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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 11 2014
SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions

The Hon. Lawton McIntosh, Circuit Court Judge

Case No. 2013-000817

The State. . . . . Respondent.

v.

Charles Cain . . . . . Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,) TRANSCRIPT
) OF
PLAINTIFF,) RECORD
)
vs.)
)
CHARLES ALLEN CAIN AND TIPHANI M. PARKHURST,) 2012-GS-42-3135
) 2012-GS-42-2547
DEFENDANTS.)

February 28th and March 1st, 2013
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, Judge, and a jury.

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

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ASSISTANT SOLICITOR
Attorney for the State

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Circuit Court Reporter
Seventh Judicial Circuit

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PROCEEDINGS

(WHEREUPON, the following takes place outside the presence of the jury panel.)

THE COURT: All right. Gentlemen, I don't know whether the jury is here or not -- I mean the entire pool. I've asked our bailiffs. They're about four people are missing.

Okay. We got them.

Okay. Before we bring them in here let's go over a couple just housekeeping matters I guess. My understanding is that there's some pretrial motions in this matter.

MR. ROBERT HALL: Yes, sir, Your Honor.

MS. CLAIRE HALL: Yes.

THE COURT: Okay. And without getting into those now, I'm just thinking scheduling --

MR. ROBERT HALL: Yes, sir.

THE COURT: -- what if we go ahead and pick a jury, let them go, bring them back after lunch, and start opening statements and trial at that, that point?

That sound reasonable?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

MR. ROBERT HALL: Yes, sir.

MS. CLAIRE HALL: Yes, sir.

THE COURT: Okay. We'll see how long it takes them. We'll kind of figure it out.

How long do you think these pretrial motions will last?

MR. ROBERT HALL: I don't think they'll be very long, Your Honor. Along the lines of what we addressed in chambers, just on the charge, and that's---

THE COURT: And, and just for the record, we had a brief conversation about the case in chambers, two matters. I think the codefendants have not appeared. But I assume that the bonding documents tell them if they don't appear they'll be tried in their absence, is that correct?

MR. ROBERT HALL: Yes, sir, and I'm assuming. I've not seen their actual bonds. But, Your Honor, they were told by -- I know I told my client that he had to be here or he would be tried in his absence.

THE COURT: All right. And they actually appeared here Monday. So --.

MR. ROBERT HALL: They were here Monday, and I've spoken with each of the two clients over the past two days.

THE COURT: Well maybe -- do you see any reason why we shouldn't go ahead and strike a jury even with them not being here at this stage?

I'm glad to give them a little time. That break may give them sufficient time to get here if they are intending to come.

MR. ROBERT HALL: Yes, sir.

THE COURT: Okay. But the other part of our meeting

was that the State intends to have a fairly novel approach to this case in that they're gonna establish trafficking through extrapolation from the aggregate components to say that a yield would of been more than the trafficking amount.

Is that correct?

SOLICITOR HOLLIDAY: Well put, Your Honor, yes, sir, and, judge, for that purpose we would simply rely on the plain language of the trafficking statute.

THE COURT: Okay. Do you have a copy of that in front of you so---

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: I don't have mine in here with me.

SOLICITOR HOLLIDAY: Yes, sir, I've got it.

THE COURT: I did look at it, and let me ask you this, Mr. Holliday.

It's right, it's Mr. Holliday?

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: I'm sorry. I'm getting everybody straight over here.

SOLICITOR HOLLIDAY: No problem, Your Honor.

THE COURT: Doesn't the statute require the drug or a mixture containing the drug?

SOLICITOR HOLLIDAY: Your Honor, I believe that the statute talks about attempt to manufacture, and I think that's what we would be to --.

THE COURT: But when you get into the measurement of the drug?

SOLICITOR HOLLIDAY: Yes, sir, the---

THE COURT: I mean I see --.

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: And I can understand the components being there.

SOLICITOR HOLLIDAY: As far as the weight to meet the 10-gram minimum, we would have to establish that the defendants could produce the drug or a combination of the drug and other elements. But the weight of the final product would have to exceed 10-grams, and I believe we have evidence to establish that.

THE COURT: Okay. Well, let me just tell you this. I'm gonna hear your argument, and after we pick the jury---

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: ---I would like to take that under advisement. So, we'll just go forward and let me think about it and read up on it. I am informed -- at least I think my law clerk may be on the way. So, we'll have some assistance. But any kind of research you could give to me with regard to that, just looking at the plain meaning of the statute, correct?

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: Okay. And I believe you're under the

impression that this is fairly novel in South Carolina?

SOLICITOR HOLLIDAY: Yes, sir, I believe this might be the appearance or the first impression.

THE COURT: So, for purposes of this case, I believe everybody agrees the strikes are five, five and five, is that correct?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

MR. ROBERT HALL: That's correct.

MS. CLAIRE HALL: Yes, sir.

THE COURT: And do we want to have an alternate?

MR. ROBERT HALL: Yes, sir.

THE COURT: Let's go ahead and have just one.

MS. CLAIRE HALL: Yeah.

THE COURT: So, I guess each side, on the defense, would have two strikes on the alternate. State would just have one.

SOLICITOR HOLLIDAY: Yes, sir.

MR. ROBERT HALL: Yes, sir.

THE COURT: All right. Is that right?

Y'all agree with that?

MS. CLAIRE HALL: Yes, sir.

MR. ROBERT HALL: That's my understanding, yes, sir, Your Honor.

THE COURT: Any reason we can't go ahead and bring the jury in now?

MR. ROBERT HALL: No, sir.
SOLICITOR HOLLIDAY: No, sir, Your Honor.
MR. ROBERT HALL: While they're bringing them around, I'll go take one more look.
THE COURT: Okay.
SOLICITOR HOLLIDAY: Indictments, Your Honor?
THE COURT: Yes, sir. What I was gonna do is have you call your case --
SOLICITOR HOLLIDAY: Okay.
THE COURT: Then hand that to me --
SOLICITOR HOLLIDAY: Absolutely, yes, sir.
THE COURT: -- if that's okay.
SOLICITOR HOLLIDAY: Absolutely.
THE COURT: Which subsection is this case under?
SOLICITOR HOLLIDAY: Subsection C would be what the State would present it as a trafficking.
THE COURT: C -- and what is it?
C and --
SOLICITOR HOLLIDAY: Subsection C(1), 10-grams or more, but less than 28-grams.
THE COURT: Is this a first?
SOLICITOR HOLLIDAY: Yes, sir, for both. Both.
MR. ROBERT HALL: Your Honor, upon reviewing the, my witnesses records, I knew his name sounded familiar, and I use to sit at the other table. In 1989, I was a much

younger prosecutor, and I was the attorney, actually the attorney that prosecuted the case. He's got in -- I just noticed, from the 1989 conviction, but I don't see any problem with that. He's just here to testify about a few things about the house and all on their part. But---

THE COURT: Does anybody see any problem?

I don't necessarily see a problem.

MR. ROBERT HALL: I just find it rather interesting.

SOLICITOR HOLLIDAY: No, sir.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: All right. Good morning, ladies and gentlemen.

Can you hear me okay?

(Jurors nod affirmatively.)

THE COURT: All right. If you can't hear during anytime, please raise your hand.

My name is Lawton McIntosh. I'm a resident circuit judge from Anderson County. It has been my pleasure and it still is my pleasure to be with you this week here in Spartanburg.

Number one, let me thank you for being here. I understand it is a inconvenience and I know that you've been working kind of hard coming back and forth. But I was checking with the clerk today, and as of today, I think,

because of your willingness to participate in the system, we've disposed of roughly 200 cases or matters this week. So, just to let you know that.

We're about to begin another case in Criminal Court.

Solicitor, would you call your case please, sir?

SOLICITOR HOLLIDAY: Sure, Your Honor.

This is the case of the State versus Charles Allen Cain. Indictment 2012-GS-42-3135 charged with trafficking in methamphetamine.

State versus Tiphani Parkhurst. It's Indictment 2012-GS-42-2547. Also charged with trafficking in methamphetamine.

THE COURT: Very good.

Would you pass those forward?

(Solicitor complies.)

THE COURT: Thank you.

All right. Ladies and gentlemen, we're about to try, begin a case against the State of, the matter of The State versus Charles Allen Cain, and State versus Tiphani M. Parkhurst.

Did I pronounce that correctly?

MS. CLAIRE HALL: Your Honor, it's Tiphani.

THE COURT: Tiphani.

MS. CLAIRE HALL: Tiphani. Thank you.

THE COURT: Okay. Both of whom have been charged with

motions in the Cain and Parkhurst, Parkhurst---

MR. ROBERT HALL: Parkhurst.

THE COURT: Parkhurst case.

MR. ROBERT HALL: Yes, sir.

THE COURT: I'll get it right before the end of the day. I promise you.

MR. ROBERT HALL: If it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. ROBERT HALL: On the part of Charles -- on behalf of Charles Allen Cain, Indictment 12-GS-42-3135 alleges trafficking in methamphetamine under 44-53-375. There -- as I understand it, no meth, methamphetamine found. This is a theoretical yield based on the, either items seized at the property, and, Your Honor, the statute does, I think, in Section D say that havings the means is prima facie case of manufacturing. But I don't think there's anything in this statute or in South Carolina law that says you can take a theoretical yield based on the evidence found and make it into a trafficking case.

There are statutes that do deal with specific amounts of drugs, combinations, and that type thing. But duplicitas in that is an actual having something to test and measure and say this is 4-grams of this or this is 3.3 grams.

THE COURT: Well, let me ask you this. Since I don't the facts of this case, I think I understand what you're

telling me is that, that the components were found at the scene.

MR. ROBERT HALL: Yes, sir.

THE COURT: However, there was no -- they not gone into the process of actually making the methamphetamine.

MR. ROBERT HALL: There were bottles I think, other things they're alleging that were used in manufacturing. There's empty blister packs of -- based on---

THE COURT: Sudafed or something along those lines.

MR. ROBERT HALL: Sudafed. There's other things. I think torn batteries, cold pacs, those type of things used in the manufacturing.

SOLICITOR HOLLIDAY: They had the flour, the sugar, and the butter, but they hadn't made the cookies yet.

THE COURT: All right. I told both of you -- I told -- let me just say I told y'all at the beginning of this, especially when we were in chambers, that I certainly don't know the answer to this question. I tried to look it before I came in here, and I have not found any cases on it.

I will tell you that I've seen cases that says the drug or a mixture containing the drug, and, and another thought that came across my mind, certainly without ruling, is that unless there's plain unambiguous language of the statute that I need to reply, that this is a penal statute. So, it's strictly construed against the State.

Okay. So, if you would, Mr.---

SOLICITOR HOLLIDAY: Holliday.

THE COURT: Holliday, I will get that right. I apologize.

SOLICITOR HOLLIDAY: No problem, Your Honor.

THE COURT: Would you point me to the plain language of 44-53-375 which allows the State to pursue this case in the method that it intends to.

SOLICITOR HOLLIDAY: Yes, sir, Your Honor. It would be under Subsection of C of the statute, Your Honor, stated -- and, judge, I would just rely on the portion where it says knowingly attempt -- or I'm sorry. Did knowingly sells, manufactures, delivers, purchases, brings into the State, or otherwise aids, abets, or attempts to manufacture. And, judge, in this case we would argue that they are attempting to manufacturing methamphetamine and the attempt to manufacture more than, a theoretical yield of more than 10-grams in this case, the maximum theoretical yield is just about 17-grams.

So, their attempt to manufacture falls directly within the statute, and if you take the statute based on the plain meaning, and apply that to the facts of this case, I believe that a charge of trafficking would be appropriate. And, Your Honor, I passed up previously a case and it's 778 NW2d 218. It's an Iowa case. State of Iowa versus Douglas Ray

Napp.

The case was---

THE COURT: Mr. Hall, you have that case?

MR. ROBERT HALL: We were given it a few minutes ago. I skimmed it and gave it to Ms. Hall to look at also.

THE COURT: Okay. So, let me, let me stop you there, Mr. Holliday.

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: Looking at Subsection C, you're asking me to read it as follow. A person who knowingly attempts to manufacture ten or grams of methamphetamine or cocaine base, et cetera, et cetera.

That's the way you want me to read the language?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

THE COURT: Okay. Mr. Hall.

MR. ROBERT HALL: Your Honor?

THE COURT: That certainly is the plain language of that statute.

MR. ROBERT HALL: Well, the -- in this case, Your Honor, they have things that they're alleging have been used to manufacture. I would read intent as you have the things to manufacture and the, the implementation to do it. You have the Sudafed. You have the batteries. You have the other things and the vessel to do it in.

THE COURT: May I ask you something please?

MR. ROBERT HALL: Yes, sir.

THE COURT: Under Title 44 Chapter 53, is there a definitional section contained in that?

MR. ROBERT HALL: I would have to look, Your Honor.

THE COURT: In other words, do these -- does the -- are these terms used in the statute terms of art or do we know them by their regular meaning?

SOLICITOR HOLLIDAY: Your Honor, I believe it's 44-53-110 provides the definitions.

THE COURT: Does it define attempt?

SOLICITOR HOLLIDAY: I'll look, Your Honor.

(Pause.)

SOLICITOR HOLLIDAY: Judge, I don't believe it defines attempt.

THE COURT: Okay. What's that section, 44-53-110?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

THE COURT: Okay. All right. Gentlemen --.

MR. ROBERT HALL: But manufacturing is defined, Your Honor.

THE COURT: Okay. I cut you off, Mr. Hall, and I apologize.

MR. ROBERT HALL: No, Your Honor. I just, I just think that, that in that plain meaning of attempt that is you have the components. Not that you have done it. They're based on not -- given the Sudafed they have, given the other

components, they could have manufactured this much. That would be attempt.

This is a theoretical yield saying we have the empty blister packs, we have these other things in the trash that, if you look at all that, they could have manufactured this much.

THE COURT: Well, let me ask you a question.

MR. ROBERT HALL: Yes, sir.

THE COURT: And I'm sorry I keep on doing this to you.

MR. ROBERT HALL: That's fine.

THE COURT: Take away the, the weight.

MR. ROBERT HALL: Yes, sir.

THE COURT: Okay. Would the possession of the components that the State says they have qualify as an attempt?

Not, not necessarily the weight. Would it be an attempt to manufacture?

MR. ROBERT HALL: I think the -- in Subsection D it says, of 44-53-375 -- let me back down to it, Your Honor.

THE COURT: I don't have D with me.

MR. ROBERT HALL: Your Honor, she can -- Ms. Hall has the, the code.

MS. CLAIRE HALL: Would you like to read it to me, to you, I'm sorry, or bring it up.

THE COURT: Please do. I'm pretty much more visual.

But go ahead. I'll try my best.

MS. CLAIRE HALL: No, I, I'll bring it up. It's Section D right there.

THE COURT: Thank you.

MS. CLAIRE HALL: Uh-huh. (Affirmative).

Well, that would answer the question, wouldn't it? Wouldn't that fall---

MR. ROBERT HALL: Yes, sir.

THE COURT: D would mean that the possession would be intent, attempt.

MR. ROBERT HALL: Yes, sir.

THE COURT: Okay.

MR. ROBERT HALL: I, I -- yeah, I think the -- in Subsection D, it says having these things is prima facie evidence of --.

THE COURT: Intent to manufacture?

MR. ROBERT HALL: Yes, sir.

THE COURT: All right. So, then the question that you properly point out to me is whether or not he could theoretical yield that amount?

MR. ROBERT HALL: Yes, I, I don't -- well, we, we feel that the statute's not clear on that, that having the things is prima facie evidence of attempt to manufacture or to manufacture. But it does not address an or trafficking. It doesn't include that. The Legislature couldn't of --.

THE COURT: Oh, manufacture is defined as a weight?

MR. ROBERT HALL: That's right.

THE COURT: That's the distinction?

MR. ROBERT HALL: Well, I think it gets to the penalty, Your Honor. The -- when the Legislature crafted this law and then they added the trafficking and all that, I'm not sure when that was put in. But they could have gone in these sections and say, and added, you know, a way that it could be trafficking. It just says manufacturing, and that's, that's the lower rung of this, and---

THE COURT: So, manufacture is, is, as worded in Subsection D, is defining the weight?

MR. ROBERT HALL: No, sir, I don't think it defines weight.

THE COURT: You mean manufacturing in the sense that we know manufacturing is to produce?

MR. ROBERT HALL: Yes, sir, that's, that's what I -- the way I read it.

THE COURT: Okay. It's---

MR. ROBERT HALL: It's simply possession of equipment or paraphernalia use in the manufacture of methamphetamine is prima facie evidence of intent to manufacture.

THE COURT: Okay.

MR. ROBERT HALL: And -- but it doesn't address trafficking. So, I think that reading that plainly then---

THE COURT: Well, that's where I'm getting confused with your argument you made, and, and it's probably cause I'm a little bit slow. But the, the -- you know, my understanding of the statute is when you use the term manufacture, that's a designated weight area or range.

MR. ROBERT HALL: Oh, yes, sir. Oh, yeah. I'm sorry.

THE COURT: And then trafficking is a designated weight and range, correct?

MR. ROBERT HALL: Yes, sir.

THE COURT: So, when you're -- it's your argument, under Subsection D, not -- you're saying it doesn't mean as defined in Subsection D, a designated weight range. It's just the, the act of producing the drug.

MR. ROBERT HALL: Yes, sir.

THE COURT: Would you agree?

MR. ROBERT HALL: Yes, sir.

THE COURT: Okay. You agree with that, Mr. Holliday?

SOLICITOR HOLLIDAY: I'm sorry, Your Honor.

THE COURT: Do you agree that Subsection D is not intended to define weight?

It's more the, the act of producing the --.

SOLICITOR HOLLIDAY: Yes, sir, that's what Subsection -- that's my interpretation of Subsection D.

THE COURT: I agree with that.

All right. I'm sorry. I keep doing it to you.

MR. ROBERT HALL: No, sir. No, sir, that's all right. I just think that if the case would go forward it would go forward as a manufacturing as opposed to a trafficking case. There's not -- I don't think there's a statute that fits it as nicely as the Subsection D there, and certainly there's no case law on this.

THE COURT: Okay. Thank you, gentlemen. I'm gonna take that under advisement.

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: I'm gonna read up on it and go ahead.

SOLICITOR HOLLIDAY: Yes, sir, judge. I was also handed another case from the Eighth Circuit. It's a United States federal case on that. I'll hand that up as well.

MS. CLAIRE HALL: Your Honor, I just wanted to put on the record, on behalf of Ms. Parkhurst we join with Mr. Hall's motion that he made for Mr. Cain.

THE COURT: I assume that when, for the purposes of the record, that the motions are being made jointly by the defendants in this matter.

All motions, is that correct?

MS. CLAIRE HALL: Yes, Your Honor.

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

All right. Any other motions other than the motion to dismiss I assume is what it is?

MR. ROBERT HALL: Yes, sir, that would be---

THE COURT: Would you hand Ms. Hall her book back? Thank you.

MS. CLAIRE HALL: Thank you.

SOLICITOR HOLLIDAY: Your Honor, just to clarify the motion, the motion to dismiss or a motion to amend the indictment from the charges?

MR. ROBERT HALL: It's a motion to dismiss that what happens after that.

SOLICITOR HOLLIDAY: I believe we could, according on Your Honor's ruling, we could still go forward on the lesser included of manufacturing.

THE COURT: Well, he hadn't been indicted on it, has he?

SOLICITOR HOLLIDAY: No, sir, he's been indicted---

THE COURT: He would have to waive presentment.

SOLICITOR HOLLIDAY: But I believe trafficking or manufacturing would be a lesser included of the offense of trafficking.

THE COURT: But if I -- if you amend the indictment, don't you have to reindict him?

MR. ROBERT HALL: On that, given the fact situation---

THE COURT: Or he waives presentment.

SOLICITOR HOLLIDAY: Or he can---

MR. ROBERT HALL: I don't have -- hopefully I'll have a client I can address that with later, Your Honor, but---

THE COURT: I know that a lot of times when you're here and you're doing pleas and you have somebody who's pleading down to a lesser charge---

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: ---we do a waiver at that point because it is a lesser, and you amend the indictment. At that point I mean I think that would be technically improper if he objected to going forward with it. Now, if he didn't object, then I think you can waive presentment.

MR. ROBERT HALL: Yes, sir, but in this case, this is a -- in most of the other cases, not all of them, but most of them that's either -- it's either a waiver or you're actually talking about the weight. You have 10.5-grams you plead down to possession, to possession with intent to distribute, which is actually weight, but we don't have any -- we have the theoretical weight here. Not a natural weight here.

THE COURT: Well, let me ask you this.

It seems to me -- and, again, I'm not ruling on it. I'm gonna look at it.

MR. ROBERT HALL: Yes, sir.

THE COURT: But the statute pretty plainly says, if you take out the other language in it, a person who knowingly attempts to manufacture methamphetamine, et cetera, et cetera, et cetera. Then you have Subsection D, which we all

have agreed means to produce.

MR. ROBERT HALL: Yes, sir.

THE COURT: There's a, there's prima facie evidence that he has these component parts that that's what he intends to do. So then it would seem to me that it would be a question of fact for the jury to determine whether or not the amount was 10-grams or not or over, and maybe send them a special interrogatory to the jury for them to make that call.

MR. ROBERT HALL: I had not thought of it in that angle, Your Honor, quite frankly.

THE COURT: I don't either. I'm just, I'm just telling you -- thinking out loud. But that seems to be a reasonable and plain application of the statute.

MR. ROBERT HALL: Well, I, I think that the statute says manufacturing this stuff is evidence of manufacturing, and it -- the Legislature is amended this statute, in just my career, several times and they did not add that. They, they went through and did all the things about possessing Sudafed and Pseudoephedrine, excuse me, and -- but they didn't go back and change this part---

THE COURT: Okay.

MR. ROBERT HALL: ---the manufacturing.

THE COURT: All right. I will look that up over lunchtime.

What -- other motions on behalf of the defense?

MR. ROBERT HALL: None from Mr. Cain.

MS. CLAIRE HALL: None from Ms. Parkhurst.

THE COURT: Okay. Motions from the State?

SOLICITOR HOLLIDAY: Yes, sir, just briefly.

For the record, I have copies of the signed, certified copies of the signed bail forms from the defendants.

THE COURT: Signed what?

SOLICITOR HOLLIDAY: Signed bail forms, Your Honor.

THE COURT: It has where they had been informed that they would have a trial in their absence?

SOLICITOR HOLLIDAY: Yes, sir, and I ask to make them Court Exhibits.

THE COURT: That will be good. Will you make both -- that's for both defendants?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

THE COURT: Very good.

MR. ROBERT HALL: There's no objection, Your Honor.

MS. CLAIRE HALL: No objection.

THE COURT: And I believe counsel both, counsel for both defendants stated that they advised their clients that a trial would be had in their absence if they didn't appear, is that correct?

MR. ROBERT HALL: That's correct, Your Honor.

THE COURT: Okay. Is that correct, Ms. Hall?

MS. CLAIRE HALL: Yes, sir.

(WHEREUPON, the two bond sheets were marked as Court's Exhibit Nos. 1 and 2 for identification purposes only at this time.)

THE COURT: All right. Anything further before we break for lunch?

SOLICITOR HOLLIDAY: Not from the State, Your Honor.

MR. ROBERT HALL: Not from the defense.

THE COURT: All right. Thank you, guys. I appreciate -- I'll look at this.

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: If I didn't, if I didn't have anything to do at lunch I do now.

SOLICITOR HOLLIDAY: Yes, sir, judge.

THE COURT: All right.

(WHEREUPON, Court was in recess for the lunch hour.)

THE COURT: All right. For the record, Bishop, Number 14, is our foreperson.

I was reading those cases, that case over the break. I -- quite frankly, my law clerk just got here. So, I let him do a little bit of work. I'll tell you that I am leaning towards going to the jury, letting it go forward and not dismissing your case, and I'm not ruling on that. It's still under advisement, but sending a special interrogatory to the jury as to the weight.

MR. ROBERT HALL: Well, Your Honor, I had a little bit of time to look at it. I think with the federal case, we've got apparently a specific statute, as I recall, that lays it out and it's dealing with manufacturing.

THE COURT: Sir, it's a federal case that says it's a manufacturing case. It's not trafficking.

MR. ROBERT HALL: I believe it says---

SOLICITOR HOLLIDAY: It does, Your Honor. But the penalties are based on theoretical yield. So, that's what we rely on in our case.

THE COURT: Well, I think we're gonna have to -- seems to me -- it's not necessarily a question of law as much as it is a question of fact for the jury if they believe your theoretical yield theory yields more than ten, less than 28-grams, then I guess they can find him guilty of trafficking. If they -- but it seems -- you're gonna come up with a theoretical argument or are you just gonna do theoretical---

SOLICITOR HOLLIDAY: Well---

THE COURT: You don't have to tell me. You don't have to tell. Excuse me. I saw your ears perking up over here.

All right. Is everybody ready to start?

MR. ROBERT HALL: Yes, sir, I came back through a few minutes earlier and went through the courthouse. I did not see our clients.

THE COURT: Okay. They've been given ample notice, and as pointed out earlier, it's in the bonding papers, right?

MR. ROBERT HALL: Yes, sir.

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: Everybody ready then?

SOLICITOR HOLLIDAY: Yes, sir.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Okay. You're Mrs. Bishop?

FORELADY: Yes, sir.

THE COURT: You've been with us all week?

FORELADY: Yes, sir.

THE COURT: Mrs. Bishop, and Mrs. Finley, I'm gonna ask both you sit in the seats that you're staying in right now throughout this trial, each time we come in and out of the courtroom. It just helps myself and other Court personnel keep up with some administrative matters we have to.

The rest of you are free to sit where you'd like when you go in and out.

Does everyone have a pad and pen who chooses to use them?

(Jurors nod affirmatively.)

THE COURT: Very good.

All right. Madam Clerk, will you swear the jury?

(WHEREUPON, the jury was placed under oath at this

presence of the jury.)

THE COURT: Thank you, sir.

State ready to proceed?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

THE COURT: Defense ready to proceed?

MR. ROBERT HALL: Yes, Your Honor.

MS. CLAIRE HALL: Yes, Your Honor.

THE COURT: Mr. Holliday.

SOLICITOR HOLLIDAY: Please the Court?

THE COURT: Yes, sir.

SOLICITOR HOLLIDAY: Ladies and gentlemen, this is a case about methamphetamine or what's more commonly referred to as a meth lab.

On January 17th of 2012, two Spartanburg County sheriff's deputies, Deputy Kyle and Deputy Wilbanks, both seated over there in the first row, went to an address at 371 Dakota Street to serve a bench warrant, and a bench warrant is just when someone doesn't show up for Court, a Court will issue a warrant for their arrest to make them show up for Court. It's the Court's power to bring people to Court.

So, they show up at this house to serve a bench warrant on an individual, which doesn't happen to be either of the two defendants. It just happens to be for the same address.

So, they knock on the door and Charles Cain and Tiphani

Parkhurst open the door, and they tell them that they're here to serve this arrest warrant and they want to look inside, and they ask for their ID, and they check their ID, and, you know, that's who they are. At first, they don't want to let them and they say well, we have this warrant it says we can come in. So, they come in and they start searching the house for this other person.

Well, the defendants, you know, they go into their bedroom, look for them. They say oh, we're just tenants of this house and we just rent this bedroom. So, they go and they look in their bedroom, look under the bed trying to find this guy who didn't show up for Court.

So, you know, they figure well, these two people are okay. You know, they don't have any warrants or anything against them. And, so, they're, you know, they're just normal citizen. So, we're just gonna search the rest of this house and look for this guy we have this warrant for.

So, they leave them in the bedroom and then they walk through the rest of the house, and low and behold they walk into the room and they find a meth lab. They see bottles with tubes and it doesn't look like the clean chemistry set you would see in a high school laboratory. It's a make shift, and fortunately we've got some pictures that, later on in the trial, we'll get you to look at. It kind of explains what a meth lab is. But albeit, the officers have

been trained on this and they knew this was a meth lab.

So, at that point they turn back around to go talk to the defendants, Mr. Cain and Ms. Parkhurst. However, the defendants have locked their bedroom door and barricaded it. So, when the deputies tried to get in, they couldn't open the door. So, eventually they broke down the car and low and behold, the defendants had fled the scene, gotten in their car, and driven off.

Well, at that point the officers realized that they had a big mess on their hands. So, they called the Spartanburg County Sheriff's Office narcotics unit who typically responds to drug calls, meth labs, and what have you. Then they called the stand-by chemist who typically comes to clean up meth labs and does all that sort of deal, and they got a search for the house because, you know, if you're gonna keep looking for things, you probably want to do it the right way. So, they got a search warrant and they went and looked at the house.

What they found was a big mess, and one of the problems with meth lab cases is that juries like to see evidence. They like to see drugs. They like to see guns. Whatever the crime is, they want, they want to be able to see and touch something.

But the problem with meth labs though is they're so dangerous that, in the interest of public safety, we

actually have to clean them up and get rid of everything. So, there's no chemistry set that I can bring into Court to show you. There's no tubing that we have because it's all dangerous and it's all volatile and Beth Stuart, the chemist who was on the scene, can explain that to you, but why that's disposed of and the way it is.

But what we do have are the officer's testimony, and we've got pictures of the lab. So, we can explain to you what was there and she can basically tell you what a meth lab is because, before I started doing this job, I didn't know what a meth lab was and I didn't know how meth was made, you know, and, so, we'll try to help you understand that.

But part of this charge, and you probably heard the judge say it or me say it, this is a trafficking charge. This is very serious offense. Not only are we alleging that the defendants, Mr. Cain and Ms. Parkhurst, were manufacturing methamphetamine, but they were making so much methamphetamine that it rose to the level of trafficking. And the way we're gonna prove that is we actually didn't find any meth on the scene, but we did find all of the ingredients or ingredients that are used to manufacture it.

And what the chemist did is she took those ingredients like you would for baking cookies. You know, your butter, your flour, your sugar, Pseudoephedrine, Lithium ions, and,

and all those sort of things that go together to make meth, and she took those and she puts them into a formula, and she says okay, if I've gotten this much Pseudoephedrine, then I can make this much meth. And, so, she's gonna get up here and explain to you how that works.

And what we're alleging is, based on the amount of Sudafed they had, they could make more than 10-grams of methamphetamine. Matter of fact, if they did it perfectly, they could make almost 17-grams of methamphetamine. And, so, at the end of this case I'm gonna come back and I'll ask you to find the defendants guilty of trafficking in methamphetamine. But to get there we're gonna have to explain to you a little bit, and that's what we'll do through the testimony of the deputies and the chemist.

So, I just ask that you pay attention. That's kind of the road map that we're gonna go down, and at the end of the trial I'd ask you to come back with a verdict of guilty.

THE COURT: Ms. Hall.

MS. CLAIRE HALL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CLAIRE HALL: Thank you, Your Honor.

I'm Ms. Hall, no relation to Mr. Hall, but we're both here today representing our clients. I represent Tiphani Parkhurst, and I just want to point out to you the law in South Carolina for trafficking in methamphetamine requires

that a person knowingly do these things, whether that's knowingly sell, manufacture, conspire to sell or manufacture 10-grams or more of methamphetamine.

So, I ask you to keep that in mind during this trial whether or not Tiphani Parkhurst knowingly was trafficking in methamphetamine, and I think the judge gave you an excellent definition of what is reasonable doubt, and that is when a reasonable person hesitates to act. And I think you'll see several things during this case that may cause you to hesitate to act as in to hesitate to find Ms. Parkhurst guilty of trafficking methamphetamine.

Mr. Holliday just stated to you in his opening that when the officers came to serve a bench warrant on someone at this address they walked into a bedroom. They came in from an outside door, walked into a bedroom, and that Mr. Cain and Ms. Parkhurst told them we're renting this room of this house. There is where we're staying, and they opened another door and allowed them to go into the rest of the house to look for the individual who was listed on this warrant.

I want you to look at and question where were the items that allegedly are used in manufacturing methamphetamine found in this house.

Did Ms. Parkhurst or Mr. Cain even have control over those parts of the house and where these things were found?

Also, how long were these two individuals even in this home?

And another reason you may hesitate to act is reviewing the physical evidence. Mr. Hall and I pointed out that they don't actually seize these drugs or items used in creating methamphetamine because of the dangers. Whether they've said there are photos and certainly there will be testimony about it.

I just ask that you keep in mind the standard that the State must prove to you is beyond a reasonable doubt, and I think I'm confident in this case that you will find evidence that will cause you to hesitate to act and that you will return with a verdict of not guilty.

Thank you.

MR. ROBERT HALL: Please the Court?

THE COURT: Yes, sir.

MR. ROBERT HALL: Counsel, solicitor.

Madam Forelady, ladies and gentlemen of the jury, as they told you, my name is Robert Hall. I represent Charles Allen Cain. It's my duty to represent his interest here in this Court.

And as the solicitor said, this is a very serious charge. It's a very serious charge.

I'm not gonna go into the facts. I think you got an overview of what's going on. But we have a case where two

people are charged because they're there.

What the State has to do, they have to make a connection to whatever it is they found, if it was a meth lab, if it's left to be a meth lab or whatever, that it was there and it was in their control. Not that just they're there, and there's these things here. They have the burden of proving beyond a reasonable doubt that they were involved with this, but that it was a short concise sentence.

You can not do your job for the State and for the defendants unless you pay attention to what's being presented. Take that in, and at the appropriate time, listen to the judge cause he's gonna tell you what the law is so you can take those facts as you find them and arrive at your verdict.

So, listen to what's being said, take it in because the issue's not just is there a meth lab. Is there a meth lab there that they were involved with.

Thank you on behalf of my client, both, both of our clients, in advance here, and I'll let us get started with the trial.

Thank you.

THE COURT: Call your first witness please, sir.

SOLICITOR HOLLIDAY: Your Honor, the State calls Deputy Kevan Kyle.

KEVAN KYLE, having been first duly

sworn, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR HOLLIDAY:

Q Thank you, Deputy Kyle.

Could you state your name for the record please?

A My name is Deputy Kevan Kyle.

Q And you work at the Sheriff's Office?

A Yes, sir, Spartanburg County Sheriff's Office.

Q Can you tell us what your job is there?

A I'm on uniform patrol.

Q Okay. So, what does that mean?

A I'm responsible for answering 9-1-1 calls is my primary duty as well as serving warrants, making traffic stops, among other things.

Q Okay. How long have you been doing that?

A I been with the Sheriff's Office since October 2007. So, about five and a half years.

Q And on January 17th, 2012, did you happen to encounter the defendants, Mr. Charles Cain and Ms. Tiphani Parkhurst?

A Yes, sir, I did.

Q And where did you come to find them?

A I was at the address of 371 Dakota Street.

Q Okay. What were you doing there?

A I was there trying to serve a Family Court bench

warrant for a Travis Kirby, and I was checking the house for him.

Q Okay. When you went to the door, what happened?

A While we knocked on the back-door, because there was a car parked right in front of that door, we went to that door and both subjects came to the door.

Q When you say both subjects you mean --?

A Ms. Parkhurst and Mr. Cain.

Q Okay.

A But they answered the door. I explained to them why I'm there, that I was looking for Travis Kirby, and I asked if they knew him. I asked for their identification to make sure I knew who they were.

Q So, you checked the driver's license?

A Yes, sir, we did.

Q Okay. What did they tell you?

A They stated that they didn't know -- they stated to me they didn't know Travis Kirby and they didn't know if anyone else was in the house. They told me, at that time, that they were renting the bedroom from the owner of the house, and that was the only area they went in, which is just that one bedroom, and they had nothing else to do with the rest of the house.

Q Did they want you to look inside the house?

A No, at that time they were both nervous, making furtive

gestures, but they did not seem inclined to let us look through the house, which, to me, is an indicator, when I'm looking for someone with a warrant, that that person is in the house. So, that just led me to believe they may have knowledge if he's in the house and they were familiar with him and was trying to hide him.

Q At that point in time did you begin a search of the house for Mr. Kirby?

A After I showed them the warrant, showed them the address on the warrant, and I explained to them that we had the right to search a house if we have a reason to believe someone's in the house, they agreed to let us search the house. We began in the bedroom. That was after we had checked their identification, make sure they didn't have any warrants themselves. But we didn't find Mr. Kirby in there. As we proceeded through the rest of the house, we actually found their dog that they had shut in the rest of the house shut off in their bedroom while we were talking to them.

Q How did you know it was their dog?

A I believe they said that they had a dog.

Q And where, where did you find the dog or was he roaming around or --?

A He was running loose in the house. He came up to us while we were walking down the hallway.

Q And where did they lock the dog up?

A Well, it -- they had just put him in the rest of the house.
Q Okay.
A Yeah, they had just shut their door to their bedroom so their dog couldn't come in that room.
Q Did you search the rest of the house looking for Mr. Kirby?
A I did. We conducted a search of the whole house.
Q And what did you find?
A Well, the way we came in, we searched the house, their bedroom was in one corner of the house and as we proceeded through the rest of the house, what we found, what I recognize to be a meth lab was in the far corner of the house.
Q Have you---
A It was---
Q I'm sorry.
A When I looked into a bathroom I immediately saw a bottle resting on a counter and it had tubing coming from the top. The tubing ran up to a window that was open at the top, and the opening of the tubing was actually out into the air, the outside, and that's one of the indicators that I recognize that is common with meth labs or active math labs is that gassing out process that they vent it so it's not dangerous to them.

I saw that and decided it was -- that was sealed off in that one room. I wasn't gonna go in there. I did a courtesy check. It was obvious no one was in there.

I proceeded to the last couple of rooms to make sure Mr. Kirby was not in the house. In the living room is where I found the rest of what I recognize to be manufacture or meth lab. It was several bottles with multicolored pellets, which is common in a one pot meth lab, coffee filters which is used to strain the meth out of liquids in the meth lab, tin foil, batteries.

Q So, how did you know it was a meth lab?

A I have had training in meth lab recognition. I went to a clandestine lab class in Meridian Mississippi. That's a week long class.

(WHEREUPON, 24 photographs were marked as State's Exhibit Nos. 1 through 24 for identification purposes only at this time.)

Q Okay. I'm gonna ask you to take a look at these photographs here and ask if you can identify those.

A Yeah.

Q Take, take your time and look at them and see if you know what they are.

A Right. I recognize all these.

Q And what are those photographs of?

A These first two are photographs of the bottle I found

with the tubing coming out in the, the window.
Q You can keep going.
A Okay. And actually at the end of the, the incident, these next pictures are photographs of what we found after we exited the house after Ms. Parkhurst and Ms. Cain had departed after sealing us in the rest of the house. But when we walked out on the front porch, which is immediately in front of the room, the exterior door they use to come and out of the house, I noticed what appeared to be the contents of a one pot or meth lab, the multicolored pellets had been poured out over the grass and on the concrete itself and it was fresh and it was wet.
Q Deputy Kyle, once you found the meth lab, did you try to go ask the defendants about it?
A Well, once we determined that Mr. Kirby was not in the house, we had recognized and made a decision to back out of that, we went to go speak with them. So, we came out the way we came in, which was gonna be through their bedroom.

When we got to the bedroom door, Deputy Wilbanks was in front of me, he found the door was not able to be moved. He was able to force it open enough to look around, and several boards or a board had been placed against the door to prop it to keep it from opening basically to seal us into the, the house, and, the defendants, they were no longer on scene. They had gotten into her car, which had been parked

right in front of the door, and they had left.
Q So they left?
A Uh-huh. (Affirmative).
Q Those pictures I asked you to take a look at.
A Yes, sir.
Q Are those a fair and accurate representation of what you saw that day?
A Yes, sir. And just so -- you asked, these last two are the front of the house.
Okay. Your Honor, at this time the State would move Exhibits 13, 15, 14, 4, 3, 2, and 1 into evidence.
THE COURT: Any objection?
MR. ROBERT HALL: No objection, Your Honor.
THE COURT: From Mr. Cain?
MS. CLAIRE HALL: No objection.
SOLICITOR HOLLIDAY: Admitted without objection.
(WHEREUPON, State's Exhibit Nos. 1 through 4 and 13 through 15 were received into evidence at this time.)
SOLICITOR HOLLIDAY: And permission to publish to the jury, Your Honor?
THE COURT: Yes, sir. Would you refer to them by exhibit number for me please, sir?
SOLICITOR HOLLIDAY: Yes, sir, Your Honor.
Q Deputy Kyle, this is Exhibit No., State's Exhibit 1. To be easier on you I'm gonna use a laser pointer if you

need to point up there.

Is this, is this the house that y'all went to?

A Yes, sir, that's the, that's the address right there, 371. It's covered up the seven, but it's actually there.

Q Okay. This is State's Exhibit No. 2.

Is that the same house?

A Yes, sir, it is.

Q Okay. Where's the defendant's bedroom door?

In that it in that picture?

A No, they're on the other side of the house.

Q Yeah, this is just a picture of the front of the house?

A Yes, sir.

Q Okay. You mentioned you saw tubing going up a window.

A Yes, sir.

THE COURT: And what exhibit number please?

SOLICITOR HOLLIDAY: On, I'm sorry, Your Honor. It's State's Exhibit No. 3.

Q Is that the tube you saw going up the window?

A Yes, sir, that's, that's the first indicator that maybe believe there may be a meth lab or an active meth lab. As you see, there's the bottle and the, the tubing is sealed right here, and then it runs up, and it was actually tucked up into the top of the window, which had been pulled down about an inch.

Q And this is State's Exhibit 4.

A That -- yes, that's the same bottle.
Q Okay. You said when you, when you exited the house following where the defendants left, you saw something on the ground?
A Yes, sir.
Q What did you see?
A Well, it, it appeared to be the same contents of the bottles I saw on the living room, the multicolored pellets.
Q Okay. This is State's Exhibit 14.
A It's -- this is where it's in the grass. You can see it's here and this clump here. But that's, that's some of the, where it's wet around the edge from the liquid inside.
Q And this is State's Exhibit 15.
A Yes, sir, that's, that's more of the splatter. This is actually on the concrete, which is their porch. You can see the dark around all the pellets is from the liquid flowing out from the pellet.
Q And State's 13.
A Yeah, that's, that's more of it right there, the pellets.
Q Okay. Please answer any questions defense attorney may have.
A Yes, sir.
SOLICITOR HOLLIDAY: No further questions at this time, Your Honor.

THE COURT: Cross-examination please.

MS. CLAIRE HALL: May it please the Court?

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. CLAIRE HALL:

Q Officer Kyle, you said the first door you went to was a back-door?

A Yes, ma'am.

Q Okay. Is that the only door you went in and out of?

A Yes, ma'am.

Q Were there other doors to this home on the outside?

A There were two other exterior doors.

Q Okay. So, the door you walked in was a bedroom?

A Yes, ma'am, it was a bedroom.

Q Okay. Now, you said you found a dog in the other part of the house?

A Yes, ma'am.

Q You know it was the defendant's dog?

A They claimed to have a dog.

Q Claimed to have a dog.

Did you make a report in this case?

A My report was a supplemental to the report that---

Q Uh-huh. (Affirmative).

A ---other officer, Investigator Schafer, when he did his search warrant.

Q Okay. Did you mention anything about a dog or the defendants having a dog in the home?
A I didn't.
Q Okay. When you tried to exit the home, after they allowed you to go through, how did you get out if they sealed you in?
A Well, like I said before, Deputy Wilbanks was able to get the door ajar enough to see behind it and saw there was a board and he was able to reach through and get the board out.
Q Okay. You didn't try any of the other three doors?
A No, ma'am.
Q Now, you mentioned that the defendants didn't want to allow you into the rest of the house to search for Mr. Kirby?
A That was my belief at the time, yes, ma'am.
Q But they had told you already that they were just staying in this one bedroom, right?
A Yes, ma'am.
Q Okay. So, you -- we don't know that they had any control over the rest of the house or access to it or suppose to have access to it?
A Well, the only thing I can think of is -- no, they -- I can't say they did.
Q Okay. And that -- you said the defendants left while

you were searching the remainder of the home.
Did you tell them to stay there?
A No, ma'am.
Q They weren't under arrest?
A No, ma'am, they were not under arrest.
MS. CLAIRE HALL: Okay. One moment please.
(Pause.)
MS. CLAIRE HALL: I have no further questions.
THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. ROBERT HALL:

Q All right. Just -- I want to clear up a few things.
The first thing, I got a lot of dogs at my house.
What kind of dog was this in the house?
A It was like a pit bull mix. Looked like a bull dog or a pit bull mix.
Q Kind of grayish looking one or black or white?
A It was tan in color.
Q Okay. Aggressive?
A No, sir.
Q Pit bulls can be friendly, can't they?
A They can.
Q And there's some friendly pit bulls.
So, we understand this house at 371 -- well, first let me say.

Was there anything else on this property, appeared to be on this property, any other structure?
A Yeah, the lot is a, is a long lot and there's a trailer behind the house.
Q Are you aware if it has a separate address from the --?
A It, it does.
Q Okay. If it -- with the warrant you had, if it had three -- if that trailer was just 371 also, you could of searched it too, couldn't you?
A If it was part of the address, yes, sir.
Q Yeah.
Okay. So, it had a separate address?
A Yes, sir, it did.
Q All right. The house that is at 371 Dakota, how many doors does it have?
A Exterior doors?
Q Yeah.
A Three.
Q Three?
A Yes, sir.
Q Okay. Are you certain of that?
A That's my recollection.
Q There's two front doors, is that correct?
The picture you saw, we saw just a few minutes ago, it had two front doors?

A It does.
Q There's a door that you said they let you in to a bedroom off of a porch in the back?
A Yes, sir.
Q Okay. And, so, that's a, a back corner?
A Yes, sir.
Q All right. Now, when you pull up the driveway, you pulled into the back of the house?
A We pulled up the driveway basically to the side of the house, but I pulled up parallel with where they had parked their car.
Q Okay. So then -- so, you -- did you stop beside the house or come to the back?
I'm a little confused.
A I stopped at the side of the house.
Q Okay.
A I walked---
Q All right.
A ---to the back-door.
Q And then how was their car parked cause I just assumed they pulled in?
A Yeah, it's as if they had pulled up the driveway and then pulled across.
Q So---
A So theirs was -- they had actually driven to the back.

Q So, you would of been more or less perpendicular and not parallel to their car?
A Parallel with the level of their car. It was on the property.
Q Oh, okay. I understand.
Now, you sure you didn't pass another door before you got to that door with the porch?
A Yes, sir, there was another door there.
Q So, there's four exterior doors?
A Yes, sir, I forgot about the other front door.
Q Now, did you have any reason to believe that you were walking into a meth lab?
A No, sir.
Q All right. Your intent, when you got there, was to find Mr. Kirby?
A Yes, sir.
Q Right?
Now, do you recall, once you're in the room, you looked for Mr. Kirby?
A Yes, sir.
Q Now, did you see anything that alerted you to a meth lab there?
A In the bedroom?
Q Yes, sir.
A Not -- no, not at that time.

Q Okay. And do you recall how you got from that room to the rest of the house?

Did you go through an open, a closed -- a door that had to be opened or anything?

A It, it was a door that had to be opened.

Q Okay. So, when you walked in there, that door to the rest of the house was at least closed?

A At that time, yes, sir.

Q Do you remember if it was blocked or barricaded in anyway?

A No, sir.

Q All right. But it would have moved, opened into the room?

A Yes, sir.

Q Okay. All right. Now, the -- where's the bathroom located in the house where you found the bottle?

A It's up next to the main front door. Not the one off to the side.

Q Okay. If I'm going from the back of the house to the front, to the right---

A If you turned into the door that led into the house, you would go to the hallway that stretches the length of the house and turns left, walk up into a common area, which is a -- to your left was a dining room/kitchen. To your right was a bathroom and a short hallway with a laundry room and a

living room for that.
Q Okay. So, it's in the front of the house?
A Yes, sir.
Q Okay. All right. Were you part of the search warrant or had you withdrawn at that point?
A No, sir, I was not part of the search warrant.
Q Okay. And you saw the things that called your attention, that your attention was called to made you call the narcotics division in the rest of the house?
A Yes, sir.
MR. ROBERT HALL: All right. All right. No further questions.
THE COURT: Redirect?
SOLICITOR HOLLIDAY: No redirect, Your Honor.
THE COURT: May this officer be excused?
SOLICITOR HOLLIDAY: Yes, sir, Your Honor. I would request that.
MR. ROBERT HALL: No objection.
MS. CLAIRE HALL: No objection.
THE COURT: Thank you, sir. You may be excused.
WITNESS: Yes, sir.
THE COURT: Call your next witness please.
SOLICITOR HOLLIDAY: State calls Deputy Chris Wilbanks.
CHRIS WILBANKS, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR HOLLIDAY:

Q Thank you, deputy.

Could you please give us your full name for the record?

A It's Chris Wilbanks.

Q And how long -- you work at the Sheriff's Office --

A Yes, sir.

Q -- by your uniform?

How long, how long have you worked there?

A Since February of 1998. So, 15 years.

Q 1998.

Okay. And what is your job at the Sheriff's Office?

A I'm assigned to uniform patrol.

Q So, the same as Deputy Kyle?

A Yes.

Q And were you with Deputy Kyle on the, on January 17th, 2012?

A Yes, I was.

Q So, you were part of that -- y'all were there to serve a bench warrant on Mr. Kirby, Travis Kirby?

A Yes.

Q Okay. When you went to the house, did you suspect anything, any legal activity going on in the house or what was your state of mind when you were walking in the door?

A We went there attempting just to locate Mr. Kirby.

Q Did you speak with the defendants, Mr. Cain and Ms. Parkhurst?
A Yes.
Q Did you ask for their identification?
A Either me -- I don't recall whether it was me or Officer Kyle, but one of us had, and they presented us with their South Carolina ID's.
Q Did you, at that point, walk through the house to look for Mr. Kirby?
A Not at that moment. When they presented us with ID's, while Deputy Kyle stayed and spoke with them at the back-door on the porch, I went back to my patrol car and checked their ID's in our system to make sure they were indeed who they said they were and make sure they weren't wanted or anything along those lines.
Q Okay. And once you checked to make sure they weren't wanted, were you very concerned with them?
A No, they, they had no -- they were clear for our purposes.
Q Why did you go to the back of the house?
A That's where the car was parked at. It -- the car was parked close enough to this back porch that, where we had made contact with them. It was obvious they were using that as an entry point into the house based on where the car was parked at.

Q And 371 Dakota Street, are you familiar with that part of Spartanburg County?
A I am. That's the area I work.
Q And, so, as part of your routine patrol in Spartanburg County, you, you went to that address?
A Yes.
Q Are you familiar with any other individuals who may reside on that property?
A I'm familiar with the property owner.
Q And who is that?
A It's Leon Fowler, Senior.
Q Okay. Was he present at this home at that time?
A Not at this home, no.
Q After you checked the defendant's ID's, did you walk through the house?
A Yes, we did.
Q And what did you see when you walked through the house?
A The door we had knocked on, which was the door they had answered, led directly into a bedroom. It was obvious, just from looking at it, that was apparently where they stay at inside the house. We had spoke to them about Travis Kirby. They denied, they denied knowing him at all.

And once they were -- we were, we were going to search the house. Mr. Cain had to open a door that led to the rest of the house. From that point we moved through their

bedroom. We checked their bedroom simply for somewhere a person could hide. That's what we were there looking for. It was obvious the bedroom and its contents, there, there was no other person there other than them two in the bedroom. So, at that point, he actually opened -- Mr. Cain opened the door which allowed us entry into the rest of the house.

Q Did the bedroom have a kitchen in it?

A No.

Q Did the bedroom have a bathroom in it?

A No.

Q Did the bedroom have any sort of typical things that one would keep in their home, pots, pans, spoons, silverware?

A Not that I recall.

Q Where was the bathroom located again?

A From the point we entered in the back, the bathroom would be the front right corner.

Q So, they would have to go through the house to go to the bathroom, through the house to go to the kitchen?

A Yes.

Q So, they weren't just living just in this one room? They, they had access to the rest of the house?

A Yes, sir.

Q Did you see -- you saw the exhibit earlier of the

tubing and that sort of thing. I believe it was State's Exhibit, State's 3.

A Yes, sir.

Q When you saw that, what did -- what, what came to your mind?

A At that moment it was, you know, from training, it was obvious it was an active meth lab.

Q And is that in the bathroom?

A That is.

Q How many bathrooms were in the house?

A Just one that I recall.

Q Once y'all were looking at this meth lab, did you want to go back and speak with the defendants, Mr. Cain and Ms. Parkhurst?

A We did.

Q And were you able to speak with them?

A No, as we -- once we had identified there was clearly no other people inside the house, we began to back back out the hallway, which led back to the bedroom which we had entered through. We got to the door that we had come through. I attempted to open it. It wouldn't open. And I actually made the comment to Deputy Kyle, I asked him, I said this is the door we came through and he said yes.

At that time I was able to force on the door. It came opened enough for me to tell it had been barricaded from the

bedroom side. At that time I kicked it the rest of the way opened. We then went back in the bedroom we had initially started at, and we realized the vehicle was gone along with Ms. Parkhurst and Mr. Cain.

Q Do you think it's kind of strange that the defendants would barricade the door that they came or separated you and them?

A Yes.

Q Do you think it strange that they would get in their car and just leave?

A Yes.

Q Would they have known that you had saw the meth lab?

A Yes, it's -- the picture that, right there is looking through a doorway from a hall pretty much. It's very visible. It's no intent to hide it once you're inside that portion of the house.

Q On your way back out did you see anything on the ground?

A Yeah, on the, the cement patio, which was also one of the pictures was shown, that's -- that picture of the contents of the, of what Officer Kyle referred to as a one pot bottle was on the cement of the porch we had initially stood on to knock at that door.

Q This is State's Exhibit 14.

This is what you're referring to --

A Yes, sir.
Q -- as material on the cement?
A That, that would be right outside the door we initially knocked on to make contact with Mr. Cain and Ms. Parkhurst.
Q Okay. And when you discovered that there was, you believed, a meth lab present, what did you and Deputy Kyle do?
A After ensuring there was no one else in the house, what -- we cleared it and got outside the residence due to the simple dangers of what the meth lab could cause inside the house.
Q Did you call anyone?
A Yes, we noted -- Deputy Kyle notified dispatch for our narcotics division, which, in turn, notified the chemist to begin the process.
Q Please answer any questions defense may have.
THE COURT: Cross-examination.
MS. CLAIRE HALL: May it please the Court?
THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. CLAIRE HALL:

Q Officer Wilbanks, do you know if the power or the water was on in this house?
A It was not.
Q Okay. So, if there was no water, they couldn't -- the

toilets can't be flushed and the sinks can't be run?
A They may of been able to. I say it was not on to that house. They were what I would refer to as illegally supplying the house with power and water by running what appeared to be drop cords and hose pipe from Mr. Fowler's residence.
Q Where did you see the hoses go to?
A They went just into the residence. I didn't look to see where they were going. They were just running from one house to the other.
Q Okay. Let's see. You told Solicitor Holliday that the defendants had access to the rest of the house.
Is this based on an assumption because there was no kitchen or bath in the bedroom that you came into?
A No, I based it on when we asked to search the residence. Mr. Cain opened the door for us.
Q Okay.
A So, he gave us access to it. So, I know he would have access as well.
Q Were you both in uniform?
A Yes.
Q And you told him that we have a, an arrest warrant, a bench warrant for somebody that allows us to search the rest of this house?
A Yeah, Deputy Kyle told him that.

MS. CLAIRE HALL: Okay. One moment please.

(Pause.)

MS. CLAIRE HALL: No further questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. ROBERT HALL:

Q Do you remember the dog?

A Yes.

Q A nice pit bull?

A Yes.

Q Were you just -- were you a little apprehensive when you first saw him?

A The reason I know it's Mr. Cain's dog is that when I actually went down the hall the dog came running up and I made the comment that I may have to shoot, and Mr. Cain spoke up, after hearing my comment, cause we just made it to the hallway, don't shoot my dog, hold on, let me get him.

Q All right. But a friendly dog?

Didn't bother you at all?

A Very friendly dog.

Q Now, you say you're familiar with Leon Fowler. You got -- I think you got to be a little more specific than that, don't you?

There's more than one Leon Fowler?

A Yeah, there's -- just from my job experience, I

actually know his son. He's Little Leon. That's what people on the street refer to them as Big Leon and Little Leon.

Q And are you assuming that -- which one do think owns this property?

A I assume Big Leon.

Q Okay. And you see Mr. Fowler sitting here?

A Yes, sir.

Q Okay. That's who we agree is Leon Fowler, Senior.

Now, you said you assumed they went into the rest of the house cause there's no kitchen and facilities in the, that little bedroom they were in, is that correct?

A He had access. It was access.

Q Yeah.

A Access to -- he had access to the house I believe.

Q Okay. But they answered from that -- well, let me make it clear. The -- when we refer to the porch, we got one picture. I think we got a couple of porches on the front.

Do you remember how this porch was on the back of the house?

A It's, it's a cement pad that sits basically up against the rear door---

Q Okay. But---

A ---that led into the bedroom.

Q Did -- all right. I can't describe it any other way,

but is a porch like you take a corner of the house and open it up, a porch like that or a porch that extends out?

A If I remember correctly it would be the corner.

Q Okay. Now, this is a -- in the picture you say cinder blocks and then you say particle board.

A Yes, I believe.

Q Okay.

A That's --

Q Did it look like maybe it's an old cinder block house and somebody's adding on to it?

A That I'm not sure. It's having construction work done to it. So --.

Q Okay. It wasn't -- it has four doors. Two front doors, two back doors.

It wasn't a duplex, was it, or was it?

A No.

Q Okay.

A That's not what I would consider a duplex at all.

Q It's not split in half?

A No.

Q All right. How long were you there?

A From the initial time we arrived, for the entire course of this investigation, hours.

Q Uh-huh. (Affirmative).

A I --.

Q Well, most of your time was spent outside of the house or---
A From, from the time we arrived until we searched the house, located the meth lab, and then backed out, 15 minutes.
Q Okay. So, you didn't notice whether or not it looked like it's, this is a house that's been added onto?
A No, I wasn't looking for anything like that, no.
Q Okay. When the pictures they give us, I don't see a picture of that door that goes to the bedroom where Cain and Parkhurst were, but do you remember if it was cinder blocked, walls, exterior walls, or if they were particle board---
A No, I don't.
Q ---or siding?
A I don't recall.
Q Okay. As far as you can tell though, the house had no power or water, but---
A Correct.
Q Except for---
A It had---
Q You said illegal means like a drop cord?
A Well, yeah, it was being run from a drop cord.
Q Okay. If -- and going from the trailer or from where?
A From, from the trailer.

Q Okay. And you agree that the trailer's like 369 Dakota?
A Yes, sir.
Q Okay. Did anybody go to that trailer to knock on it to -- if you, if you assume that this all belongs to Mr. Leon Fowler, did anybody check that place to see if Mr. Kirby was there or anything else?
A I can't say for sure. But I, I think I did, but I can't say for sure that I did.
Q Okay. All right. Now, how -- like I said, I don't think we've got a -- is there a picture of showing us how deep this house is?

I hope I can do this right.

THE COURT: What exhibit number please, sir?

MR. ROBERT HALL: This is Exhibit No. 2, State's Exhibit No. 2.

Q Now we'll -- this looks like -- is this, excuse me, in here there's cinder block and cinder block?
A Yes.
Q It looks like it's got some stripping for nailing up and there's some particle board?
A Yes.
Q And we got cinder block at least over here.

Okay. But this is the front of the house, correct?

A Correct.

Q Did y'all ever go around to the front?
A When we first got there, if I remember correctly, I actually knocked on the back-door and Deputy Kyle stood at the back corner to see if anyone were to run from the front. That's pretty standard when two officers show up to serve a warrant.
Q Like flushing quail?
A Yes, sir.
Q All right. Thank you.
Well, I guess -- this shows a little better. This is -- you can clearly see the, more clearly see the cinder, cinder block and then the particle board?
THE COURT: What exhibit number please?
MR. ROBERT HALL: This is Exhibit No. 1, State's Exhibit No. 1.
Q Did you know if anybody ever checked to see if these other doors operated properly or if they were nailed shut or---
A No.
Q ---anything?
All right. Thank you.
Now, do you -- you say -- you remember where the power cord or whatever and the hose that went from the trailer to the house where they went into the house?
A No, at -- the power cord into the bedroom.

Q Okay.
A The hose, I don't, I don't recall ever looking to, you know, even try to determine where it was going.
Q All right. But you remember the hose going towards the house or --?
A Yes.
Q All right. Did -- I can't see the pictures very well. Was there any food in the bedroom where Ms. Parkhurst and Mr. Cain were in if you recall?
A Yeah, it's -- I think I do remember there being food and, and drinks --
Q Okay.
A -- in there.
Q You say drinks like sodas?
A Sodas. Like bottles of sodas and so forth.
Q Fast food, sandwiches, or what -- I mean what kind of food?
A I don't recall. I just -- I do remember seeing that it appeared they had been living---
Q Okay.
A ---in the bedroom.
Q Were there any dishes or anything in there?
A I don't recall.
Q Okay. And the purpose of going there was to find Mr. Kirby --

A Yes, sir.
Q -- not a meth lab?
But when you exited back out and pushed through the door and back in the bedroom, you, at that time, you knew you had a meth lab?
A Yeah. Well, we -- at that point, we were getting out of the house because of the meth lab.
Q Okay.
A And had Ms. Parkhurst and Mr. Cain still been there we would of been you, wanting to speak with them about it.
Q But nobody told them they couldn't leave?
A No, at that point we had no reason to detain them.
MR. ROBERT HALL: All right. No further questions.
THE COURT: Redirect?
SOLICITOR HOLLIDAY: No redirect, Your Honor.
THE COURT: May he be excused?
SOLICITOR HOLLIDAY: No objection.
MR. ROBERT HALL: No objection.
MS. CLAIRE HALL: No objection.
THE COURT: Thank you, sir.
WITNESS: All right.
SOLICITOR HOLLIDAY: Your Honor, State calls Beth Stuart.
BETH STUART, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR HOLLIDAY:

Q Ms. Stuart, could you give us your name for the record?

A Okay. It's Mary Elizabeth Stuart. Everybody just calls me Beth.

Q And where -- do you work at the Sheriff's Office?

A I do. I work for the Spartanburg County Sheriff's Office.

Q And on January 17th, 2012, what was your job?

A Forensic chemist.

Q And what does a forensic chemist do?

A I'm responsible for all drug analysis, fire debris analysis, poison analysis, and also the breaking down or making safe of methamphetamine labs or clandestine labs.

Q How long have you -- how long on, at this point in time, on January 17th, 2012, how long have you been a chemical analyst?

A About eight and a half years.

Q Did you have to go through any special classes or have any degrees or anything to do that?

A Yes, my -- a little bit of my background, I have a Bachelor's of Science in Chemistry, and a Bachelor's of Science in Biochemistry from the College of Charleston. I have a Master's Degree in Chemistry from the University of South Carolina.

I've been to the police academy. I've been to the DEA, which is our federal government organization, for drugs. I've been to their forensic chemist school. I've also been to their clandestine lab school.

I'm also a member of the Clandestine Lab Investigating Chemist Association. It's an international chemist association so that once a year all chemist from all over the world can get together and discuss current issues and problems and cases and what we see involving clandestine labs.

I'm also certified by the American Board of Criminalistics in all areas for forensic science. It's a national certification. Every year I have to do forty hours of continuing training in all of my areas of forensics and then I also have to do a recertification course in clandestine labs.

Q All tolled, how many hours of education and training do you have?

A I have no earthly idea.

Q More than a hundred?

A I am for sure it's more than a hundred.

Q Have you ever testified in Court before?

A I have, 34 times.

Q Have you ever been qualified as an expert before?

A Everytime.

SOLICITOR HOLLIDAY: Your Honor, at this time we would move to qualify this witness as an expert in chemical analysis.

THE COURT: Any voir dire?

MR. ROBERT HALL: As a forensic chemist, no objection, Your Honor.

THE COURT: Ms. Hall.

MS. CLAIRE HALL: I have no objection to her qualification as a chemist.

THE COURT: Are you trying to have her expertise in the field of forensic chemistry?

SOLICITOR HOLLIDAY: Forensic chemistry and chemical analysis, Your Honor.

THE COURT: And chemical analysis.

Any objection to each of those fields?

MS. CLAIRE HALL: No objection.

MR. ROBERT HALL: No objection, Your Honor.

THE COURT: Okay. Ladies and gentlemen of the jury, most of the time witnesses are limited in their testimony to what they see, they hear, they smell, that kind of thing, their senses. However, a person, because of their expertise or their education and experience, may become an expert in a particular area. In that event, they're allowed to give their opinion, and the reasons for their opinions.

Expert testimony is like any other testimony in this

Court. You can accept it and you can reject it or give it as much weight as you think it should have.

Ms. Stuart will be declared an expert in the field of chemistry, forensic chemistry and chemical analysis.

All right. Mr. Holliday.

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

Q Ms. Stuart, were you called to 371 Dakota Street on January 17th, 2012?

A I was.

Q And what was the nature of that call?

A Received a call from dispatch there was a possible meth lab at this address.

Q As part of your job as a forensic chemist, as a forensic chemist, do you typically respond to meth labs?

A A lot of them.

Q Can you just give us an idea, what -- when you say meth lab, what do you mean?

A A methamphetamine lab is, is basically where a persons or person are manufacturing methamphetamine, a known drug, by taking normal household products and putting them together in order to make it. And, so, there would be what we call chemicals around, but they're gonna look like normal household products to the general eye. But, to us, when they're put in a certain order or done in a certain way, those chemicals, those household products are actually the

chemicals that will produce this drug.
Q Okay. How many meth labs have you responded to would you say?
A Probably 150 in my time at the Sheriff's Office.
Q Okay. I'm gonna hand you what's been marked as State's Exhibits 1 through 24.
Can you take a look at those and see if you can tell what those are?
A Sorry. There's a lot of pictures.
Q Take your time.
A These are all pictures of this residence, 371 Dakota Street, where I was.
Q And are those pictures all fair and accurate representations of what you saw that day?
A Yes, they were actually taken in my presence, the pictures were.
SOLICITOR HOLLIDAY: Your Honor, at this time we would move to have Exhibits 1 through 24 all into evidence.
MR. ROBERT HALL: I would like to see them. I've seen some of them. We haven't seen seven.
(Pause.)
MR. ROBERT HALL: No objection, Your Honor.
MS. CLAIRE HALL: No objection.
THE COURT: Thank you, ma'am. One through 24 will be admitted without objection.

(WHEREUPON, State's Exhibit Nos. 5 through 12 and 16 through 24 were received into evidence at this time.)

Q Now, there's, there's a lot of pictures?

A There are.

Q Why is it that we, when we have pictures, we don't have the actual components of the meth lab here in Court today?

A The components used in a meth lab, once they're mixed together -- I'll just give you an example. They actually, in order to make meth, they need Lithium strips, and it's a metal, and they'll cut open batteries to get the Lithium out of it. Well, that Lithium, when it's exposed to air or water, it's actually a fire hazard. It will just catch on fire in air and water once it gets moisture on it. Metals, pure metals are prone to do that. So, there is exposed Lithium down in these reaction bottles.

Also, they will put, like muriatic acid, which you would typically use as a drain cleaner, they will put it into a bottle with salt, and what that actually produces is an acid gas, and that acid, acid gas -- and you know all your bottles have warnings about it will burn your skin, and it will burn your throat, well that acid gas is extremely caustic and it will burn you.

Well, that's not something I'm transporting back to my lab or back to my Sheriff's Office and possibly hurting myself or the other deputies or anyone. So, all that stuff

is taken outside, separated into categories, and we have a company that comes in, picks it up, and hauls it off. It's just way too dangerous to bring back in the Sheriff's Office, store it in evidence, bring it here to the courtroom, and expose all of y'all to it. So, we don't do it. We're not gonna do it.

Q Do you typically fingerprint the labs or anything like that?

A We do not fingerprint the labs.

Q And why don't you do that?

A For the same reason. When you go in there, it's very fun. You watch the TV shows and you see going into meth labs or whatever and they're wearing their plain clothes. We suit up. We're suited up in a suit. We have masks on. I don't want that stuff on me. We don't want to breathe it in.

Well, it's the same thing. If I take my fingerprint kit in there, use my fingerprint brush, and that's gonna have to be thrown away every time. Also, because they're pouring liquids, they don't exactly take all the safety precautions in the world. The, the liquid has spilled over the sides of the bottles. Any fingerprints that might have been on there would be gone. It's, it's not worth the time or contaminating everything or possible hazard of doing it.

Q Let's go through some of these pictures here. You can

kind of explain, as we go along, what you're looking at.
A It's -- I'm gonna scoot over a little bit.
Q Yeah, sure, yeah.
A This actually blocks the---
Q You can come down and stand here if you want and point if you need to.
A However y'all will let me do it best. Just so I can---
Q You can stand up. You can stand up there.
A Okay. Just so I can see the screen good. I won't get in y'all's way either.
Q Matter of fact, I'll just let you -- if you just want to go through and explain these pictures and go over it with them here.
A Okay.
Q What are we looking at here.
A That's fine.
THE COURT: Ms. Stuart, if you would, just announce the exhibit number on the back of that at this time so that we'll have a record of it please, ma'am.
WITNESS: Sure. No problem.
When I got there and went in to actually start doing the dismantling of the lab, the officers had mentioned to me, first off, that they had seen the bottle in the bathroom and the tubing running out of the window. Well, to me that starts sending off triggers of danger, danger. If they've

got tubing running out of the window, obviously they don't want to smell it. And, so, we don't either.

And, and my job, when I go in there, is to find all the components, break it down, get it out into an open air or make it safe where it's doing the least harm. I don't want something to catch on fire, you know, possibly causing the neighbor's harm or anything. So, I actually went straight into the bathroom to assess this bottle.

So, I'm gonna throw that picture up there if I can find it. They're kind of all mixed up in here. It's not in here.

Q And these are all photographs previously admitted into evidence, Exhibits 4, 14, 3, 13, 15, 2, and 1.

A Okay. In the bathroom -- and you can look in the door from the hallway and see into the bathroom, and this is --.

THE COURT: Would you give us the exhibit number please?

WITNESS: I will. I'm so sorry, sir.

THE COURT: That's okay.

A It's Exhibit 3.

Q You can use this pointer if you need to.

A Okay. So when I went in there I saw this bottle sitting on the table and the tubing running out. Of course, you know alarms are going off in my head, right. They don't want to smell it.

So, what I do, I'm all geared up, and, you know, I've got a mask on. I will actually unscrew it a little bit, the lid a little bit, and stick pH paper down into it, and that gives me if something's acidic or basic. You know, if something's acidic, it's caustic, it will burn you. Basics on the end, other end of the spectrum.

This was actually acidic, which is typical when someone is what we call in the gassing out phase of the methamphetamine at the very end, and I'll explain the whole process for you from the beginning. So, this was the first thing that I, the other officer with me took pictures of for me, and I wrote it down, and we got this out of the house automatically, and this is a closer up picture of the bottle.

Q And the exhibit number on that?

A Is -- that's gonna be my archenemies apparently. Exhibit 4.

Down in this bottle it would actually be, and we pH'd it to get a reading of the acidity, would be an acid like muriatic acid or drain cleaner or something you would buy, and then they would put salt down in there too. Like I said, this produces an acid gas which would come up through the tubing that they would put onto the reaction at the very end.

After I had removed this, I felt the immediate dangers

were out of the house, and then I would go through doing a thorough research. At that point we moved on into the living room, and this is Exhibit No. 16, and this is the living room, and how it would be, if I remember correctly, you would leave out of the bathroom kind of into a hallway and off to your right was a living room. This hallway went a long ways and then cut right back to that bedroom that y'all keep hearing about.

So, you'd come out of the bedroom, down a little hallway, up the small hallway, and then it would be like it would jet off to another bedroom which I didn't see anything in and we don't have any pictures of, into a bathroom, and then a living room that went off to the kitchen. And this is in the living room. All these trash bags were laying in the floor. It's hard to tell from the pictures, but right off the bat you start seeing like some coffee filters in it, and maybe like a blister pack, and so I know now I've got to tear open all these trash bags and see what's in there.

So, this is Exhibit No. 17, and this is where I've torn open, torn open the trash bags and then taken the picture, and you can -- you start seeing how there's Pseudoephedrine packet, and you've got a bottle with pieces in it, and some strippings of batteries in it, and my job, while I'm in there, is to separate all these things into their categories, try to get the good pictures of it, and make

sure they're safe.

So, as we go on through the bag, and I'm separating in categories, we see Exhibit 18, and we have face masks. Even people who manufacture meth don't always want to smell the bad smell. So, it is typical that we find either respirators or face masks or something of that sort inside the meth lab. Same goes for here.

Exhibit 19, this is all the blister packs, packs that we found in this area of the house, and everybody uses cold medicine. Okay. We all have it. We all may have a pack in our purse, a pack in our bathroom cabinet, a pack in our car, a pack in our office desk. That's typical. We want it where we have it. One of our main indicators of a meth lab is a large abundance of cold medicine. It's not typical for a family to have 15, 20 boxes of cold medicine laying around the house. So, that's an indicator of a meth lab for us.

Also what we found, and this is Exhibit 20, are these battery pieces and we all have Lithium batteries in our house. Like I said, it's normal household products used in the manufacture of methamphetamine. Now I don't cut mine open.

So, another indicator of meth labs are cut open Lithium batteries. They'll be sheered open with wire cutters, copper cutters that you use for copper wiring, and this is where we found the open, open Lithium batteries.

What we also found that has to do with the Lithium batteries, and this is Exhibit 21, is this -- we found all the wrappings, and put them down into the bucket, of the Lithium batteries. If you strip open a Lithium battery, what you have in there is a long sheet, and this is the backing on that sheet, and on top of that backing, backing is the Lithium, the actual metal Lithium, and in order to manufacture methamphetamine, they peel that Lithium off and put it into their reaction.

And as you look down into the bottom of this bucket you'll see some tiny Lithium pieces that they actually didn't break up yet. The reason we separate out that separate is, like I said before, it's very air and water reactive. We want to get all that Lithium stuff, the wrappings, the small Lithium pieces that may be left, into a bucket and outside away from us. We don't want any kind of fire thing going while we're in there.

What we also found in the living room, this is Exhibit 24, and this was a bottle that we found in the living room, and I'm sorry. I can't get them on this projector right, and I pH'd this bottle also with my pH paper and found this to also pH acidic. So, likewise, it would be an acid that would be used in the last step of manufacturing, and then one other thing we found in the living room were these bottles, and they're two liter bottles.

Q What's the exhibit number?

A Oh sorry. Exhibit No. 23.

Two litter bottles. I think this one was a liquor bottle, but what you see, and I know it's hard to tell on a projector, but as you look at these pictures by yourself or back in the jury room or whatever, take notice inside of here there's pink little pellets and white pellets all mixed into the bottom together, and you can see little black specs in there too.

In the process of making methamphetamine, what you have to do in order to manufacture it is you take your Pseudoephedrine and crush it up. Now, anybody that's taking cold medicine, the tablets are typically red when you pop them out of the blister packs. So, that's the pink pellets that you see in there. So, they crush that up and they put it down into the bottle. Then they take a cold pack, which I haven't showed you a picture of that yet, but we'll get to it in just a few minutes, the cold pack, you know the ones you go buy in the store that you pop them together and you put them on your booboos or whatever to make them feel better, they take those, but they don't need the water portion of it. They discard that.

What's in the, what's in the other pack, the white little prills that you see is actually ammonia pellets, they need those to produce ammonia gas in their reaction to get

the reaction to go. So, they take the Pseudoephedrine, put it in the bottle, they take those ammonia prills and put it in the bottle, and then they pour what I call an organic solvent over the top, and all an organic solvent is it like Coleman fuel, lighter fluid, something like that that they pour over the top of it. Then they'll cut open their Lithium batteries, take the little Lithium pieces, put it down into the bottle too.

Now, they -- you want that organic in there, the Coleman fuel in there before they put the Lithium cause what did I tell you about Lithium?

It's water and air reactive, and if you can get that covered up with that Coleman fuel it's a little less reactive. They do that and then take lye, which is basic, and put it in the bottle too.

So, now they've mixed Pseudoephedrine, the ammonia pills, the Lithium from the batteries, and the lye in this bottle together with the organic solvent, Coleman fuel, poured on top of it.

Okay. You're gonna see a little bit of a reaction going on, a little bubbling. That's really not enough force and they really want it to go fast and strong. So, they usually top it off with water. Okay. Now, Lithium's water reactive, remember I told you, and it gets a reaction going.

So, what's gonna happen when they mix all that stuff

together, that little bit of water, it's gonna be what they call rolling. Rolling and bubbling kind of like what you would notice if you, when you pour your drain cleaner in the sink and add water, and you see the smoke and the rolling and the bubbling. It's kind of that kind of same thing.

So, that happens, and in about an hour, they have what's called meth base. Okay. It's a basic form of meth. It is not ingestible by the body in that form, but it still is meth.

Okay. So what they have to do next is that organic liquid I told you about, the Coleman fuel, they have to pour it off of that bottle into some sort of jar. Well, when they pour that off, that bottle, what's left are bottles like these with all that solid down in there, but the meth is gone.

Okay. So, I found three of those in the living room. This is all that stuff I told you they combined in there, but they've poured the liquid off of it.

Okay. Just to go on with the process in manufacturing, once they pour the liquid off of it, they take that liquid and they create what's called an acid gas generator. Remember the picture I showed you of the thing in the bathroom that I said pH acidic. They make that acid gas generator with the tube running out, and they take that bottle, that's the gas and gas generator with the tube, and

they run tube into their liquid that they poured off of their reaction. When they do that, that acid gas makes that meth fall of that solution into this white powder on the top.

That white powder on top is what's digestible by the body. That's what put in, what they smoke, snort, shoot-up, whatever they want to do with it, and that's how it's manufactured. So, three of these left over one pots, as we call them, were found in the living room.

Q As you leave the living room and go down the hallway towards the, the bedroom that we keep talking about, we found this. It's one of those cold packs I told you about that you're gonna take the ammonia prills out of.

Okay.

Q You have the exhibit number on that?

A I'm very sorry. Exhibit 7.

Okay. What we also found going down that hallway -- there's two different pictures of it. This is, this is like a, the top of -- I don't even remember what this piece of furniture was. It's some sort of piece of furniture. I'm kind of one track mind when I'm in there. I'm looking at my meth lab stuff making sure I'm keeping everybody safe. So, I don't remember what this furniture was. But on top of it was a funnel.

Q And that was Exhibit Number?

A It is Exhibit No. 8, and this one is Exhibit No. 9, and some aluminum foil.

Now, why is aluminum foil important?

We all have aluminum foil in our house. Well, that acid gas generator I talked about, to make that reaction a little more violent when they mix the salt and the acid together, they might get little chards of aluminum foil in there. Also, aluminum foil is typically how we see meth addicts smoke their meth. They'll take a little piece of aluminum foil and put their meth in it and then they light the bottom of it, and that's how they smoke their meth.

So, that's -- we, we always find aluminum foil and the funnel.

Why is the funnel important?

I didn't mention a funnel when I'm talking about manufacturing.

Well, at the end where I told you how they, they made the white solid fall out solution. Well, that white solid is sitting on top of the liquid, right, and they got to have some way. So, they'll put a coffee filter down into a funnel, do kind of like how you make coffee, you know what I mean, and then they'll pour the liquid through and now their white solid will be in the coffee filter.

So, we often time find coffee filters and a lot of times we'll find coffee filters, not in this case, but that

other meth lab, we'll find coffee filters with solid in it. Now, we did not in this case, but in other times we have. So, that's why you'll find coffee filters at the scene and funnels and things like that.

Okay. So, you're going down this, the hallway, and you go down the hallway and if, if you're kind of walking into the picture, this is a view from that hallway looking into that bedroom that we keep talking about where the two people were that answered the door. I just wanted you to see this view into their bedroom where they had -- and this appears to be a couch and things like that, and it is a door and it does open up into the bedroom. It was opened when I got there. So --.

And then inside---

Q What exhibit number -- I'm sorry.

What exhibit number is that?

A Oh, I'm sorry. That was Exhibit 5 and this one is Exhibit 6. Inside the bedroom, as part of my part, you know, the only thing of significance I found as far as a meth lab was they actually had a piece of the aluminum foil here. That's in the shape of how that you would smoke meth.

Q Okay.

A And I was in that particular bedroom.

Okay. The door that the officers keep talking about that they were standing at when they got there talking to

the people, right outside that door was a trash can, and I took a picture of the trash can before I dumped anything out and that's the picture of the trash can. So, you walk out their door that they used to enter and exit their bedroom to the outside, and this is what you see. Right off the bat I already told you how to manufacture meth.

What do you see?

You see the wall fed packs for the Pseudoephedrine. You see the Lithium battery packs. You see some rolled up pieces of coffee filters, things like that. So, once again, I know I'm gonna have to dump out this trash and make it safe and make sure there's nothing---

Q That was exhibit number?

A That was Exhibit No. 10.

So, just to show you what was in the trash, I have some pictures of what I found in that trash. This is one of the pictures of what we found in the trash. Once we---

Q And what's the exhibit number?

A It is Exhibit No. 11. Thank you for continuing to remind me. Appreciate it.

We found needles. Very common cause a lot of times people will shoot up the meth. We found the Pseudoephedrine, the blister packs, and the packets, the Lithium battery cases, and then miscellaneous garbage too.

But then also we found, and I'm sorry this picture is

blurry, and it's Exhibit No. 12, three more of those what I explained to y'all earlier were one pots, and I know it's hard to see on the protector, but when you look at the pictures closer you'll be able to tell. It's -- they're very pink from that, where the Pseudoephedrine was crushed up in them. But we also found what was a bottle that pH'd acidic. So, it too had the acid in it, and then in this bucket is Lithium pieces, and you can tell I've moved it away from where I was working over there with the other pile.

So, once again, it's more one pots where more reactions -- each one pot in a reaction that they've performed that they've left for us to find in the trash.

Also what we saw when we exited, and you've seen these pictures before.

Q What exhibit number is that?

A This is Exhibit No. 15, and y'all have seen these pictures before. This is the stuff on the ground, and, once again, when you look at the, the picture's closer up, you'll see -- the solid you see is pink. So, it appears to be dumped out of a, of a one pot bottle, and I'll just show you all those again.

This one is Exhibit 13. Once again, it's on the ground. These cases where things are dumped out, I'll try to neutralize it as much as possible or scoop up the solid.

Q And that exhibit number is?
A This one is Exhibit No. 14, and this one was 13.
You've seen the pictures of the front of the house. That was just to mark what house it was.
Q Okay.
A So, that's all the pictures.
Q Thank you very much. You may have a seat back up --.
A (Witness returns to the stand.)
Q So, Ms. Stuart, is it, is the manufacture of methamphetamine dangerous?
A Yes, sir.
Q Is it volatile?
Could things explode?
A Yes, sir.
Q Would it be safe or recommended to live in a house where meth, where meth is being manufactured?
A No, sir.
Q Did you perform a -- well, first off, Pseudoephedrine, is that an important ingredient in manufacturing methamphetamine?
A It's the main ingredient in the manufacture of methamphetamine. There are many methods to manufacture methamphetamine. The one pot being one of them that I talked to y'all about today. But all of them use Pseudoephedrine even though they may use other things

besides Lithium, ammonia prills, they all use Pseudoephedrine.

Q Did you do an analysis to come up with a yield for the amount of, of methamphetamine that you found at this house?

A Yes. Now, just to be clear, I did not actually find any meth at the house like I could bring you in and show you in a bag hey, this is meth. Okay. But what I can do -- let me see if I can explain this to you.

There's an equation you can use. Let's say, as a chemist when I was in graduate school, we might want to make 50-grams of a certain product. Okay. In order to make 50-grams of that product, if I wanted 50-grams of it I had to know how much of the beginning thing I needed to start with. Kind of like cooking. If you want to make eight servings of a chicken dish, and your recipe calls for four servings of chicken, then you know you need to double the recipe to get your eight servings, right. I mean it's the same thing. If you know you want to end with a certain amount you got to know how much to start with.

Well, a theoretical equation, what I can do is see how much starting stuff they had and work my way to how much product they could of made with that starting stuff or, for instance, you know you have six breasts of chicken, well then you only have enough to feed six people if you want -- that's kind of the way that I look at it. It's an equation,

a real chemist, equation where you use the weights of all the different compounds in it to determine theoretical yield.

Q Okay. How much Pseudoephedrine did you find at the residence or empty packages of Pseudoephedrine---

A Okay.

Q ---that had been there at one time?

A Looking back on my notes, we found boxes that the blister packs would come out of and we find blister packs. Whenever we do that, I don't count both because, to me, the blister packs could of come out of the boxes. So, I'll just choose one thing to count.

Well, on the meth lab I counted blister packs. So, all the boxes, I mean you saw them in pictures, but I just pushed them to the side, and I piled up all my blister packs, and what I'll do from the blister packs, you'll know from going to store, cold medicine comes in different amounts. Like you might buy a pack of 24 where the tablets are 30-milligrams a piece or you might buy a pack of ten where the dose is bigger in the tablet. So, I made them into these separate piles, and actually found 20 blister packs.

Q And blister packs are those things you got to punch them out?

A They're where you've got to pop the -- you know, you

see them in all medicines, and you pop your tablets out of the pack. They're called blister packs.

So, I actually found 20 of those blister packs that contained 24 tablets and each tablet had 30-milligrams of Pseudoephedrine in it, and then I found four blister packs that would have ten tablets in it, and each of those tablets would be a weight of 120-milligrams. So, the total milligram of Pseudoephedrine or starting material that I found on scene was 19.2 grams or 19,200 milligrams.

Q Okay. And if you were gonna take 19,200 milligrams of Pseudoephedrine --

A Uh-huh. (Affirmative).

Q -- and attempt to make or manufacture methamphetamine, through your attempt, how much methamphetamine could you make?

MR. ROBERT HALL: Your Honor, we're gonna object to her testifying to this. I think we may need to take up a matter.

THE COURT: I'm sorry?

MR. ROBERT HALL: We're gonna object to her making a conclusion here.

THE COURT: Just one second please, sir.

Madam Forelady, will you take your jury to the jury room please?

(WHEREUPON, the following takes place outside the

presence of the jury.)

MR. ROBERT HALL: Your Honor, we have stipulated that she's a chemist and she can do those analysis. This is something totally different. We're in new ground here. I think I---

THE COURT: What ground are we in?

MR. ROBERT HALL: That's she is -- this is into the theoretical yield. I don't know that -- she's not been certified as an expert in theoretical yield and how all that works. What I understand a forensic chemist does and analyst is they test things, and they say this is meth and this is how much it weighs or this is crack cocaine and this is how much it weighs. This is coming at something from a totally different area. They're saying theoretically this is what they could do. I don't know that we've got some learned treatise that says you plug these formulas in.

THE COURT: Well, let me just say this.

MR. ROBERT HALL: Yes, sir.

THE COURT: Mr. Holliday, will you lay additional foundation for her---

SOLICITOR HOLLIDAY: Absolutely, Your Honor.

THE COURT: ---establishing her criteria.

SOLICITOR HOLLIDAY: Absolutely, Your Honor.

THE COURT: Okay. I'm gonna overrule your objection---

MR. ROBERT HALL: Yes, sir.

THE COURT: ---subject to him laying the proper foundation.

MR. ROBERT HALL: Thank you, Your Honor.

THE COURT: Okay. Everybody ready to proceed?

I know we're going a little bit long, but I'm trying to get through with direct and then maybe we'll break.

Also, how many -- you have four witnesses?

SOLICITOR HOLLIDAY: Your Honor, I do not intend to call Investigator Schafer at this time. He may be a rebuttal witness.

THE COURT: Okay. Well, what I was thinking about is the potential of getting through as much testimony today as we can, and maybe run a little bit longer so we don't get stuck here tomorrow afternoon or late Friday. Whatever y'all want to do.

MR. ROBERT HALL: Yes, sir.

THE COURT: All right. Would you bring the jury in please?

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Mr. Holliday.

SOLICITOR HOLLIDAY: Yes, sir, Your Honor. Thank you.

CONTINUED DIRECT EXAMINATION

BY SOLICITOR HOLLIDAY:

Q All right, Ms. Stuart. You said you had an

undergraduate and Master's degrees?
A I do.
Q What are your degrees in?
A Chemistry and biochemistry.
Q And as part of earning a Bachelor's Degree and a Master's Degree in Chemistry, do you ever -- did you ever do any equations?
A Yes, that's their first semester of chemistry in college.
Q Okay. And as part or those equations did you learn how to multiple and divide and take one item and another item and figure out, if you put them together, how much the end result will be?
A Entire sections in chemistry.
Q So, you've how -- how many courses would you say you've taken where you used equations to figure out the sum of multiple parts?
A Every chemistry course I've ever taken.
Q Have you ever been given a problem in class or in your course of employment where you had to figure out, if you took multiple ingredients and you were to combine them, how much of another ingredient they would yield?
A Yes, it's a, it's a core standard. Even if you're not a chemistry major and you have to take a science, your very first semester of chemistry, it's all about making equations

and determining if you put these things together in these amounts, what amount of your product you get, and how to set up the equations and reactions. It's a very standard principle in chemistry.

Q And earning a degree in chemistry, would, as a Master's level degree, would a person who receives that degree be qualified to give, you know, state how, yields and things of that such?

A Well, not only would I have done it on tests, but getting a Master's Degree means I had to do research and graduate work, and to do this research I would have to make and perform reactions of my own to make the chemicals I needed from my research, which meant I had to use these equations, theoretical yields, Stoikiometri, in order to determine how much product I wanted and how much I needed to start with. So, I used it in actual research settings too.

SOLICITOR HOLLIDAY: Your Honor, at this time we would move to have the witness certified as an expert in chemistry and specifically in theoretical yield based on chemistry.

THE COURT: Any voir dire as to theoretical yields?

MR. ROBERT HALL: Yes, sir, Your Honor. Just---

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. ROBERT HALL:

Q Did you ever do, produce math in your studies, meth in

your studies, methamphetamine?
A I have produced meth. In the DNA methamphetamine school we actually have to go through the reactions and methamphetamine and determine yields.
Q And how much -- I mean do you use one pill, 20 pills, a hundred pills when you do this?
A In our reaction we chose to do it small scale. I can't say what everybody does, but in our reaction we did small scale and used a half a box.
Q How much did that produce?
A I don't remember what milligram tablets we used. So, I'd have to go back and look at my math. But I could do -- if you give me right now some milligrams and the number of tablets and want me to tell you a theoretical yield for it I'll be more than happy to.
Q That's not what I'm asking you. I said -- actually a lot of the formulas that you use are based on people performing, using these formulas to produce things, and that's how, you know, you take this much from -- to go to cooking, you take this much flour, this much milk, eggs, salt, some other things, it will make this much of, of a size of a cake.
A Uh-huh. (Affirmative).
Q Cause people have experimented to get that to give you a recipe.

A Okay. When you're producing methamphetamine there is an equation. It's Pseudoephedrine, plus Lithium, plus ammonia gas yields methamphetamine.

Okay. We call it a one-to-one more Stoikiometri ratio between Pseudoephedrine and methamphetamine. What that means is for every mole, which is a extremely scientific term, of Pseudoephedrine that you put into the reaction, you get one mole of methamphetamine out. It's a one-to-one mole reaction.

To determine the number of moles that you put in, and this is all science and chemistry, if you look at a periodic table, okay, everybody's seen one of those from some of your time in school, they have elements on there and the elements have what they call a mass, okay, and it's grams per mole if you remember that.

So, I can take the weight of Pseudoephedrine and do the math of its mass from the periodic table and tell you how many moles of Pseudoephedrine I have. I know it's a one-to-one molar ratio between Pseudoephedrine and methamphetamine from the equations of how to make meth. Okay. So then all I need to do is take that amount and do it times the mass of methamphetamine in order to get how much methamphetamine is made.

Q If I may go to what I'm, my question---

A Oh, I'm sorry, sir.

Q The lesson---
A I thought I was answering your question.
Q No.
A Then, sir, I'm sorry.
Q Did you start with an amount of Sudafed and other things and say I should get this much and go through it and get that much?
A You mean did I have one hundred percent yield?
Q Did you -- say, in doing the practical part where you---
A Uh-huh. (Affirmative).
Q ---start with the ingredients to be able to do the---
A I knew how much I started with. I knew how much I should of gotten, yes.
Q That's what I asked.
A Yes, sir.
Q That's what I was trying to get to.
A Yes, sir.
Q And how much was that?
Do -- you used small amounts. Do you remember what it was?
A Sir, that was years ago. I don't remember what the exact amounts we used and what I should of got back was, no, sir.
MR. ROBERT HALL: Your Honor, I think we've -- I have

no more voir dire. I understand what your ruling is, but still note for the record what our objections are.

THE COURT: Ms. Hall, you have any voir dire?

MS. CLAIRE HALL: I have no further questions. I just like to note that, on behalf of Ms. Parkhurst, we join in Mr. Hall's arguments.

THE COURT: Okay. Ladies and gentlemen of the jury, Ms. Stuart, Doctor Stuart will also be considered an expert in the field of chemistry to be able to give her opinion in the area of theoretical yields, and the same information by an expert. So, you apply that to every expert.

Okay. Go ahead.

SOLICITOR HOLLIDAY: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY SOLICITOR HOLLIDAY:

Q All right. Now, if you take the 19,200 milligrams of either the Sudafed you found or the empty packets of Sudafed that had been there --

A Yes, sir.

Q -- and you were going to attempt to manufacture methamphetamine, and you got a one hundred percent yield --

A Uh-huh. (Affirmative).

Q -- how much methamphetamine could you manufacture?

A 17.67 grams.

Q 17.67 grams?

A Yes, sir.
Q And that's under laboratory conditions?
A Yes.
Q Okay. Let's say you only got an 80 percent yield.
A Okay.
Q How much methamphetamine could you manufacture?
A 14.13 grams.
Q How about a 75 percent yield?
A 13.25 grams.
Q How about a 70 percent yield?
A 12.36 grams.
Q What about a 65 percent yield?
A 11.48 grams.
Q Still more ten grams?
A Yes, sir.
Q So, if you, if you were going to get at least a two-thirds return on what you put in, you would still manufacture more than 10-grams?
A Yes.
Q Okay. I have no further questions at this time. Please answer any questions defense has.

THE COURT: Cross-examination.

A Sure. No problem.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. ROBERT HALL:

Q Okay. All right. Let me get something out of the way. You said, used the term they put, they want to make, they -- you know, those -- they put things here, they did this.

You don't know who they is, do you?

A There were no suspects on scene when I arrived.

Q Okay. Now, let me ask you -- you assume we're gonna make, ask math questions and the solicitor's been asking them.

But at a 50 percent yield, what would it be?

A Sure. 8.83 grams.

Q And when you did your studies and you do your work, you have what would be termed like laboratory conditions?

A Yes, sir.

Q And there's a -- if you tell the jury what laboratory conditions would be.

A Sure. It means I'm using pure ingredients, pure chemicals, a hood, real glassware. All the real stuff you see in, you know, in chemistry labs.

Q Like when you use funnels, it's not a plastic funnel, those type things?

A Well, they're still plastic, but yeah.

Q This house, if it's a meth lab, it's a miss use of the word lab, wouldn't it be, in the context of laboratory conditions?

A Oh, yes, sir.
Q And there's no way to tell, from what you had there, how much they were actually getting from their work?
A As in percent yield?
Q Yeah.
A No, sir.
Q Now, if I can -- I don't know how to get all this stuff up. I'm gonna refer to some photographs. I appreciate it.
SOLICITOR HOLLIDAY: Yes, sir.
THE COURT: Would you help him cut that on, Mr. Holliday?
SOLICITOR HOLLIDAY: Yes, sir, it should be coming up. Yeah, it's warming up.
Q I'm putting in here exhibits, State's Exhibit No. 12.
A Move it again. I'm sorry.
Q Yes, ma'am.
A So I can see it.
THE COURT: Come on around. You can step around.
WITNESS: Okay.
Q Okay. Do you recall which door this is?
I think we've established there's four doors in the house.
A If you're looking at the back of the house, I believe, if my memory serves me, this one is to the right of the door that they're talking about going in and out of that bedroom.

Q Okay. Just a moment.
And number -- State's Exhibit No. 13.
A Uh-huh. (Affirmative).
Q What is this item here?
A It -- a paper towel.
Q Paper towel?
A Yes, sir.
Q Okay. Cause I -- it's just kind of hard to tell how close or far away they were when this, there's nothing to --.
A Yes, sir.
Q -- gauge the size.
A Unfortunately, when we take a picture, we're all suited up trying to --.
Q All right. Thank you, ma'am. That's all I have with this.
A Thank you. Excuse me.
(Witness returns to the stand.)
Q Do you know if anybody did a property check to see who owns the house or anything when you went -- at any point in this investigation?
A I don't have any knowledge of that.
Q Okay. But I believe you testified you found no, nothing that you've tested that came out and said this is meth?

A No, I did not.
Q Okay. And, again, you don't know who the they is that did this stuff?
A There were no suspects on scene when I got there.
MR. ROBERT HALL: All right. I have no further questions.
THE COURT: Ms. Hall, cross-examination.
MS. CLAIRE HALL: May it please the Court.
CROSS-EXAMINATION
BY MS. CLAIRE HALL:
Q Ms. Stuart, I think we've established that a theoretical yield is what you would get in ideal laboratory conditions?
A Not necessarily. You can do percentages of theoretical yields. For instance, when I do the math, I can do it based on if you're gonna get a hundred percent or 50 or 85 like -- cause they kept asking me well, what happens if you got 75 percent yield or 50. So, theoretical yield is just basically how much you can get out depending on what percentage converts.
Q Okay. You're saying a hundred percent --
A Yes.
Q -- theoretical yield, the first number you gave us --
A Yes.
Q -- 17.67 grams --

A Yes.
Q -- is that assuming ideal laboratory conditions when you talked about the glassware and in a clean lab and so on?
A Yes, sir. Yes, ma'am, I'm sorry.
Q And with pure products, et cetera?
A Yes, sir.
Q Does that also assume the person who is doing the chemical conversion is a trained chemist like yourself?
A I guess, or a trained person.
Q In, in a lab, don't -- do you ever have wastes when you're creating a product, when you're combining different chemicals?
A Yes, there's always waste because, just because something converts into something doesn't mean you leave behind what -- like in a reaction, the Pseudoephedrine changes over, but in Pseudoephedrine tablets, there's -- in a Pseudoephedrine tablet, the amount of Pseudoephedrine is only 30-milligrams or 120-milligrams. If that was all that was in the tablet you couldn't even see it to swallow it. So, they have to put all kind of fillers and stuff in there, and the Lithium doesn't get converted. It's just used up and ammonia's just used up.

So, even if 100 percent of the Pseudoephedrine in the reaction converts to meth, you're still gonna have all that waste left over. You would in any setting, laboratory or

whatever.
Q Is it possible, when you're doing a chemical conversion or reaction, that not all of the various components react?
A You mean like not to make what you're looking for to begin with?
Q Perhaps some of the Pseudoephedrine does not react with the other ingredients.
A That would be possible if you don't put enough of the other stuff in there or you don't wash it enough times to get it all out.
Q Uh-huh. (Affirmative).
A There -- it is possible, yes, not to get a hundred percent conversion.
Q Okay. These -- in some of the photos, they're -- well, the one in the bathroom---
A Uh-huh. (Affirmative).
Q -- that was a Coke bottle --
A Uh-huh. (Affirmative).
Q -- that you said was in one of the final stages --
A Uh-huh. (Affirmative).
Q -- of off gassing?
A Uh-huh. (Affirmative).
Q That's definitely not a clean theory you would use in a lab, correct?
A No, but that has nothing to do with the conversion.

That's the final step. That doesn't have any Pseudoephedrine or meth in it.

Q But if I wanted to make a small amount of methamphetamine in this bottle --

A Yeah.

Q -- I've drank all this Coke, but there's still a little bit in the bottom---

A Oh, yeah.

Q ---right?

A Yes, ma'am.

Q And would you say the ingredients in Diet Coke are fairly -- you could maybe, in layman's terms, the vernacular say chemical?

A Yes.

Q Okay. Do you know when these people are using containers such as this in a meth lab if they wash it out first or sanitize it?

A They've never invited me to watch them.

Q Okay.

A I wish they would and I would know, but they don't invite you.

Q It's not part of your training?

A No, no.

Q Okay. Let's see. Do you know how long it takes --

A Approximately---

Q -- from start to finish?
A Approximately an hour.
Q To get a product that you can actually use?
A You might -- well, some of that -- it takes an hour to get the meth base inside the original Coke bottle. Then they have to go back and filter that liquid off, set up the acid gas generator. So, we always say an hour. Now, how long they let it sit there before they pour off the liquid and use the acid gas generator to crash the meth out I can't tell you. But about an hour is usually what we say.
Q Okay. Did you do any sketch of the floor plan of this house or the property?
A No, ma'am.
Q I apologize while I take a minute to go back to some of the photographs that you showed us.

Now, you said you used some acid, excuse me, pH paper---
A Yes, ma'am.
Q ---in at least a few bottles to test for, if they're acidic.

What did you -- what do you do with the pH paper after you quit?
A It goes into my pile of stuff to be hauled off to waste --
Q Okay.

A -- cause at that point it has an acid on it.
Q Let me see. When is it safe to take anything related to methamphetamine into evidence?
A I would say never.
Q You don't ever take a, the final product?
Is it a powder or is it a white solid?
A We will take -- if we find a baggy of meth or if we find a filter paper on scene --
Q Uh-huh. (Affirmative).
A -- if we find a filter paper that's got solid it in, I will do cursory examinations on scene --
Q Uh-huh. (Affirmative).
A -- to determine a most likely what it is, a field test of what it is, and in my field tests, if I believe that to be a methamphetamine final product, I will take that back cause at that point it's completed its reactions.
Q And then it's, it's no longer dangerous to -- unless you're ingesting it.
Is that what you're saying or less dangerous?
A Less dangerous, yes.
Q Okay. This is State's Exhibit No. 11. It's the photo of I believe trash contents that were dumped, dumped on the ground outside the back-door, and you pointed out to us some batter packaging and blister packs. There also appears to be at least two prescription pill bottles.

A Uh-huh. (Affirmative).
Q Did you find out who those belonged to?
A I didn't.
Q Okay. Didn't look at the names on them?
A I didn't. I don't know if some -- I mean I wasn't the only investigator out there. But --.
Q And these -- this is State's Exhibit 12 where we have the photo of bottles looks like on the concrete slab/stoop outside the back-door where the officers initially entered that you had moved outside for safety?
A I think that's another door. That's not the one they entered because that's like on the other end of the house and we're kind of staging over there away from where we were, we were mainly.
Q Where, where did you find -- would you remind me where you found these bottles?
A Those were in that trash where---
Q They were in a trash can?
A The one right outside the bedroom door of the, the people who were living there.
Q Was that trash can outside -- do you mean in another part of the house or outside in that outdoors?
A No, you know the concrete patio that we keep talking about, the officers were standing on, and they're talking to the people, it's outside and it's like just a slab of

concrete and there's a door there. And when you open the door, you're looking into a bedroom, but you're standing outside, and that trash can was right there beside that door. So, it's on the outside of the house beside the door leading to the bedroom.

Q Now, were these blister packs, were they all still containing all the Pseudoephedrine pills?

A No, ma'am.

Q Were they empty?

A They were empty.

Q They were all empty?

A Yes, ma'am.

Q And you said you did not find any finished methamphetamine product?

A No, ma'am.

MS. CLAIRE HALL: Okay. Court's indulgence one moment.

THE COURT: Yes, ma'am.

(Pause.)

MS. CLAIRE HALL: I have no further questions.

THE COURT: Thank you, ma'am.

Redirect?

SOLICITOR HOLLIDAY: Nothing further, Your Honor.

THE COURT: May this witness be excused?

SOLICITOR HOLLIDAY: No objection.

MS. CLAIRE HALL: I have no objection.

MR. ROBERT HALL: No objection.

THE COURT: All right. Thank you, ma'am. You may be excused.

All right. Madam Forelady, would you take your jury back to the jury room?

I want to do some scheduling ideas, and while you're back there, I don't know how many witnesses we have, my idea was that maybe we work a little bit longer this evening so we can finish up within a reasonable hour tomorrow. If you would question your jurors and see if that's suitable. If it's not, that's certainly okay, and let me know, and if you just take your jury back to the jury room now please.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. How many more do you have?

SOLICITOR HOLLIDAY: Your Honor, that, that, that'd be it.

THE COURT: That's your case?

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: Okay. Puts you in a bind over there, doesn't it, buddy?

Not really. Excuse me. Oh, you have one?

MR. ROBERT HALL: Yes, sir.

THE COURT: That's right. I forgot.

Well, let me ask you, would you want to call your

witness now and get the testimony over unless your clients show tomorrow or do you want to go forward and I'm including you obviously, Ms. Hall.

MR. ROBERT HALL: I know he's -- as I referred to the Court before, I've known of him for a long time. I think he's got some health issues, and I don't intend for him to be long on our part.

THE COURT: Okay.

MR. ROBERT HALL: He's -- just to clear up a few things. He'll be a short witness.

THE COURT: All right.

MR. ROBERT HALL: Well, let's take up some motions now and then we'll go ahead and see what the jury says. If they're willing to go, let's go ahead and get it done.

MR. ROBERT HALL: Okay.

SOLICITOR HOLLIDAY: Your Honor, would -- we'll get to rest in front of the jury when we come back?

THE COURT: Sir?

SOLICITOR HOLLIDAY: I know I let you know the State rests its case, but we'll be able to do that in front of the jury?

THE COURT: Oh yeah.

MR. ROBERT HALL: All right. Your Honor, we'd make a motion for directed verdict. The testimony has been presented that there is some type of something going on in

this house, some ingredient in this house that has been identified as a meth lab with some yield. In optimal conditions, maybe, to be a little over 17-grams.

But the evidence we have has been presented is that people indicated that they had one room. There's nothing but maybe a piece of aluminum foil found in that room that -- there's just -- the nexus is not there connecting them to the rest of the house. We don't -- technically, at this point, we don't even know who owns the property, Your Honor.

So, I think the evidence that has been presented is, at this point, is not sufficient for at least trafficking I find for enough evidence, for a question for the jury. But it's certainly the -- it's too speculative to present the trafficking. So, if we don't have -- if we have enough to present to the jury, I submit we have -- it would be for manufacturing as opposed to trafficking.

THE COURT: Okay, sir. Ms. Hall.

MS. CLAIRE HALL: Your Honor, of course I would join in Mr. Hall's motion and arguments he's made, and just reiterate that there's no evidence of who actually owned this property. There's no evidence of Ms. Parkhurst or Mr. Cain having a lease on the entire house. We just know what the officers said that they told them was we live in this room. There's not -- the officers did not indicate in their

testimony that they had any idea or suspicion of a meth lab until they went into the rest of the house.

THE COURT: The officers or the defendants?

MS. CLAIRE HALL: The officers --

THE COURT: Okay.

MS. CLAIRE HALL: -- did not indicate to us in their testimony that they believed there was any meth lab until they went into the other part of the house. Your Honor, I would argue that that does not rise to the level of enough evidence to present to the jury that these clients were knowingly engaged in manufacturing or trafficking methamphetamine, and that merely being in the proximity of something that appears to be a meth lab is not enough.

THE COURT: Okay. Let me do this. Subject to my other matter I've taken under advisement with regard to the theoretical yield, I'm gonna deny your motion. I assume that each of you are adopting the other one's motion for directed verdict if there---

MR. ROBERT HALL: Yes, sir.

THE COURT: You're covered on both. One thing I would point out that, and I want -- I was gonna ask you to address at least as far as this theoretical yield is the case that was given to me by Mr. Holliday. It's United States of America versus Joseph Nelson, and they discussed theoretical yields. They also discussed the fact, and I'm not candidly,

but read it carefully. I've scanned it.

But they say that it indicates that even though there use no finished meth product, if based on the set-up they had, there was a substantial step, which is what was needed under the statute for an attempt.

MR. ROBERT HALL: Yes, sir.

THE COURT: And that's included in the wording of the statute.

Would that not be a similar situation through what we have in our statute?

MR. ROBERT HALL: Well, Your Honor, I know there are some things that we have in South Carolina. We have diversion and anything federal. But other times in our laws we have accepted them, and I don't think---

THE COURT: Well, let me do this, Mr. Hall.

MR. ROBERT HALL: Yes, sir.

THE COURT: You just got this case today. Think about that --

MR. ROBERT HALL: Yes, sir.

THE COURT: -- and Ms. Hall. And let me just respond. Give me some arguments on that in the morning.

MR. ROBERT HALL: Okay.

THE COURT: Is that fair enough?

MR. ROBERT HALL: Yes, sir.

THE COURT: Okay. Now, anything further from the

defense before we bring the jury back in?

MR. ROBERT HALL: No, sir.

MS. CLAIRE HALL: No, sir.

THE COURT: From the State?

SOLICITOR HOLLIDAY: No, sir, Your Honor.

THE COURT: All right. Would you bring them in please?

MR. ROBERT HALL: Oh, Your Honor. I'm sorry. Just one second.

THE COURT: Hold the---

MR. ROBERT HALL: I think we need to clarify.

Can we wait?

THE COURT: Go ahead.

MR. ROBERT HALL: But -- I don't know if -- they, they've pulled the record of Mr. Fowler, and I don't know if we need to clear up his record before he testifies. As I inferred or said, stated, he had 1989 trafficking cocaine conviction that I was involved in, and -- but I think he -- back then, there wasn't the 85 percent. He served 51 percent of his sentence, maxed it out, and he was out. So, I don't think he's had anything since then.

THE COURT: Well, you know, under 609, a drug offense wouldn't qualify for impeachment purposes anyway.

MR. ROBERT HALL: Yes, sir.

THE COURT: I mean, based on Pleicones case, Justice Pleicones case where you have to have some element of

dishonesty for it to be probative.

SOLICITOR HOLLIDAY: That's correct, Your Honor. There's nothing inside the last ten years or more than a year or so other than those offenses. I don't think there's anything we can use.

THE COURT: So, we clear?

Everybody agrees?

MR. ROBERT HALL: Yes, sir, I just wanted to make sure. I apologize for that.

THE COURT: No, no, I'm glad you did that. Thank you.

Are we ready now?

MR. ROBERT HALL: Yes, sir.

MS. CLAIRE HALL: Yes, sir.

THE COURT: All right. Bring the jury in.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: All right. Madam Forelady, let me just tell you this. There -- the State is about to rest its case, and I'm gonna call that and make sure. But I anticipate we only have one witness from the defense, which will not be terribly long.

But what -- have you been able to square with your jury what they want to do as far as finishing up the testimony today or would you like to go ahead and break today?

Either way is fine.

FORELADY: I would say the general -- there was concern that it would be overly lengthy on either day.

THE COURT: Right. Let me just say this. I don't anticipate this is gonna be a very long witness. I would think we would probably be through, and I'm gonna ask the lawyers to tell me, but about 5:30 at the latest.

Do you disagree with that?

MR. ROBERT HALL: I don't think that would be any problem, Your Honor.

SOLICITOR HOLLIDAY: Your Honor, we'll try to keep it short.

THE COURT: If I assured you that we wouldn't extend past that, do y'all have a problem with that?

Does anybody have a problem with children or any other, other needs outside of this room?

And I don't want to put anybody on the spot. So, I mean really, it doesn't matter if you want to break.

FORELADY: If we're finished by 5:30 I think we're okay---

THE COURT: You okay?

FORELADY: ---and we can finish today.

THE COURT: Now, Mr. Holliday, I told the jury I thought that the State has ended its evidence.

Is that correct?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor. At this

point in time the State rests its case in chief.

THE COURT: Okay. Thank you.

All right.

MR. ROBERT HALL: Your Honor, the defendant, Charles Cain, calls Leon Fowler, Senior.

LEON FOWLER, SENIOR, being first duly sworn, testified as follows:

THE COURT: All. Mr. Fowler, if you'd speak loudly please, sir.

WITNESS: All right, sir.

DIRECT EXAMINATION

BY MR. ROBERT HALL:

Q All right. You don't need to blow into the microphone, but if you'll get close to it so they can hear.

Tell the jury what your name is.

A Leon Fowler.

Q And where do you live, Mr. Fowler?

A 369 Dakota Street.

Q And that's here in Spartanburg?

A Yes, sir.

Q Is that the trailer that's---

A It's the trailer---

Q ---that's been referenced to here?

A ---behind my house that everybody's talking about.

Q Is the trailer and the house the same, part of the same

property owned by the same person?
A It's owned by the same person, but it's two different lots.
Q Two different lots.
Okay. Who owns it?
A My son.
Q Is that Leon Junior?
A Yeah.
Q Okay. And do you recall when this happened back last year?
A I think it's been longer than that it seems.
Q I believe January of 2012?
A I really can't tell you cause --.
Q Okay.
A I've had a couple heart attacks and it's messed my memory around.
Q Yes, sir.
Did -- were you at home when the police were there and everything?
A Yes, sir.
Q Okay. Are you familiar with that house your son owned?
A Yes, sir.
Q Okay. And did you know if anybody was staying in the house at that time?
A Well, I knowed they was done there, yes.

Q Okay. Was that the defendants in this case?
A Yes.
Q And do you know where in the house they were living, part of it, all of it?
A I thought they was living in that one room. I don't, I don't really know.
Q Was anybody else living in the house to your knowledge?
A Not as I know of.
Q And I made reference to the particle board and cinder block.

Do you know if -- what did the house start out as?
A Well, it was just a block house, and then -- so, he just added on to it and---
Q He -- I'm sorry.
A ---it got to---
Q Leon Junior?
A Yes, sir.
Q Little Leon?
A Okay. Is that why it had four doors?
A Yes, sir.
Q Okay. Now, the part that Ms. Cain, Mr. Cain and Ms. Parkhurst was staying in, is that the old part of the house or the new part?
A The old part.
Q The old part.

All right. Now, you -- do you go into that house at all?
A No, sir.
Q Okay. Do you have a, the trailer behind it?
A Yes, sir.
Q All right. And you live there with who?
A I live there with my grandson most of the time.
Q Okay. Do you how long Ms. Parkhurst and Mr. Cain were at that house?
A Not really. But it wasn't very long. Maybe -- not over two or three weeks anyway. I really can't tell you.
Q Okay. Did they come to your trailer for anything?
A They come up there and asked me could they take a bath cause there wasn't no water down there, you know, and, of course, I let them. But I didn't even know them, you know. I just knowed they was my son's friend.
Q Okay.
A So sure.
Q As far as you know your son rented them that bedroom?
A Yes, sir.
Q All right. And as far as you know there was no running water?
A No, sir.
Q Did they have a power cord going to your house?
A I don't know. My son sometimes he, when he was working

on the house he plug up outside my house, you know. So, I wouldn't even know he was doing it.

Q Okay.

A He never come there and asked me. Just plugged it up.

Q All right. And were -- you know if there was a power cord hooked up at, back when the police came there?

A I -- seemed like it was, but I wouldn't swear to it.

Q All right. Did the -- Ms. Parkhurst and Mr. Cain routinely come there to go to the bathroom, use the restroom?

A Well, they -- yeah, they'd come up there.

MR. ROBERT HALL: I have no further questions of this witness, Your Honor.

THE COURT: Thank you.

MR. ROBERT HALL: Oh, excuse me. Just one more.

Do you have a pit bull?

A Yes, sir.

Q What color?

A Oh, it's a brown and got white swipes on it.

Q And how long you had that dog?

A Oh, about six years.

Q She's friendly, isn't she?

A Oh yeah.

Q All right. Thank you.

THE COURT: Ms. Hall.

MS. CLAIRE HALL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. CLAIRE HALL:

Q Mr. Fowler, on this date in January 2012, did any officers comes to your home to ask you about any questions about the house?

A Not that I remember.

Q You don't remember speaking to anyone?

A No, ma'am.

Q Okay. Thank you.

THE COURT: Yes, ma'am.

THE COURT: Mr. Holliday.

CROSS-EXAMINATION

BY SOLICITOR HOLLIDAY:

Q Mr. Fowler, the trailer you live on, how far away is that from the house where the defendants were staying?

A About a hundred foot. Just --.

Q And had you ever met them before?

A No, I knew their mama and daddy, the Cains you know. But I hadn't seen them in years.

Q Okay. Could you, could you point them out if you saw them?

A They were friends with my son.

Q Could you point them out if you saw them in a crowd?

A Oh, yeah.

Q Yeah.
When did you first meet them, the defendants?
Do you know their names?
A No.
Q You don't know their names, but you let them come use your bathroom?
A Sure. They want to take a bath.
Q So, you just let complete strangers who you don't know their names come use your bathroom?
A Yes, sir, I'd let you use it.
Q Appreciate that.
Did you ever go into the house?
A Not unless my son asked me to come down there and look at something he built.
Q Okay. You don't know when the defendants moved in?
You don't even know if they were living there?
A I don't know nothing about it.
Q So, do you know what was going on in the house?
A No, didn't want to know. I know they drank too much and I wouldn't have that around my grandson. So, I ain't drink nothing since he was born.
Q Did you know if they used drugs?
A No.
Q Did you know there was a meth lab in the house?
A No, sir.

Q You didn't know anything about the house?
A No, sir, I wouldn't of been around it.
Q No further questions.
A Yes, sir.
MR. ROBERT HALL: Nothing further.
THE COURT: May this witness be excused?
MR. ROBERT HALL: Yes, sir.
MS. CLAIRE HALL: Yes, Your Honor.
MR. ROBERT HALL: We'd ask that he be excused.
THE COURT: Thank you, sir.
WITNESS: Thank you.
THE COURT: All right. Ladies and gentlemen, I'm gonna go ahead and excuse you for the remainder, for the day. I'm gonna ask that you be back in your jury room by 9:30, and we'll resume the case at that time. I also remind you not to speak with anyone about this case including your spouses or significant others either directly or on the phone.
Okay. Thank you. We'll excuse you for the evening. Thank you.
(WHEREUPON, the following takes place outside the presence of the jury.)
THE COURT: If your clients don't appear, do either one of you anticipate having additional witnesses?
MR. ROBERT HALL: Yes, sir, if they, if they do -- if we do find them, they could very well---

THE COURT: No, if they do not.

MS. CLAIRE HALL: If they do not appear, no.

THE COURT: All right. Let me say something to you, Ms. Hall. I'm so use to having one attorney instead of two. It's no slight.

MS. CLAIRE HALL: That's okay.

THE COURT: I'm just so use to it. I apologize.

MS. CLAIRE HALL: And we have the same name. So, I understand that.

THE COURT: We're off the record.

(WHEREUPON, an off-the-record discussion was held at this time.)

THE COURT: Guys, see y'all in the morning.

(WHEREUPON, Court was in recess for the evening.)

Friday, March 1st, 2013

THE COURT: All right, guys. I have my law clerk preparing a verdict form.

Does everybody all agree that the charge will be -- let me just say, I need to rule on your motion to dismiss. I'm gonna deny that motion.

MR. ROBERT HALL: Yes, sir.

THE COURT: Okay, sir. I think you're protected on the record, but I am denying the motion based on the plain reading of the statute, and based on the cases of, persuasive authority that was handed in by Mr. Holliday. I think theoretical yield would be an appropriate analysis in this case.

Now, with that being said, I jotted down, I'm gonna let y'all look at it and see what you think, a proposed special interrogatory to the jury, and it goes basically, you know, do you find that the State has proven, beyond a reasonable doubt, that the theoretical yield was 10-grams or more but less than 28-grams. Yes or no. If yes, then go to question number two about trafficking cause they could still find that they're not guilty, and then I have the ultimate manufacturing after that.

MR. ROBERT HALL: Okay.

THE COURT: I mean obviously subject to your prior

motion, but as far as the way the status of the case is now.

MR. ROBERT HALL: Yes, sir, I understand. Yes, sir.

THE COURT: Ms. Hall, what do you think?

MS. CLAIRE HALL: I just want to make sure I understand your -- you want to send a special interrogatory where the jury determines whether or not there will be a theoretical yield of at least 10-grams?

THE COURT: Yes, ma'am.

MS. CLAIRE HALL: And that's to establish whether or not it was trafficking?

THE COURT: Correct.

MS. CLAIRE HALL: Okay. As long as Your Honor is charging on --.

THE COURT: Manufacturing.

MS. CLAIRE HALL: Well, manufacturing as well as the lesser included. But also, I'm assuming, you'll be charging on intent. We would request a mere presence charge.

THE COURT: Yeah, I tell you---

MS. CLAIRE HALL: If you'll cover that basis---

THE COURT: In fact, let me do this. I'm gonna go over my, just my basic structure of my charge with you --

MS. CLAIRE HALL: Okay.

THE COURT: -- and that way you'll know what I'm gonna do, and both of you, all three of you, excuse me, I keep doing that to y'all, are more than welcome to come and look

at my actual charge.

Have y'all ever tried a case with Judge Hill from Greenville?

MR. ROBERT HALL: No, sir.

MS. CLAIRE HALL: No, sir.

THE COURT: Okay. Well, I have shamelessly plagiarized his charge just to be honest with you. I sat with him when I first started, and I liked it. So, I took it.

But my charge is in three parts. The first part, I'll go through the general rules that define and control the jury's duties. I will then go through the substantive law, i.e. what the State must prove in order to make its case out against the, both defendants, and then, third, I'll go over some considerations for their deliberations, and I will then go over the verdict form with the foreperson so that they know or she knows how to fill it, and I tell them, I reiterate that they have to make their decision based on the evidence presented here in this courtroom, and, and according to the law as I give it to them, and, and they shall not be concerned with what the law is, but they have to apply it as I give it to them.

They shouldn't be influenced by any personal likes or dislikes, prejudice, undue sympathy to one side or the other. I tell them then, following these instructions, they have to follow all of my instructions. They can't just pick

out the things that they may like and apply those and disregard those that they may not like. And if I've done anything throughout the course of this trial that seems to indicate how they're to find facts or the verdict they're to reach, I'm gonna instruct them that they have to disregard that cause I assure them I have no feeling one way or the other, that they and they alone are the judges of the facts.

They determine what those facts are by evaluating and weighing the evidence they heard here in this courtroom during the trial, and there's no way for me to give them a scale in a literal sense. It is entirely a mental process that they go through using their good common sense and sound judgment.

Then I go through and describe for them what is evidence, and I'll tell them that it's testimony that they heard from the witness stand, and any exhibits that may be received into evidence, and that's only, the only categories that they may consider technically as evidence.

Now, what is not evidence is what y'all say. You're -- I remind them that everybody, that lawyers have a duty to object. And, so, the fact that there may be objections during this trial shall not be discussed by them, and to the extent I let them see my ruling, it shall not be considered. Also I tell them anything that they may have heard while Court is not in session shall not be considered by them.

I then go into direct and circumstantial evidence, and I define both of them for them, and also give them examples. Now -- and I'll give you the examples I'm gonna give cause I've had somebody object to my, my circumstantial example.

The direct example, I just say if somebody's sitting on a corner and they see somebody run a stop light would be an example of direct evidence.

Circumstantial evidence, I tell them there's -- imagine there being a fresh sheet of snow in their front yard when they go to bed at night, and they wake up in the morning, and they're tracks in the snow. They can infer that someone or something walked through their yard during the night although they did not actually see that, and that the law makes no distinction between the two.

They're entitled to consider both, and there's not a greater degree of certainty required of circumstantial evidence. The only prohibition they have is any inference they may try to draw from their circumstantial evidence can't be the conclusion, can't be speculation or just conjecture.

Then I go through and tell them about the credibility of the witnesses, and give them factors they can consider, and they can disbelieve all or part or believe all or part of anybody's testimony. They can believe one over all of the one or one over the all. And -- but what they don't do

is add up the number of people that, excuse me, may testify for one side or the other in making their determination.

Also tell them about expert testimony. Basically what I told them during the trial.

And then I'll remind them that the indictment, the fact that the defendants both were arrested and charged and indicted is not evidence of guilt, does not raise a presumption nor an inference of guilt. It's simply the documents that we use to bring them to Court.

He hasn't gotten it for me, but I also have a charge that I told them earlier about being, you know, being absent, trial in the absence charge, and that fact that there's multiple defendants. They can find one guilty and not the other, and find both guilty or they can acquit both of them. They have to separately make their determination as to each defendant.

Then I charge them on presumption of innocence and reasonable doubt and intent.

Now, I wouldn't -- what's your thoughts on the failure of the defendants to testify?

I mean, since they're not here.

MR. ROBERT HALL: I would --.

THE COURT: We have -- I cover it about them being here, not being here.

MR. ROBERT HALL: Yes, sir.

THE COURT: I'll be glad to charge it or not. Whatever you want me to do.

MR. ROBERT HALL: I don't think it's necessary, judge.

THE COURT: Okay.

MR. ROBERT HALL: I mean---

THE COURT: I kind of felt the same way.

MR. ROBERT HALL: If they have a right not to be here, they have a right not to testify, and it's kind of --.

THE COURT: Okay. We don't have -- is there any -- there was really no identification issue in this case I can think of, right?

MR. ROBERT HALL: No, sir.

THE COURT: Okay. So, that would be that aspect of my charge. I then give them the charge that I have up here. I'll let y'all look at it. Then I go through the duty to deliberate and then I define deliberations and go through all that, and then I'll go over the verdict form with them. Okay.

MR. ROBERT HALL: Did you have mere presence?

I think once you went---

THE COURT: I don't have mere presence, but I'll be glad to do it.

MR. ROBERT HALL: Yeah, that's what we -- I was talking to your clerk.

THE COURT: I think you're right on that.

MR. ROBERT HALL: That's one of the things I think that was not standard that we would ask for.

THE COURT: Let me go back and check with my wayward law clerk and what he's doing and I'll come back. Here you go. Here's this if you want to look at it, and I'll get mere presence, and then the failure, and let me get those so I can look at them.

MR. ROBERT HALL: Okay.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: Here's what I'm gonna do. I'm gonna do two different, separate forms.

(Pause.)

THE COURT: All right. I'll be right back. I don't know what's going on, but I need to find out.

(WHEREUPON, a short recess was taken at this time.)

THE COURT: I have Mr. Cain's verdict form if you want to see it. It's just like Ms. --.

MR. ROBERT HALL: I'm sure it's fine, Your Honor.

THE COURT: -- Ms. Parkhurst.

MR. ROBERT HALL: At least the defendants have names very different from Hall.

THE COURT: Sir?

MR. ROBERT HALL: I said at least the defendants have names very different from Hall. We got Hall, Hall, and Holliday.

THE COURT: All right. Everybody ready to go?

MR. ROBERT HALL: Yes, sir, Your Honor.

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

MS. CLAIRE HALL: Yes, sir.

THE COURT: Bring the jury in.

I guess you need to rest, don't you?

MR. ROBERT HALL: Pardon?

THE COURT: Both defendants need to rest.

MS. CLAIRE HALL: Yes, Your Honor. There's no more testimony.

MR. ROBERT HALL: Yes, sir.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

Let me just tell you that I know sometimes when you're sitting back there in the jury room and you're wondering what we're doing out here, I always like to try to tell jurors what's happening so you know what the process is, what we have been doing. We, we are working. We've been going over the law that I'm gonna charge y'all in just a few minutes. So, that's what we've been doing. So, don't think we're sitting around.

Does the defendants have any further witnesses.

MR. ROBERT HALL: No, Your Honor.

MS. CLAIRE HALL: No, sir.

MR. ROBERT HALL: We rest.

THE COURT: Very good.

All right. Ladies and gentlemen, we had opening statements. We then had presentation of the evidence. We have passed both those phases. We will now go into what is called the closing argument phase of this case. After that, I will charge you on the law.

Is the State ready to proceed?

SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

THE COURT: Defense ready to proceed?

MR. ROBERT HALL: Yes, sir, Your Honor.

MS. CLAIRE HALL: Yes, sir.

THE COURT: Mr. Holliday.

SOLICITOR HOLLIDAY: Your Honor, I believe the defense gets to go first.

THE COURT: Okay.

MR. ROBERT HALL: We're not requiring them to open on the law.

THE COURT: Okay. All right.

MR. ROBERT HALL: All right. Please the Court, counsel?

THE COURT: Uh-huh. (Affirmative).

MR. ROBERT HALL: Solicitor.

Madam Forelady, and members of the jury, this is my last opportunity to be in front of you or summarize what

we've seen here yesterday basically.

This is not been a very long trial. This is a very important trial to both the State and to the defendants in this case or we wouldn't be here.

It can seem a little complicated. I like to try to make things a little less complicated.

What we have here is two people charged with trafficking, making certain amounts of, methamphetamine. Two things we have in this case. The State has to prove to you beyond a reasonable doubt that there was a operation. I think to call it a meth lab is a misnomer. I think it's inappropriate. A meth making operation cause it certainly wasn't a lab. That produced methamphetamine and it's the chemist, Ms. Stuart, who testified to they did this, they did that.

The State must prove, beyond a reasonable doubt, that the defendants were they. Not that they were just there, but the defendants were they.

The evidence you have before you, we have the testimony. We have the photographs. We have the one pot method bottles and events and all that in a house. A house with four doors, four entrances and exits, one of which the defendant used. They were there. But they would have to have control of all that other and be involved in that operation before, if there was an operation that yielded

methamphetamine, before they could be found guilty, be proved guilty beyond a reasonable doubt.

We have two officers who came to serve a bench warrant on a third party. They went to the door that had the car closest to it. That happened to be the door where there's a bedroom, a porch, a bedroom. That's where the defendants told them we were staying. That's where Mr. Fowler told them they were staying in that bedroom. No power. No water.

They went to Mr. Fowler's trailer behind it where he lived because it's like his trailer, but his trailer to go to the bathroom, take a shower, take a bath. Didn't do it down there.

If this pad is the house, this is the back of the house, they're back here, the bathroom is up here somewhere. It's -- the stuff for the meth manufacturing production is up here. Not over here.

Now, the two defendants charged in this case were there. First, hey, we live here. We don't know about the rest of the house. We can't just let you go in there. We've got a warrant. We think the person's here got this address and we can go in there.

Okay. They let them in the rest of the house. They're not told they have to stay. They're not told that there's suspicion of anything.

They searched that room. They were looking for a person, but they didn't find anything. They didn't find a person. They're perfectly free to leave, which they did.

The testimony -- and we have the pictures of the pour. I call it a pour in this area. It looks like a bottle was poured out that was used in the making of meth. It wasn't there before we got there. When we walked in it wasn't there. We would of noticed it. We noticed it when we left.

But what happened between those two things?

They went into the rest of the house and they saw a meth lab, what they called a meth lab, a meth production facility. They had the stuff there.

Then they were kind of just heightened what they were looking for. They came out and they saw it.

You know what else was on that porch area where it was poured out?

Remember Beth Stuart testifying. There was that trash can. You got a picture of it. It's just so obvious and it was sitting right beside the door on that porch. They didn't notice that when they went in. They didn't look at it and say gosh this looks like meth stuff. Maybe they didn't see that other stuff either.

What we have is two unfortunate people who were staying in a room, in a house that is somewhat under construction. No power. No water. Staying in one room. Something's

going on in the rest of the house.

Now, the officer said they blocked their door. They were staying in one part of the house. He doesn't -- a couple stayed in one part of the house. Don't have anything to do with the rest of the house. He blocked it off. Closed that door. You're not part of that house. You're free to go about your business. They do. They left.

This comes down to some kind of circumstantial evidence, and I think the judge is gonna charge you on that, and part of the charge is you have snow on the ground in your yard when you go to bed and you wake up in the morning and there's tracks. Someone or something went through there. Some reasonable assumption.

But do you have trees up there?

The snow could of fallen down and made it look like tracks.

The circumstantial evidence has to be strong to get you to the conclusion of guilt. What we have in this case is could they have been, maybe they could of been. But the State has to prove, beyond a reasonable doubt, that Ms. Parkhurst and Mr. Cain were involved in meth production if you find that there was a meth production going on.

What they have shown is that they were there in one part of the house. They didn't try to hide who they were. They showed their ID's. They said we got a warrant for

this, for somebody at this address. We can go in the house. They let them into the rest of the house. There's a door that went in there. Opened that door and let them in.

The State has showed you some suspicion. Maybe it's a strong suspicion that they were involved in something. But they hadn't carried it beyond a reasonable doubt. There is nothing connecting it other than that they were there and there was that pour. We didn't see that pour when we left, when we came in, but when we came back out we saw it.

Well, they didn't see the trash can either. Those two officers, once they saw the vented bottle, this could be a meth production facility. Again, I won't call it a meth lab, meth production facility, and then they started looking around more, and they noticed those things.

You can't convict somebody because they left when they were free to leave, that they just happened to be somewhere staying, that some of the house may of been used for an illegal purpose. It's mere presence. It's not enough.

Ladies and gentlemen of the jury, when you look at this case, if you find that there was a production facility, and you find that yeah, there's credible evidence that it could of produced some meth, you got to decide how much that meth was, could of been produced, could of been produced. In laboratory conditions, they gave you testimony what it could be.

This is not a laboratory. It wasn't laboratory conditions. It's poor conditions.

So, if there was a meth production, how much, 50 percent, 40 percent, 30 percent, 60 percent, we don't have any evidence to determine that other than it certainly was not a lab. It was not laboratory conditions. And then for the particular defendants, even if there was a production facility going on in there, and something could of been produced, an amount, the connection is tenuous at best. It certainly was not beyond a reasonable doubt.

On behalf of the defendant, Charles Allen Cain, I ask you to consider this evidence, weigh it, apply it to the law, and arrive at a verdict for Mr. Cain of not guilty.

Thank you.

THE COURT: Ms. Hall.

MS. CLAIRE HALL: May it please the Court?

THE COURT: Yes, ma'am.

MS. CLAIRE HALL: Good morning.

The first thing I want to say to you, and I hope you'll remember this throughout your deliberations, is you are not here to make a moral judgment about illegal drugs. I think we can all agree that they're devastating to people who use them, and for communities where they're found.

You're here to determine if the State is proven, beyond a reasonable doubt, if Tiphani Parkhurst and Charles Cain

were trafficking methamphetamine, which means first they have to have proven to you, beyond a reasonable doubt, that they were involved in making methamphetamine, and, two, that, in theory, they could have produced at least 10-grams.

From what you heard yesterday, at best, you could speculate that they were involved in making methamphetamine and that they could have made 10-grams or more. But first let's talk about whether or not they were actually involved in making meth. Not did they know if meth was being made in close proximity to them or that they should have known, but were they themselves actually involved.

What do we hear?

They lived in or -- I don't know if we can even say lived. We know that they were found in a bedroom in this house that had its own entrance, that had a door that was closed off to the rest of the house.

Officer Wilbanks testified from the stand it appeared that they were living in the bedroom, that there was food in there. There was no water to this house. They went to Mr. Fowler's trailer to use the bathroom on occasion. No one investigated who owned this house. No one investigated if Tiphani Parkhurst or Charles Cain had a lease to this room or how long they been there or what the nature of their living situation was. We don't know if they were there every single night or if they only stayed there sometimes.

Also, no one testified about their being any smell of methamphetamine. Whatever that might smell like, but we know apparently there is a smell involved because Beth Stuart testified from the stand of the photo of a face mask that oh, it's smells terrible when you're making meth. So, people wear these masks and they don't smell it.

No officer who was there said they, they smelled anything, and there was no masks or any meth found or any ingredients to making meth or implements for making it found in that bedroom, the only place where we know Tiphani and Charles were in this house.

Beth Stuart testified about the theoretical yield that she got from her equation based on blister packs found in the rest of the house. We know that those blister packs were empty.

How long was that trash there?

How long was Tiphani and Charles there?

What the State is asking you to do is to speculate that Tiphani and Charles were there, when meth was being made, and that at least 10-grams could of been made or maybe were made. This Coke bottle in the bathroom was found. We don't know if it was, the process was underway or if it was abandoned or if it was over.

Even if you believe that Tiphani Parkhurst and Charles Cain knew what was going on in the rest of this house, that

doesn't make them guilty of trafficking meth. Because, under the law, you don't have a duty to report criminal activity, and if it's -- that's enough to find these two people guilty of trafficking meth, then that means that you're okay with being held responsible for what your neighbors may do or perhaps a roommate or a family member living under your roof doing something you don't know about.

Then, secondly, the State has to prove to you that, based on what was found in the rest of this house, that Tiphani and Charles could have made, in theory, 10-grams or more of meth, and we heard that the 17 point however much grams theoretical yield that could of been made from the empty blister packs found in the rest of the house is based on ideal lab conditions, which is what?

Not using old Coke bottles and makeshift equipment by people who have no science training, who are not using pure ingredients, who haven't been trained by the DEA on how to make methamphetamine. We heard from Beth Stuart that anytime you have a chemical reaction there's waste. That not necessarily every product in the reaction actually reacts.

I ask that you review this evidence very carefully and think is this enough to find someone guilty of trafficking methamphetamine solely because they were in the proximity of some illegal activity that had gone on or perhaps is going

on, and, in theory, they could have made 10-grams or more according to a chemist of what could happen in a lab. I argue to you that is not enough, and there's plenty of reason for you to hesitate to find Tiphani Parkhurst guilty of trafficking, and I ask you to return a not guilty verdict.

Thank you.

THE COURT: Mr. Holliday.

SOLICITOR HOLLIDAY: Thank you, Your Honor.

Ladies and gentlemen, manufacturing meth is dangerous, and I wish, I wish I could come in here and I can show you the meth that they made, and I wish I could come in here and I could show you bottles and the, and the tubes and everything to help the State prove its case. But I can't do that because making methamphetamine is dangerous.

So, all I've got is these pictures that the officers took on the scene because, as soon as they take these pictures, they clean up the meth lab and they dispose of everything.

But what I do have is the testimony of deputies who came in and found this meth lab, and I've got the testimony of the chemist, Beth Stuart, who came in and gave a, quite a good class on methamphetamine. I'll have to admit, before this trial, I really didn't know that much about the manufacture of methamphetamine, and after hearing Beth

Stuart talk, I'm fascinated of the topic.

Matter of fact, when you look as these pictures, it was quite an elaborate process. Quite an elaborate dangerous, and I find it hard to believe that someone could be living in a house and not know that this was going on. I find it hard to believe that someone could be living in a house and not, at least, if they're aware of the dangers, be willing to live there unless they're participating in those dangers.

I want to point your attention to I believe it's State's Exhibit 6, and you'll get to look at this more in detail when you get back in the jury room. If you look here, you'll notice that Ms. Stuart testified about the use of aluminum foil in not only making meth, but in using meth, and this is in the defendant's bedroom. And you'll notice there's a little bit of aluminum foil, and we can't really see it this far away. But when you get back in the jury room you can take a look at it.

But what that indicates is they were using methamphetamine in the bedroom. And if you're using methamphetamine, and you're living in a house that's got a meth lab, I'm willing to bet you're probably part of making that.

Now let's talk about who was living in the house. No one has come forward to testify, yeah, I was in the house, I was making that meth. There's been no witnesses brought

forth to say anyone else was living in the house for that matter.

Matter of fact, the defense own witness, Mr. Leon Fowler, came up here and testified that, as far as he knew, no one else lived in the house. Mr. Fowler was very nice. He even offered me to go take a bath at his house, and, you know, I may take him up on that, probably won't, but as far as he's concerned, no one else lived in that house. He kind of told two different stories though.

On the one hand he says yeah, I let them come take a bath in my house. I'd let you come back to take a bath in my house. Then, on the other hand, he says well, my grandson lives in that house. I never go -- lives in my trailer. Sorry. I never let my grandson go in that house because those people drink too much. I don't even know their name.

Which one, which one's the truth?

Which one's the real, the real deal?

I would submit, and I think that he probably doesn't know their name, he doesn't want to go in that house, and he doesn't want to have anything to do with the house cause there's a meth lab in it.

No one else lived in that house that we know of. There was a meth lab in that house. I don't think there's any question that that's a meth lab. I think, even through the

defense's own questioning, they basically understand yes, there was a meth lab going on in this house.

Let's, let's talk about that. You'll get to see the, the pictures of the tubing and the pipes and the cold packs and the Pseudoephedrine.

Now, in order to prove that they were manufacturing methamphetamine, and the State's charged them with trafficking, which means that they were manufacturing so much methamphetamine that it rose to a certain level of the offense, and, in this case, it has to be more than 10-grams. And, so, Ms. Stuart, who is much smarter than me, and I usually rely on people who are smarter than me to tell me things I don't know about, manufacturing methamphetamine being one of them, she said that if you take the Sudafed, and she's got formula with moles and stuff in it, and she can type in how much Sudafed they had or would of had so that -- I believe her testimony was that she, they didn't find any Sudafed, that all they found was empty packages, which means that all the Sudafed had been used up. Either the defendants had some serious cold and had to use ten or 19,000 milligrams of Pseudoephedrine or they were making meth. And, so, I would submit to you and I personally think that they were making meth.

In order to prove that they were trafficking meth though we have to prove that they either attempted,

conspired, or actually did, in fact, manufacture more than 10-grams of methamphetamine, and Ms. Stuart talked about the theoretical yield and what that meant.

Theoretical yield is basically if you take 19,000 milligrams of pseudoephedrine, you get 17-grams of methamphetamine. And, so, at some point, on or about the date that's charged, we allege and I believe it actually happened, the defendants made methamphetamine. How much methamphetamine they made is up for you to decide. But at a hundred percent theoretical yield, they would of made 17-grams. At -- and y'all remember I asked Ms. Stuart what about 85 percent, what about at 80 percent, 75, 60 percent. And even at a 60 percent yield they would still have produced over 10-grams for a trafficking in amount of methamphetamine, which is a lot of methamphetamine.

Now, the defense is kind of raised the argument well, these weren't chemist. They weren't laboratory. But you can go on Google and google instructions on how to make methamphetamine step-by-step. I really don't think it's that complicated, and when you see the elaborate laboratory, for lack of a better term, that they've got going on in their house, I don't think it's an issue. I think these people knew what they were doing, and I think that the fact that they had this elaborate system set up proves that they knew what they were doing.

The defense is raised an issue of well, they were just at the house. They were merely present. They didn't have anything to do with this. They were just living in that one bedroom and that was it.

Well, what about the fact that -- all right. The officers go to the house. They checked their ID. They're looking for this other guy on this bench warrant, and they, at first, don't want to let them in the house.

Wonder why?

Cause there's a meth lab in there. But they don't want to let them into the house, and eventually they say no, we have the right to come in and search. So, they searched their bedroom, and they don't really see the evidence of a meth lab cause, at that point, they're not looking for a meth lab. They were looking for a person.

But once they go back further into the house, they discover oh, my goodness, look what we've got here. We better call in the experts.

Well, at that point in time they turn around and go back out, and the door that they try to get out of is barricaded. They knock on it, bang on it, and the officer actually had to kick the door down to get through.

Why would you barricade a door to two armed deputies unless you had something to hide or were tying to get away?

Matter of fact, they did get away. They got in their

vehicle and they skedaddled. They were not there. They escaped. They fled. They're gone.

And not only do they leave, but on their way out, they dumped the evidence on the ground.

Who knows, maybe there was meth in there. Maybe they took their meth with them. Maybe that's why we didn't find methamphetamine. But for some reason, on their way out, they dumped it, and I believe they dumped it because it's wet. It was still wet by the time the, the chemist got there, Beth Stuart, and she took pictures of it. She testified, and you can even see here on the wood when you look at the picture, it was still wet. They just dumped the bottle out here. Maybe they took their meth with them. Maybe they hid it somewhere. We don't know. We didn't find any meth. We just have evidence of a meth lab.

I wish we had the meth. I wish we had -- could show you the equipment that they used to make the meth out of, but that's just the way it is.

I've got pictures. I've got testimony. I believe, when you look at it all, you'll come to the same conclusion. These defendants were making meth. They were making so much meth that it rose to the level of trafficking, and I just ask that you find them guilty and just carry out the truth and just do the right thing.

THE COURT: All right. Madam Forelady, ladies and

gentlemen of the jury, my charge will probably be about 25 to 30 minutes. I'll be glad to let you have a break or we can proceed with my charge.

Would you poll your jury and see what you want to do?

FORELADY: We can continue.

THE COURT: Very good.

Okay. Ladies and gentlemen, now that you've heard all the evidence in the case, and you've heard the arguments of these attorneys, it's my duty to instruct you on the law which applies to this case. My instruction will be in three parts.

The first part will be the general rules that define and control your duties as jurors. The second part of my instructions will be the law that the, that the State applies or that you must find in this case, i.e. what the State must prove to make its case. The third part of my instructions will be some considerations for your deliberations.

If you recall, at the beginning of this case, I told you that it's your duty to find the facts from the evidence that's presented here in this courtroom. As to those facts you must apply the law as I give it to you, and you must follow the law as I give it to you, and you shall not be concerned with what you would like it to be or you think it should be. It's your duty to apply the law as I give it to

you, and, again, if I'm incorrect, that will be corrected down at another place and another time.

Also, you must not be influenced by any personal likes or dislikes or opinions, prejudice, or undue sympathy from one side or the other. That means that you decide this case simply on the evidence that's presented here in this courtroom, and according to the law as I give it to you. In fact, when you took your oath at the beginning of this trial you agreed to do just that.

Now, following my instructions -- you must follow all of my instructions. You can't pick out things that you'd like and apply those and disregard the other aspects of my instructions that you may not like. They're all equally important.

And, again, I will remind you that if I have done anything throughout the course of this trial that indicates to you on what verdict you should have in this matter, I'm gonna ask you and instruct you to disregard it. I can assure you I have no feeling about what the verdict should be. That is not -- I'm not allowed to under the Constitution. No judge is. This matter is solely up to you and you and you alone are the judges of what the facts are in this case.

Now, you decide what those facts are by evaluating and weighing the evidence that you heard during this trial, and

there's no way that you can weigh evidence in a literal sense. I can't give you a set of scales for you to go to place the evidence on and weigh it. It is entirely a mental process that you go through, evaluate, and discuss all the evidence in this case, and you use your good common sense and sound judgment that you apply to that evidence.

So that leads me to what is evidence. Again, the sworn testimony of the witnesses, whether it was on direct examination or cross-examination, is evidence. Also, the exhibits that I have received into evidence is also evidence, and that is the only two categories that fits into the technical definition of what constitutes evidence.

So, let me tell you what does not constitute evidence. The arguments and the statements of these fine lawyers is not evidence. What they say and what they've told you or their questions throughout this case are designed to help you understand the case, to point out the issues, and give you basically a roadmap that you can follow in making your decision.

However, if your memory of the facts in this case differs from what any of these lawyers tell you, then your memory will control. Also, let me remind you of the fact that somebody's notes may say one thing, but somebody's memory is something else, the notes do not control. That means you'll have to deliberate the point. If there is a

difference of opinion, you discuss all of it and come to a resolution if you can.

Also, the lawyers are required, by their rules of ethics, to object when they see something going on in a case they feel like is proper. The fact that a lawyer may have objected during the course of this trial shall not be discussed by you and shall not be consideration by you, considered by you in any form or fashion. That is their absolute duty and it happens in every single trial. That is simply the process.

Now, finally, ladies and gentlemen, anything that you may have seen or heard when Court was not in session is not evidence and may not be considered by you in this matter.

In South Carolina, we recognize two types of evidence. We have direct evidence and we have circumstantial evidence.

Direct evidence is this. It is testimony of a person who asserts or who claims to have actual and direct knowledge of a fact such as an eye witness. Give you an example of direct evidence. If I was standing on a street corner, and a car ran a stop sign right in front of me, that would be direct evidence cause I viewed it.

We also recognize in this state a category known as circumstantial evidence. Circumstantial evidence is a little bit more tricky. I'm gonna define it for you and give you an example of it as well.

Circumstantial evidence is proof of a chain of facts and circumstances from which you can find that another fact exist although that fact has not been proven directly. Think about that, and let me give you an example.

If you were -- each of you were to go to bed at night and have a fresh sheet of snow in your front yard when you went to bed. If you were to wake up in the morning and look at that snow and see tracks, you may infer that someone or something walked through your yard during the night although you did not actually see that occur. That is circumstantial evidence.

I'll tell you that the law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence. You are entitled to consider both kinds of evidence, and there's not a higher degree of proof required for circumstantial evidence to be considered by you. However, the inference that you draw from the circumstances may not be speculative or conjecture. That is the only prohibition.

Now, after you have weighed and considered all the evidence in this case, if you're not considered (sic) of the guilt of these defendants or either of these defendants beyond a reasonable doubt, then it will be your duty to find them not guilty. In defining -- in deciding what the facts are, it will be essential for you to consider the

credibility of the witnesses.

In doing this, you have to decide which testimony that you want to believe and which testimony you choose not to believe. You have a right to disbelieve all or part of any witnesses testimony. You may believe all of any witnesses testimony.

In making this determination, of witness credibility, you may, but you're not required to take into account of the following factors. You may ask yourselves was the witness able to see or hear or know the things about which that witness testified, how well was the witness able to recall and describe those things, what was the witness' manner on the witness stand. In other words, what was their demeanor.

Also you can ask yourself was there a reason that a witness would want to give testimony that would help or hurt one side or the other. Did they have an interest in the outcome of the case or any bias towards any party or towards any issue in the case. You can also consider how reasonable that witness testimony was considered in light of all the evidence and whether that witnesses testimony was contradicted by what that witness, witness had said or done at another time or by other witnesses or by the other evidence in this case.

Now, ladies and gentlemen, those are some but certainly not all of the factors that you may consider in deciding

whether or not to believe any or all of the testimony presented in this case, and, of course, as jurors, you do not check your common sense at the door once you're sworn in, and you should not do so in this case. You should use those days, those things that in your day-to-day lives that you find indicative of truthfulness and indicative of lack of truthfulness in making the determination of credibility. But one thing you shall not do is to add up the number of witnesses who may have appeared on behalf of one side or the other in making that determination cause it does not matter where the truth comes from. But your sole interest in this case is to see that truth is done.

Also, ladies and gentlemen, you've heard testimony by persons who have been qualified or described as experts. As I told you yesterday, people who, by their education or experience, have become an expert have a right to state their opinion in the matters in their field of expertise. Now, expert testimony should be judged just like any other testimony. You may accept it, you may reject it, or give it as much weight as you think it deserves considering all the evidence in this case, the witness' education, and their experience.

Now, ladies and gentlemen, also the fact that these defendants were charged and arrested and indicted is not evidence of guilt. These indictments are simply the

charging mechanism by which the State of South Carolina brings criminal defendants before a jury such as yourselves for a determination of their guilt or innocence. The fact that these defendants were indicted does not raise an inference nor a presumption of their guilt.

Now, I will charge you that there are two defendants in this case each of whom is charged with trafficking in methamphetamine. The case of each defendant and the evidence and the law concerning that defendant should be considered separately and individually. Your verdict does not have to be the same for both defendants. The fact that you may find one defendant guilty or not guilty should not control your verdict as to the other defendant.

Where more than one person is charged with a crime, if the evidence warrants it, you may convict one and acquit the other or you may acquit both or you may convict both, excuse me, or you may convict both. It will be -- it would depend upon your view of the testimony and the evidence and you must take each defendant and consider the evidence as to that defendant and my instructions to you on the law.

Now, Madam Forelady, I will give you two separate verdict forms for each defendant, and you need to consider each defendant's guilt or innocence independently of one another.

Now, also, ladies and gentlemen, under the laws of this

state, a defendant may be tried even if the defendant does not attend trial. But the fact that the defendant or defendants is not present may not be considered against that defendant or defendants in any manner whatsoever. The burden remains on the State of South Carolina to prove their case in all respects.

Now, mere presence at the scene is not sufficient to prove someone guilty of a crime. A defendant's presence where a crime is being committed or mere association with a person who commits a crime does not make a person, a defendant an accomplice or an aider and abettor of the person committing the crime. The burden is on the State to prove every element of the crime charged. If you find, after reviewing all the evidence, that the State has proved that the defendant was only present at the scene of the crime, and that they have not proved, beyond a reasonable doubt, any participation in the crime, then you must find the defendant or defendants not guilty. The law is that proof of being at the scene of the crime only is not sufficient to find someone guilty.

In fact, ladies and gentlemen, both defendants have pled not guilty to the charges against them in this matter. I'll charge you and tell you that a person charged with committing a criminal offense in South Carolina is never required to prove himself or herself innocent.

Now, I tell you that it is an important rule of law that a defendant, in a criminal trial, no matter how serious the crime may be, will always be presumed innocent for the crime in which they have been charged unless there has been guilt that proves their guilt, unless there's been evidence that proves their guilt by proof beyond a reasonable doubt.

Now, this presumption, ladies and gentlemen, does not end when you begin your deliberations. But it accompanies the defendants throughout the trial until you, the jury, reach a verdict of guilt based on the evidence that satisfies you of their guilt or their individual guilt by proof beyond a reasonable doubt. In the vernacular of the law, it says that the presumption of innocence is like a robe of righteousness that is placed about the shoulders of the defendants that remains there until it has been striped by evidence satisfying you of their guilt or their individual guilt by proof beyond a reasonable doubt.

Now, ladies and gentlemen, the presumption of innocence is not a mere legal theory. It's just not a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of their guilt or individual guilt by proof beyond a reasonable doubt.

Now, that leads me to the definition of reasonable doubt, and I gave you a short version at the beginning of

this case, but I'll give you a little bit longer one now. A reasonable doubt is the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendants, plurally or singularly, are guilty of the crime charged, it would be your duty to find them guilty. If, on the other hand, you think there is a real possibility that the defendant or defendants are not guilty, you must give them the benefit of the doubt and find them not guilty.

A reasonable doubt may arise from the evidence or from the lack of the evidence, and I further instruct you that a defendant is entitled to every reasonable doubt that may arise in the case. Now, what that simply means is this. If, upon any essential issue to a conviction, conviction, and a verdict of guilty of an offense charged, if you have any reasonable doubt as to how that issue should be resolved, it will be your duty to resolve that issue in favor of the defendants.

Also, ladies and gentlemen, in order to establish criminal liability criminal intent is required to be established. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

Now, there's no way to prove intent to a mathematical certainty. There's no way that medical science can dissect a person's brain to determine what they had in mind. So, the law says that criminal intent may be inferred from the circumstances shown to have existed, and this is how you make a determination of whether or not the element requiring intent is present. It is not necessary to establish intent by direct or positive evidence. But intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It's up to you, the jury, to determine what the defendants or individual defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act. It may arise

from negligence, recklessness, or an difference to a duty or to the consequences that is considered by the law to be equivalent to criminal intent.

Now, Madam Forelady, ladies and gentlemen of the jury, those are the general rules that define and control your duty as jurors. I'm gonna now charge you on the substantive law that you must apply to the charges in this case.

The defendants are charged with trafficking in methamphetamine. The State must prove, beyond a reasonable doubt, that the defendants or either of them knowingly sold, manufactured, cultivated, delivered, purchased, brought into this state, provided financial assistance, or otherwise aided, abetted, attempted, or conspired to sell, manufacture, cultivate, deliver, purchase, or bring into this state what was knowingly in actual or constructive possession or attempted to become in actual or constructive possession of methamphetamine.

The State must also prove, beyond a reasonable doubt, that the amount of the methamphetamine yield was 10-grams or more, but less than 28-grams.

Now, knowingly means with knowledge, consciously, and not accidentally. To prove possession, the State must prove, beyond a reasonable doubt, that the defendants or either of them had both the power and the intent to control the disposition or use of the methamphetamine. Possession

may be either actual or constructive.

Actual possession means that the methamphetamine was in the actual physical custody of the defendants. Constructive possession means that the defendants had dominion and control or the right to exercise dominion or control over either the methamphetamine itself or the property on which the methamphetamine was found.

Mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of methamphetamine is strong evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with the other evidence in the case and to be given the weight you decide it should have. Two or more persons, ladies and gentlemen, may have joint possession of a drug.

Now, to deliver means to actually constructively attempt to transfer the drug. Distribute means to deliver other than by administering or dispensing a drug.

To prove attempt to commit a crime, the State must prove the defendants committed an overt act. It is sufficient that the act go far enough toward the accomplishment of the crime to amount to the commencement of

its consummation. While the efficiency of a particular act depends on the facts of the particular case, the acts must always amount to more than mere preparation and move directly toward the commission of the crime. In any event, it would seem the act need not be the last proximate step leading to the consummation of the offense. The preparation consists of devising or arranging the means or measures necessary for the commission of the crime. The attempt -- the overt act is the direct movement towards the commission after the preparations are made.

Finally, ladies and gentlemen, if you determine that the State has not proven the charge of trafficking in methamphetamine beyond a reasonable doubt, you should then consider whether the State has proven, beyond a reasonable doubt, that the defendants are guilty of manufacturing methamphetamine, which is a, which is a lesser included charge.

Manufacturing means to produce, prepare, convert, process, plant, cultivate, grow, or harvest a drug naturally or chemically. Manufacturing includes any packaging or repackaging of the drug or labeling or relabeling of the drugs container. Possession of equipment or paraphernalia used in the manufacture of, of methamphetamine is prima facie evidence of intent to manufacture.

Now, Madam Forelady, ladies and gentlemen of the jury,

that is the substantive law which you must consider in making your determination of guilt or innocence of these two defendants. I'd like now to go over some considerations for your deliberations.

First, deliberation is defined as this. It is a careful consideration and weighing up with a view toward a decision. Now, regardless of what you may think about the judicial system, and our criminal justice system, I would submit to you that the genius of the system is that it allows 12 men and women such as yourselves who come from different walks of life to bring with them different prospectives and different viewpoints, to listen to the evidence, to listen to the laws given to you by the Court, to go through and to thoroughly and courteously discuss all the evidence and ultimately reach a decision.

We call them deliberations for a reason. You should look at all the evidence very carefully and deliberately and discuss it in a calm, thorough, and courteous manner. Remember, you're not partisans or advocates for one side or the other. You are the judges of the facts. Your sole interest in this case is to find the truth from the evidence you heard here in this courtroom.

I would ask you and also instruct you that you are to listen to all the views of your fellow jurors, consider their points and their points of view, talk to, and talk

through and discuss all the evidence. You remember, if you're doing something deliberately, you should not be in a big hurry and you should not do that today. This is the States and these defendants only day in Court.

Now, when you retire to your jury room and you discuss the case with your fellow jurors, in order for your verdict to stand, it must be unanimous. That means all 12 jurors must agree to the verdict.

With that being said, however, you must decide the case for yourself and you can only do so after you have thoroughly and impartially considered all the other evidence, discussed everyone's points of view, and their prospectives, and listen to your fellow jurors.

Do not be afraid to change your opinion.

Do you want me to get you some water?

JUROR: Yes, sir.

THE COURT: Okay. You okay?

JUROR: (Juror nods affirmatively.)

THE COURT: Okay. All right. Do not be afraid to change your opinions if the discussion persuades that you should change your opinion. On the other hand, do not come to a decision simply because other jurors think that's the right thing to do.

Again, it is important that you attempt to reach a unanimous verdict before your verdict stands. But, of

course, you can only do that after you have made your own decision. Do not change an honest view of your belief about the weight of the evidence simply to reach a verdict. In other words, don't come to a verdict simply to appease your fellow jurors.

Now, with that being said, I will remind you that your deliberations of the evidence is confined to the evidence that is been presented here in this courtroom from the witness stand and by sworn testimony and by exhibits.

Madam Forelady, they're two separate verdict forms because they're -- each defendant stands trial independently of one another. The order that I put these in is of no consequence. I have to put them in some order. So, when you see them, please do not take any or make any conclusions as to the order.

First, I'm gonna ask that the jury consider what we call a special interrogatory, and it will be on both verdict forms. This is the interrogatory. Do you find that the State proved, beyond a reasonable doubt, that the theoretical yield of the methamphetamine was 10-grams or more, but less than 28-grams. If you answer no, then you would go to number three, which is the last option on this, on this verdict form. If you answer yes, then you'll go to section number two, which is the charge of trafficking methamphetamine.

So, we, the jury, under Indictment 2012-GS-44-3135, unanimously find the defendant either not guilty of trafficking in methamphetamine or guilty of trafficking in methamphetamine, methamphetamine. Once you make your decision, you'll check the applicable space next to the option that the jury all agrees on, and if you find trafficking as to either of these defendants, you could sign the verdict form and would not consider the lesser included charge.

On the other hand, if you do not find that the State has proven trafficking beyond a reasonable doubt as to either or both defendants, then you may consider the charge of manufacturing. Again, if you find trafficking, there's no need to consider the lesser charge of manufacturing. Your option under that would be we, the jury, under Indictment 2012-GS-42-3135 unanimously find the defendant not guilty of manufacturing or guilty of manufacturing.

And also, Madam Forelady, your verdict form is exactly the same for the other defendant, and that would be Indictment 2012-GS-42-2547.

Now, once the jury reaches a unanimous verdict, I'm gonna ask that you sign the, each of these verdict forms separately, knock on the door, and we'll receive your verdict here in the courtroom.

Now, I'm gonna send you back to the jury room right

now, but do not begin your deliberations yet. I need to go over these attorneys whether or not I said something I shouldn't have said or neglected to tell you something that I should of told you, and I'm gonna let the alternate continue back there. But before you begin your deliberations, I'm gonna ask you step back out in the courtroom.

Okay. But you go to your jury room.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Any additions or exceptions form the State?

SOLICITOR HOLLIDAY: None from the State, Your Honor.

THE COURT: Either defense attorneys?

MS. CLAIRE HALL: No, Your Honor.

MR. ROBERT HALL: No, Your Honor. Your Honor, just it's a -- to clarify some things with you. We ruled on our motions at the time we were, I assume, including directed verdict motion, at the time we concluded our case. We didn't renew our directed verdict motion.

THE COURT: You know, this morning when I was doing that I was assuming that's what you were doing at that point.

MR. ROBERT HALL: Yes, sir.

THE COURT: But if you wanted to make sure on the

record. Obviously we visited that issue, and you may not have said, said I'll renew, but that's the way I took it for both of you.

MR. ROBERT HALL: Yes, sir.

MS. CLAIRE HALL: That was my intent.

THE COURT: Right. And both of you were adopting each one's motions---

MR. ROBERT HALL: Yes, sir.

MS. CLAIRE HALL: Yes, sir Your Honor.

THE COURT: ---for each particular defendant?

Okay. Very well.

MR. ROBERT HALL: Thank you.

THE COURT: Guys, thank you. Appreciate it. Y'all tried a nice case and did it efficiently.

Would you do two things, let's get the exhibits, and make sure -- y'all doublecheck your exhibits. Again, once you take them in there, ask the alternate to come out, and tell them to begin their deliberations.

(Pause.)

MR. ROBERT HALL: They're all there.

SOLICITOR HOLLIDAY: Your Honor, all the exhibits are there.

THE COURT: Okay. Good.

(WHEREUPON, the alternate juror was dismissed at this time. The jury began deliberations at 10:58AM and returned

with a question at 12:17PM.)

THE COURT: All right. We got a question. This is the questions.

It says No. 7, 8, and 9, where in the house are these pictures?

No. 5, is this the door that was barricaded?

Now, normally I don't ever make any comments on factual determinations.

What would you propose that we do, Mr. Holliday?

SOLICITOR HOLLIDAY: Judge, I just think you tell them they can only consider what's been put in evidence and nothing more.

MR. ROBERT HALL: I agree that evidence has been presented for their consideration, and we can't---

THE COURT: Well -- or we can play where you introduce those.

SOLICITOR HOLLIDAY: We can play the testimony back.

THE COURT: If you want to do that, of course, my court reporter is -- let me just say this. I'm gonna tell them I'm not allowed to comment on the evidence. However, if you want me to replay for these introduced, I can do that. We'll take just a minute to tee it up. That's the only thing I know to do. I hate to not just send them back and not say anything to them because it just doesn't seem fair to them.

MR. ROBERT HALL: They have the burden of proof. It's---

THE COURT: All right.

SOLICITOR HOLLIDAY: I agree, judge. I think that's what we need to do.

THE COURT: Does everybody agree if I told them that that would be fine?

MR. ROBERT HALL: Yes, sir.

MS. CLAIRE HALL: Yes, sir.

THE COURT: Okay. Bring them in.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Thank you, sir.

All right. Madam Forelady, ladies and gentlemen of the jury, my understanding is the jury has the following questions. Number 7, 8 and 9, where in the house are these pictures, and Number 5, is this the door that was barricaded.

Is that, in fact, the jury's question?

FORELADY: Yes, sir.

THE COURT: All right. Madam Forelady, let me say two things.

First, as I've told you, I'm not allowed to have any comment on the facts of the case. So, I'm not allowed to address or answer that question directly.

Okay. The second part of that is I can have our court reporter go back in the record and find where those exhibits were introduced and explain and let you listen to that if there's an audio version of the testimony if that's what you prefer. I'm gonna ask you to do, to check with your jury and see if that's what they want.

FORELADY: Yes, sir.

THE COURT: Okay. It will take us a few minutes. So, I'm gonna ask you to go back to your jury room. Stop your deliberations now till we get this up and then we'll bring you back out.

Okay.

FORELADY: Thank you.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Any additions or exceptions to my instructions to the jury?

SOLICITOR HOLLIDAY: None from the State, Your Honor.

MS. CLAIRE HALL: None, Your Honor.

MR. ROBERT HALL: No, Your Honor.

THE COURT: All right. Very good.

(Pause.)

THE COURT: Bring them in.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Ladies and gentlemen, thank you. It takes a little while to round this up.

Madam Court Reporter, are you ready?

COURT REPORTER: Yes, sir.

(WHEREUPON, a portion of the testimony was played back for the jury at this time.)

THE COURT: Does that answer your question, Madam Forelady?

FORELADY: It does.

THE COURT: I am gonna check with the lawyers and make sure I didn't do anything wrong. So, if you'd go back to your jury room, and we'll send you word to go ahead and start back.

Okay.

(WHEREUPON, the following takes place outside the presence of the jury.)

THE COURT: All right. Any additions or exceptions from the State?

SOLICITOR HOLLIDAY: None from the State, Your Honor.

THE COURT: From the defense?

MR. ROBERT HALL: None, Your Honor.

MS. CLAIRE HALL: None, Your Honor.

THE COURT: Okay. Tell them to resume their deliberations.

(WHEREUPON, the jury began deliberations again at

12:21PM and returned with a verdict at 12:35PM.)

THE COURT: I hear we have a verdict.

Would you bring the jury in please?

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Madam Forelady, my understanding is the jury has reached a verdict, is that correct?

FORELADY: Yes, we have.

THE COURT: Is it unanimous?

FORELADY: Yes, it is.

THE COURT: Would you pass the form to the bailiff please, ma'am?

(Forelady complies.)

THE COURT: Very good.

Would you publish the verdict please, verdicts?

CLERK: State of South Carolina, County of Spartanburg, in the Court of General Sessions, the State of South Carolina versus Tiphani M. Parkhurst, it says do you, do you find that the State proved, beyond a reasonable doubt, that the theoretical yield of the methamphetamine was 10-grams or more, but less than 28-grams.

The answer is yes.

We, the jury, under Indictment Number 2012-GS-42-2546, unanimously find for the defendant guilty of trafficking in methamphetamine. It is signed by the foreperson and dated

today's date.

State of South Carolina, County of Spartanburg, in the Court of General Sessions, the State of South Carolina versus Charles Allen Cain, do you find that the State proved, beyond a reasonable doubt, that the theoretical yield of methamphetamine was 10-grams or more, but less than 28-grams.

Yes.

We, the jury, under Indictment Number 2012-GS-42-3135, unanimously find the defendant guilty of trafficking in methamphetamine. It is signed by the foreperson and dated today's date.

Ladies and gentlemen of the jury, if this is your verdict and still your verdict, please raise your right-hand.

(WHEREUPON, all jurors raise their hands at this time.)

CLERK: So say you-all.

THE COURT: Let the record reflect that all 12 jurors raised their right-hand.

(WHEREUPON, the jury was dismissed at this time.)

THE COURT: All right. Does defense counsel wish to file written motions or do you wish to make your post-trial motions now?

MR. ROBERT HALL: I think we make them now, Your Honor.

MS. CLAIRE HALL: Yeah, you do.

THE COURT: Okay.

MR. ROBERT HALL: Your Honor, on behalf of Mr. Cain, I'd make a motion for a new trial. The case was basically circumstantial against them, and we just don't feel there's enough evidence to support the jury's verdict.

MS. CLAIRE HALL: Your Honor, I would join in Mr. Hall's motion on behalf of Ms. Parkhurst.

THE COURT: All right. Thank you. Those motions were denied.

And my understanding, ladies and gentlemen, is that when I have a trial in absence I just sentence them and seal it, and sign it, and then when he gets caught or they get caught, then they'll be read the verdict.

SOLICITOR HOLLIDAY: Yes, sir.

THE COURT: Is that right?

Okay. I'm gonna place on there, unless y'all think I shouldn't, that any Circuit Court judge can open and read the verdict.

SOLICITOR HOLLIDAY: That's fine.

THE COURT: Usually they don't come back to us.

SOLICITOR HOLLIDAY: No objection.

THE COURT: Thank you, guys.

(Pause.)

THE COURT: What is the range on these?

SOLICITOR HOLLIDAY: Three to ten, Your Honor.

THE COURT: Three to ten.

Okay. We have it here, Madam Clerk.

SOLICITOR HOLLIDAY: Judge, do you want their prior record?

THE COURT: Yeah, I think I heard one of the jurors holler hold it. Y'all hang on for one second.

SOLICITOR HOLLIDAY: Oh, sure.

(Pause.)

THE COURT: Tell me about Ms. Parkhurst first.

SOLICITOR HOLLIDAY: Ms. Parkhurst, Your Honor, her prior convictions are 2005 shoplifting, and 2005 possession of drug paraphernalia.

THE COURT: That's it?

SOLICITOR HOLLIDAY: That's it.

THE COURT: All right. Ms. Hall, what do you, you -- anything you want to add to what you've told me already?

MS. CLAIRE HALL: Your Honor, I would just request that, based on her lack of any serious record, that you would sentence her to the minimum possible under the law.

THE COURT: Okay.

Okay. Tell me about Mr. Cain.

SOLICITOR HOLLIDAY: Your Honor, Mr. Cain has a '97 possession of marijuana.

'98, fifteen counts of fraud check, public disorderly conduct, possession of marijuana, driving under suspension,

false information, and grand larceny.

'99, driving under suspension, and habitual traffic offender.

2005, six counts of burglary third.

2008, two counts of third property offense.

2011, public disorderly conduct.

THE COURT: Okay, sir. Anything you want to tell me?

MR. ROBERT HALL: Yes, sir, he -- I'd spoken with him about the 2005 conviction for those burglaries, Your Honor. She says that's not him.

THE COURT: I hate it for him.

MR. ROBERT HALL: Well, Your Honor, that's in Greenwood County. All his other record is in Spartanburg County. He received a five year sentence. He was arrested---

THE COURT: Let me just tell I'm gonna treat it as if it is him.

MR. ROBERT HALL: Okay.

THE COURT: When he's here, he's arrested, he can contest it then.

MR. ROBERT HALL: I don't know who's gonna be doing this once we do find him, but he was arrested in 2006 and 2007 while he would of been -- I think after -- he got the -- excuse me. He got sentenced in 2000 or those or whoever it was got sentenced in 2007, and it looks like he was arrested while he should of been serving that sentence

in 2008 and stuff, Your Honor. But it's -- he did contest that. He does have one child, 15-year old son, and I think he and Ms. Parkhurst have one on the way.

THE COURT: Okay, sir.

(Pause.)

THE COURT: All right, guys. Thank you so much. I appreciate your professionalism, and I've always -- as always, enjoyed Spartanburg County.

MR. ROBERT HALL: Thank you, Your Honor.

MS. CLAIRE HALL: Thank you.

SOLICITOR HOLLIDAY: Thank you, Your Honor.

(WHEREUPON, two notes from the jury were marked as Court's Exhibit Nos. 3 and 4 for identification purposes only at this time.)

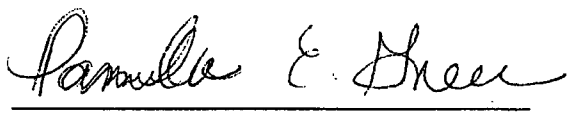
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 28th day of February and the 1st day of March, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 3rd, 2013



PAMELA E. GREEN, Court Reporter

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

The State,) TRANSCRIPT OF RECORD
) 2012-GS-42-03135,
-vs-) 2012-GS-42-02547
)
Charles Allen Cain and)
Tiphani M. Parkhurst,)
) April 11, 2013
Defendants.) Spartanburg, South Carolina

B E F O R E:

HONORABLE R. LAWTON MCINTOSH, JUDGE

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

JOSEPH HAYES HOLLIDAY, ESQ.
Attorney for the State

M. CLAIRE HALL, ESQ.
Attorney for Defendant Parkhurst

ROBERT B. HALL, ESQ.
Attorney for Defendant Cain

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

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NO EXHIBITS INTRODUCED

THE COURT: Alright, let's do Ms. Parkhurst. It says March the 1st first I believe based on the sentencing sheet is when the jury found Ms. Parkhurst guilty in her absence?

MS. HALL: I have February 29th.

THE COURT: Okay, ---

MR. HALL: But that ---

THE COURT: --- that was beginning, is it, a couple day trial?

MR. HALL: It be March 1st.

THE COURT: Either way, ---

MS. HALL: I'm sorry.

THE COURT: --- Ms. Parkhurst, the the trial was had in your absence, you were found guilty by a jury of trafficking methamphetamine 10 to 28 grams grams first offense. Your attorney appeared and and defended you on your behalf and also gave me your background information at the time I filled out the sentencing sheet, this stage I don't need to hear anything further. The sentence that I gave you back in March of this year on March 1st is 5 years suspended on 3 years and 40 months probation. During your probation you'll be subject to random drug and alcohol testing, substance abuse counseling. Good luck to you. How much time does she need to get credit for, counsel?

MS. HALL: Um, Your Honor, she was picked up on the bench warrant, um, I believe it was about two weeks ago.

(Attorney/client discussion held off the record.)

THE COURT: I'll just mark credit for time served and we just need to put that in, okay?

MS. HALL: I can get ya the exact time.

THE COURT: Okay. Alright, Mr. Cain, you were likewise found guilty in trial in your absence, your attorney appeared, defended you as well and gave me your background information. The State gave me your prior record, because yours was much more severe than Ms. Parkhurst I sentenced you to 10 years straight up. Good luck to you.

MR. HOLLIDAY: Thank you, Your Honor.

MS. HALL: Thank you, Your Honor.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 11, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 4, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

May 4, 2013

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

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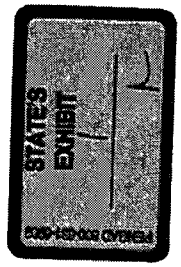
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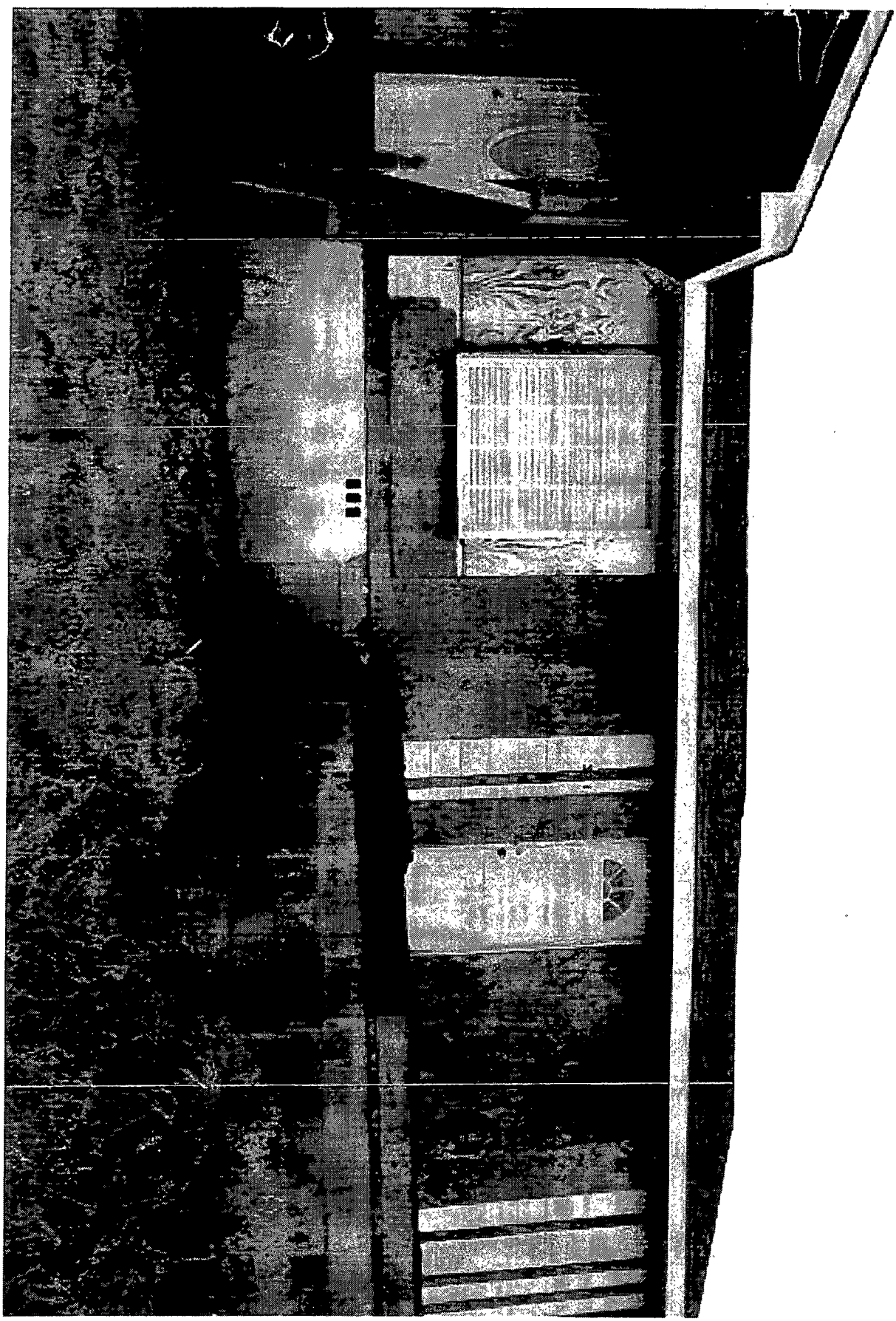

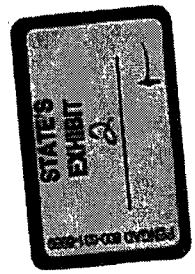
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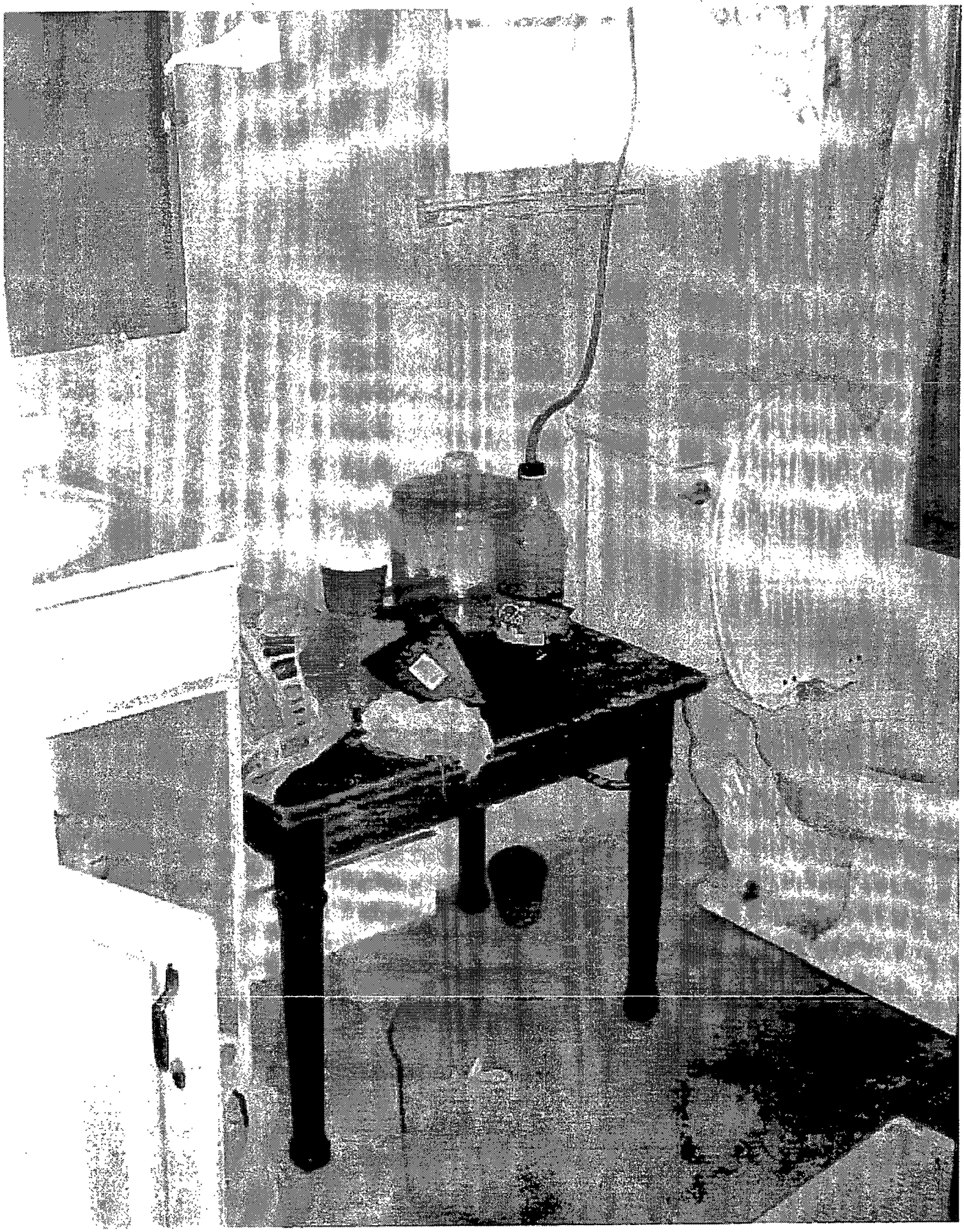

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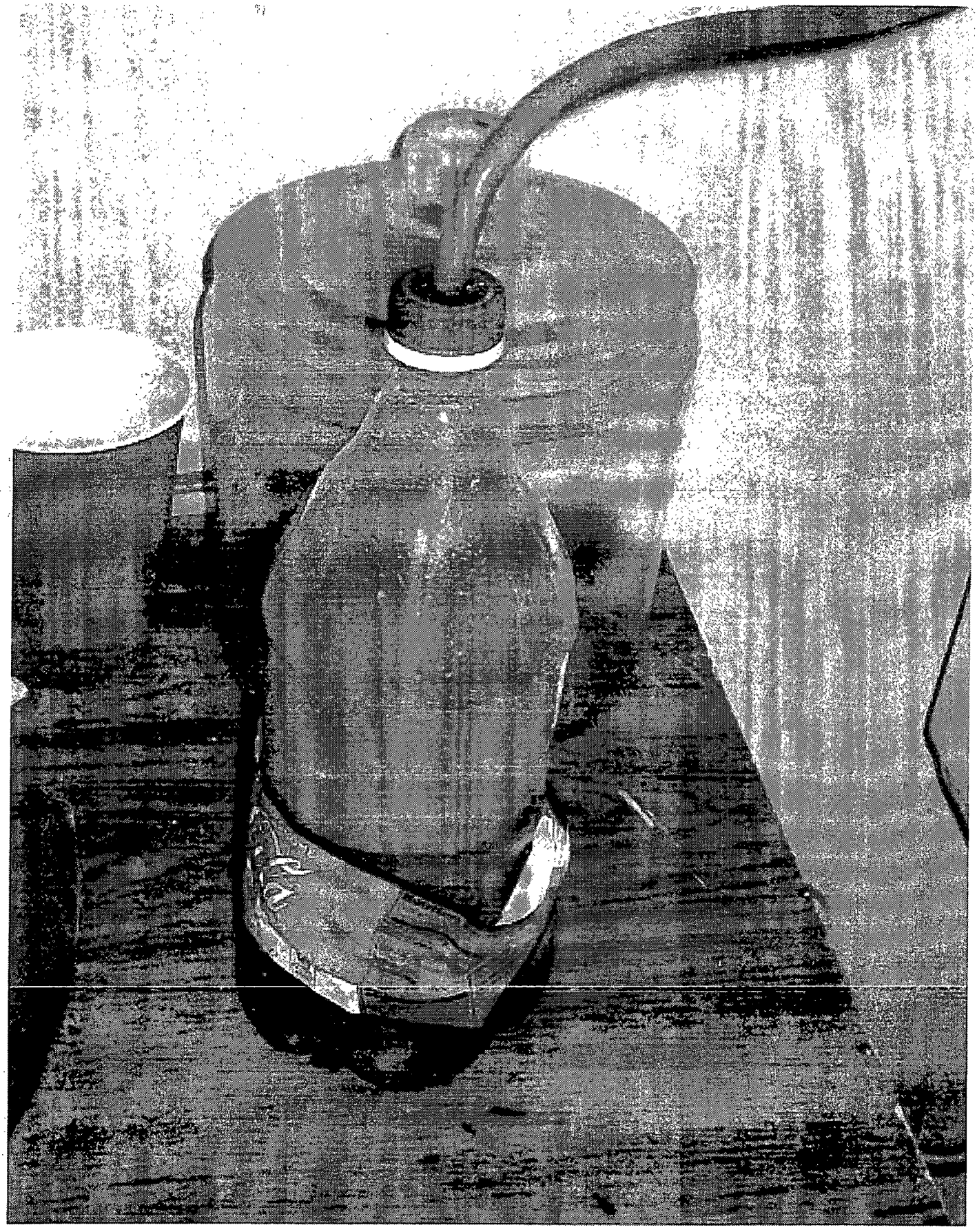

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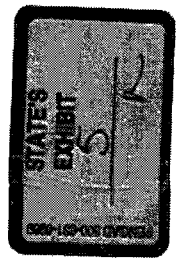
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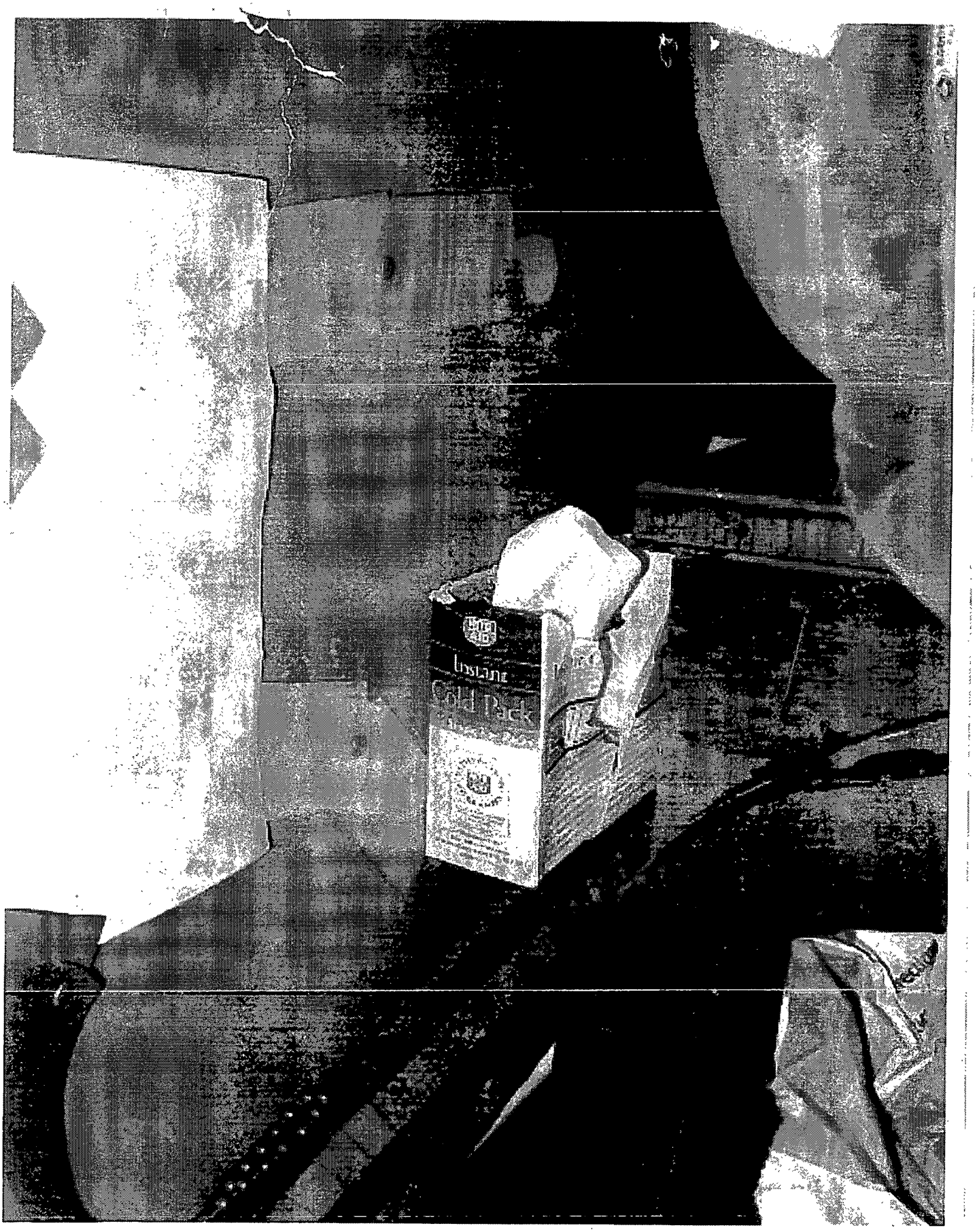
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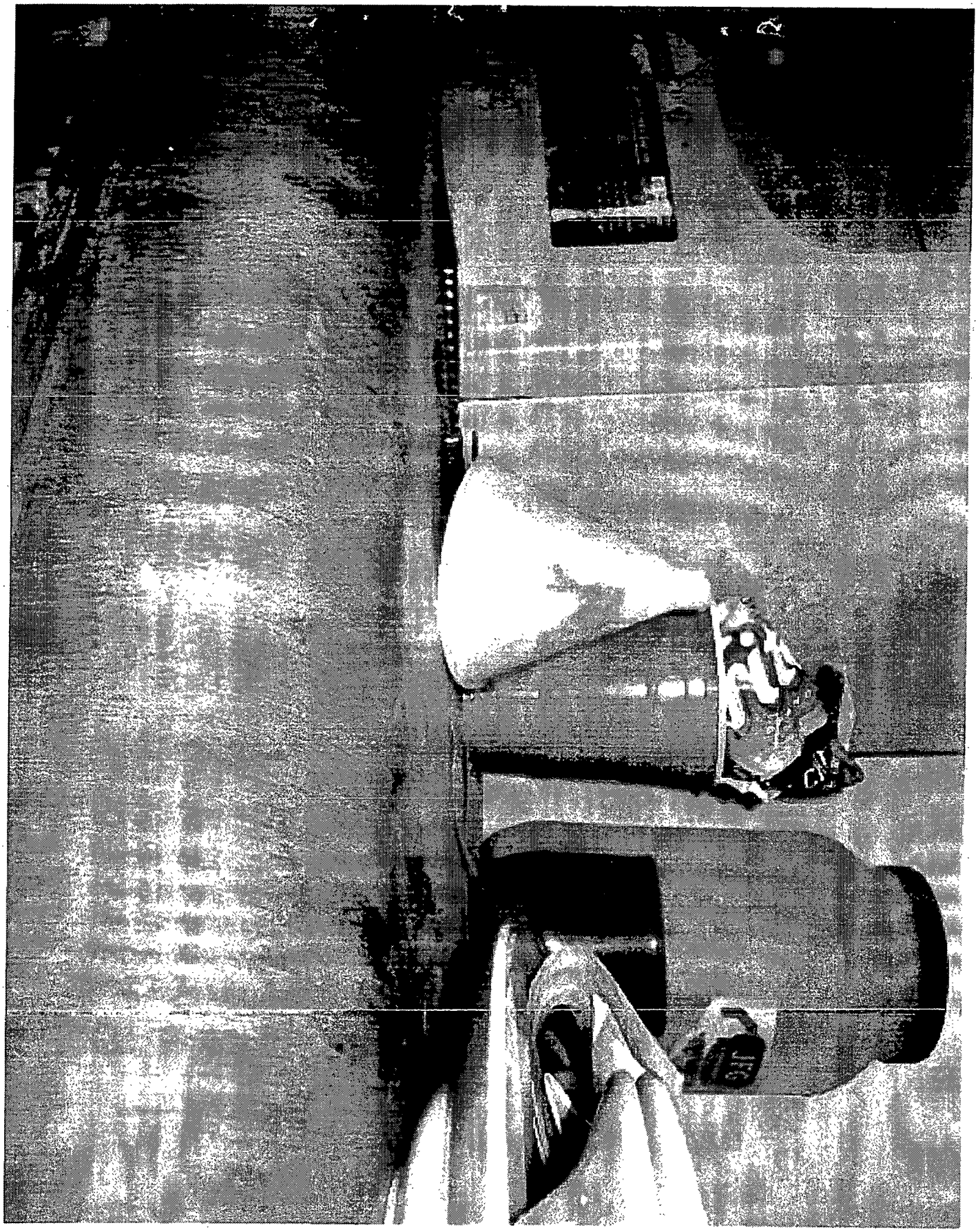
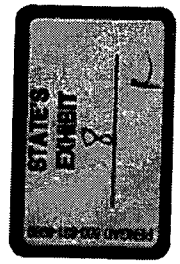
STATE'S
EXHIBIT

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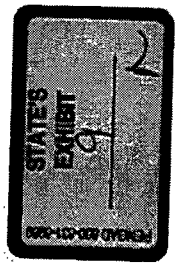
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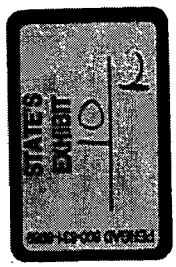
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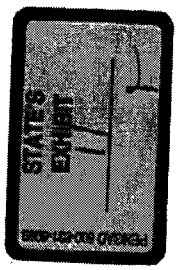
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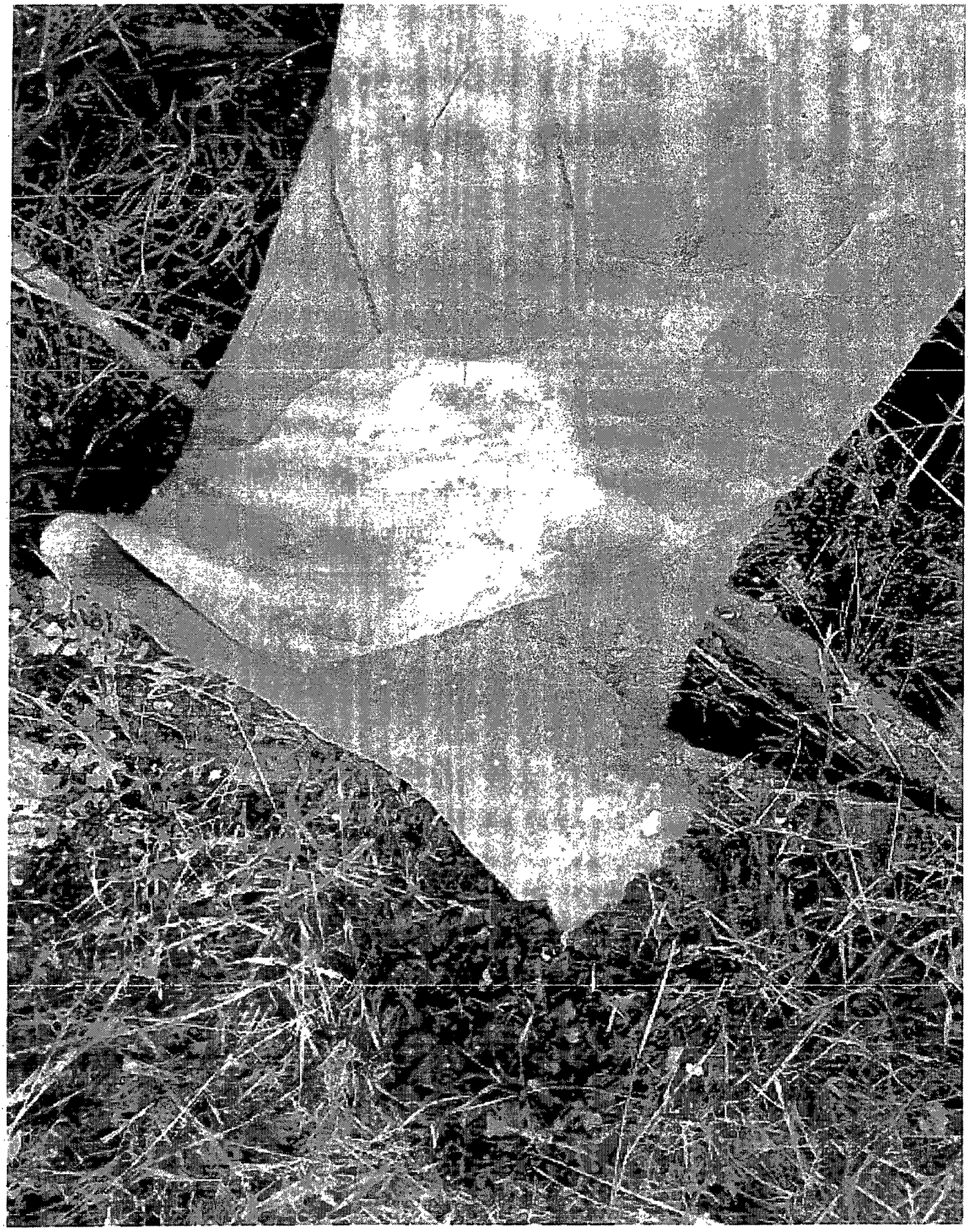

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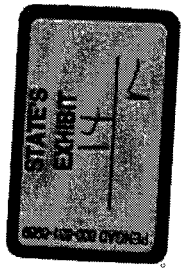
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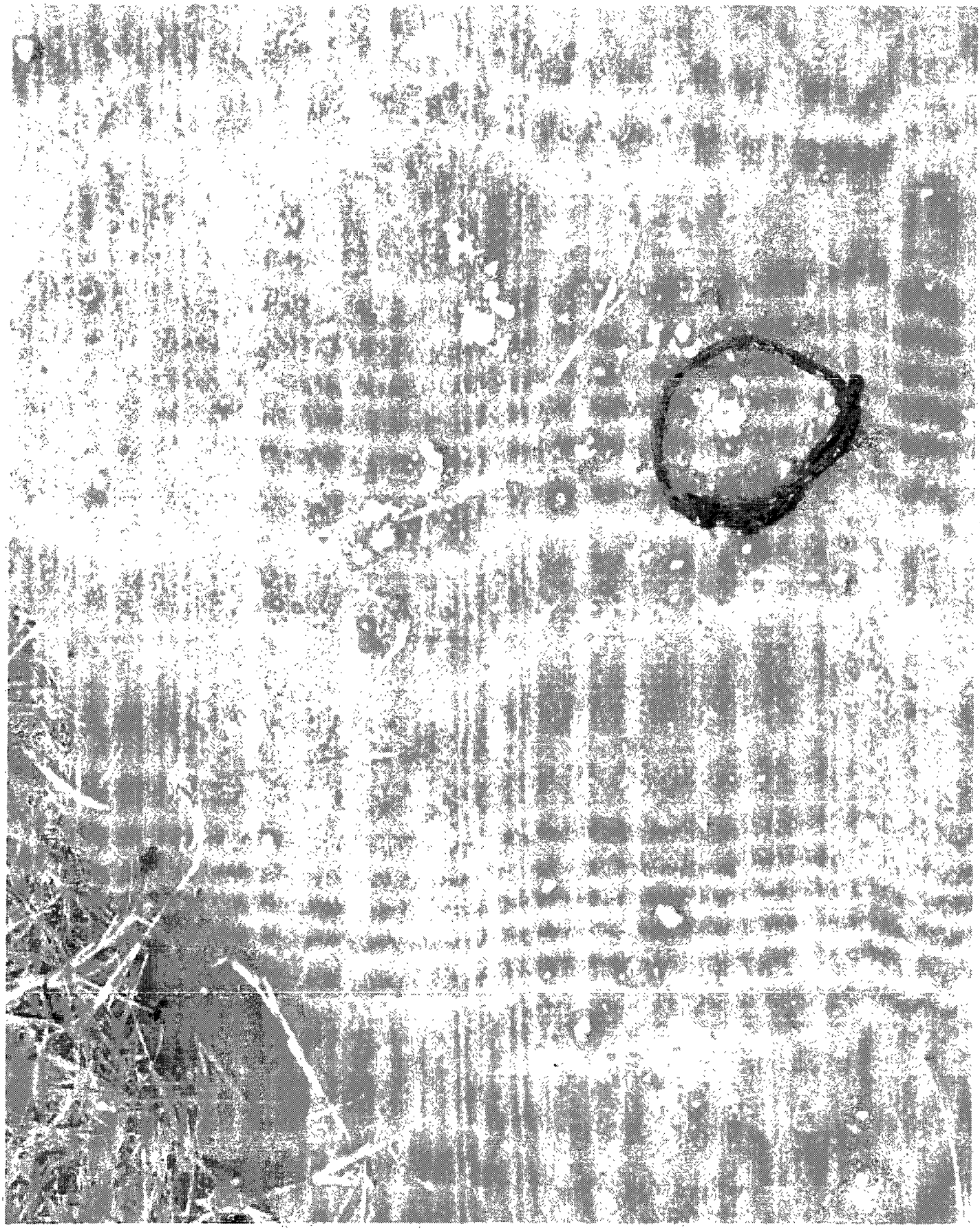

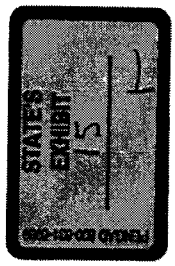
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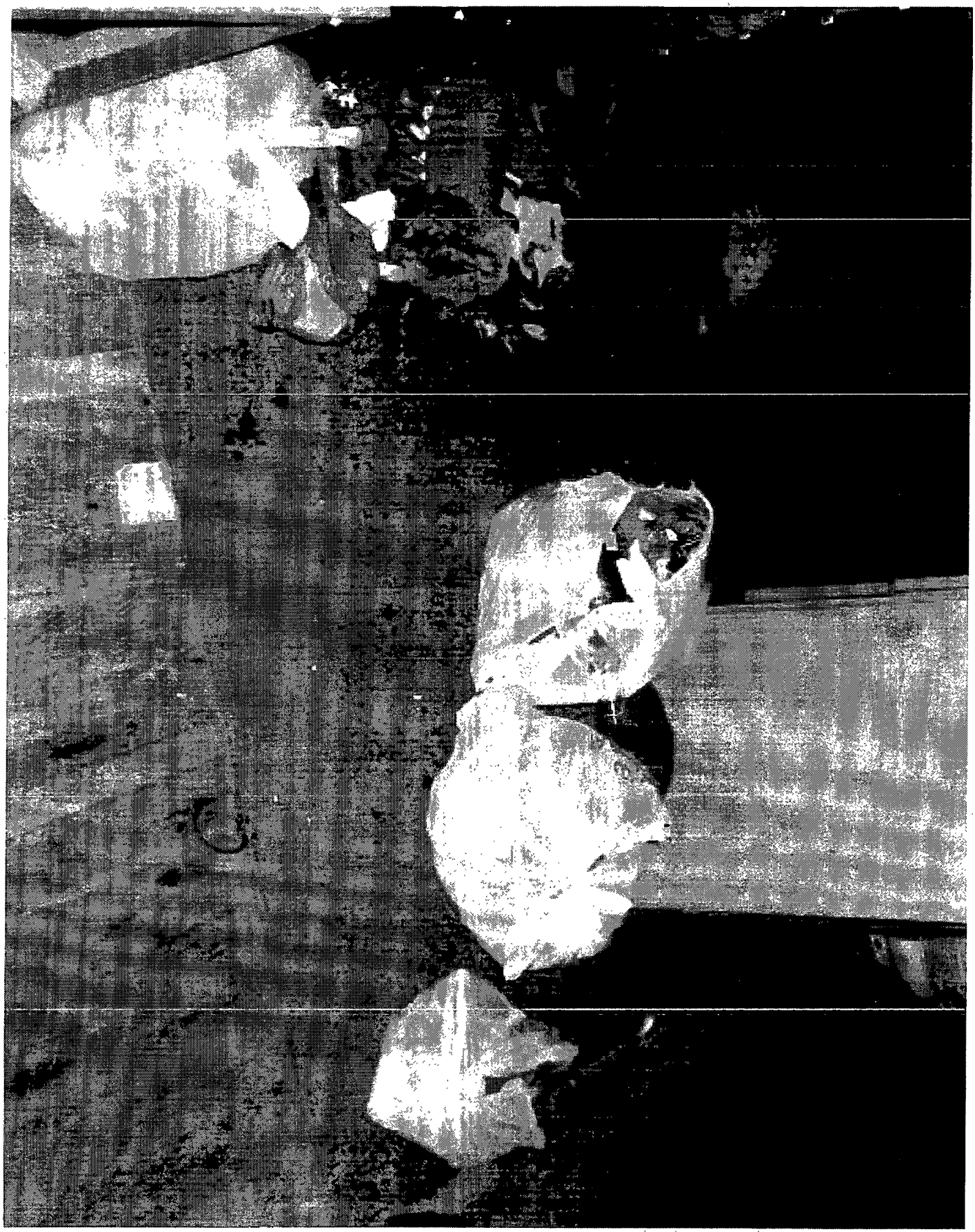

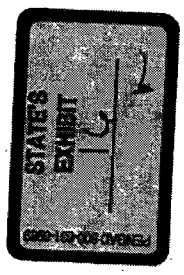
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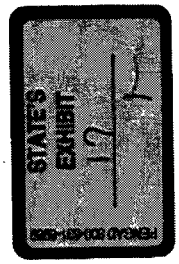
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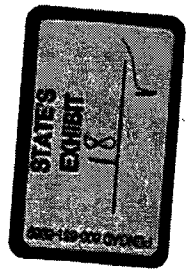
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STATE'S
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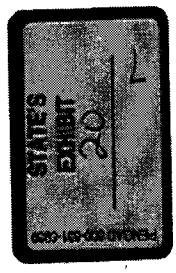
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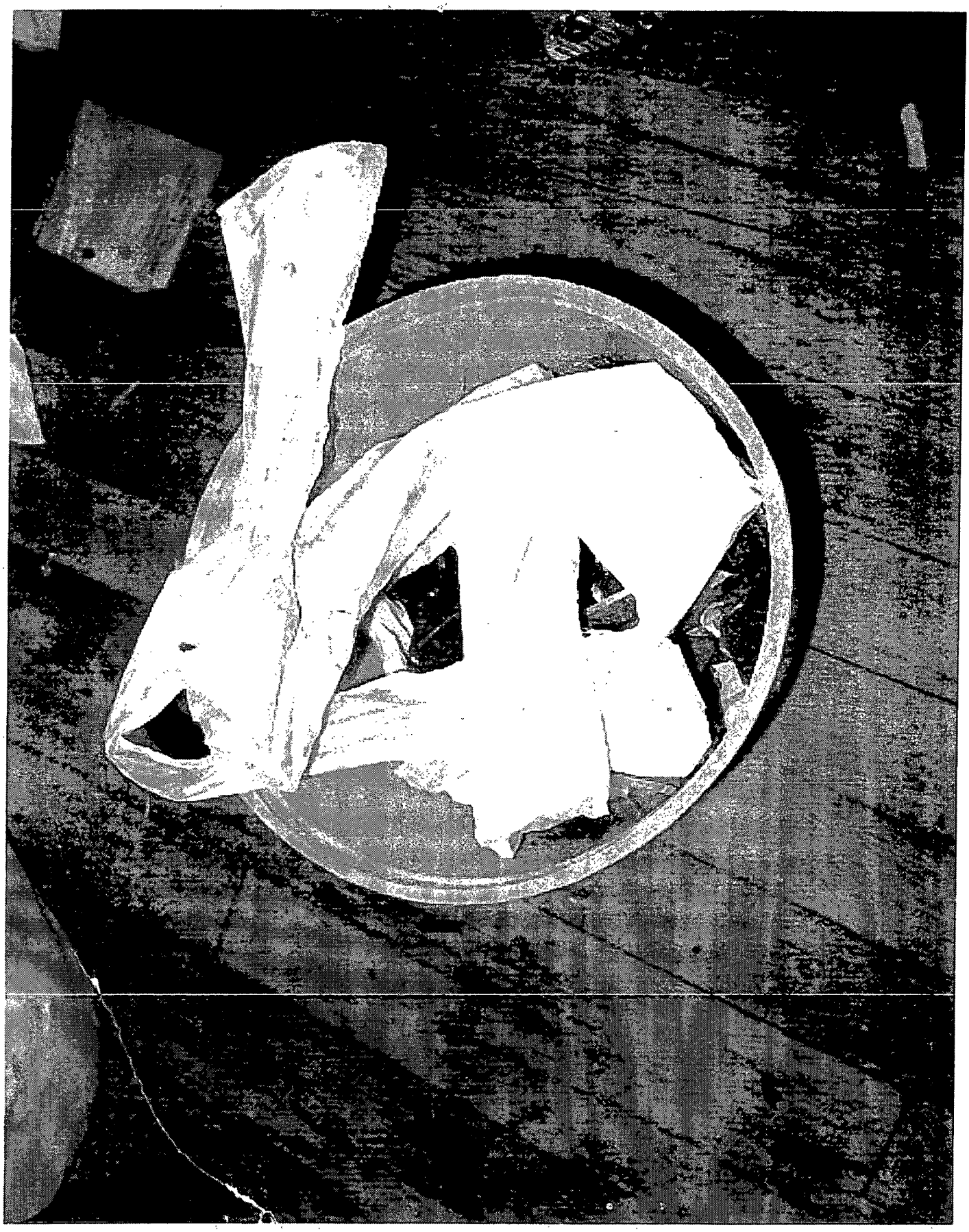

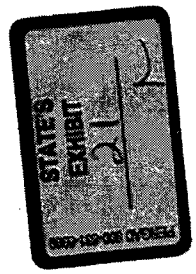
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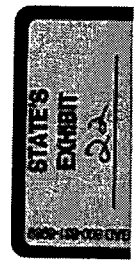
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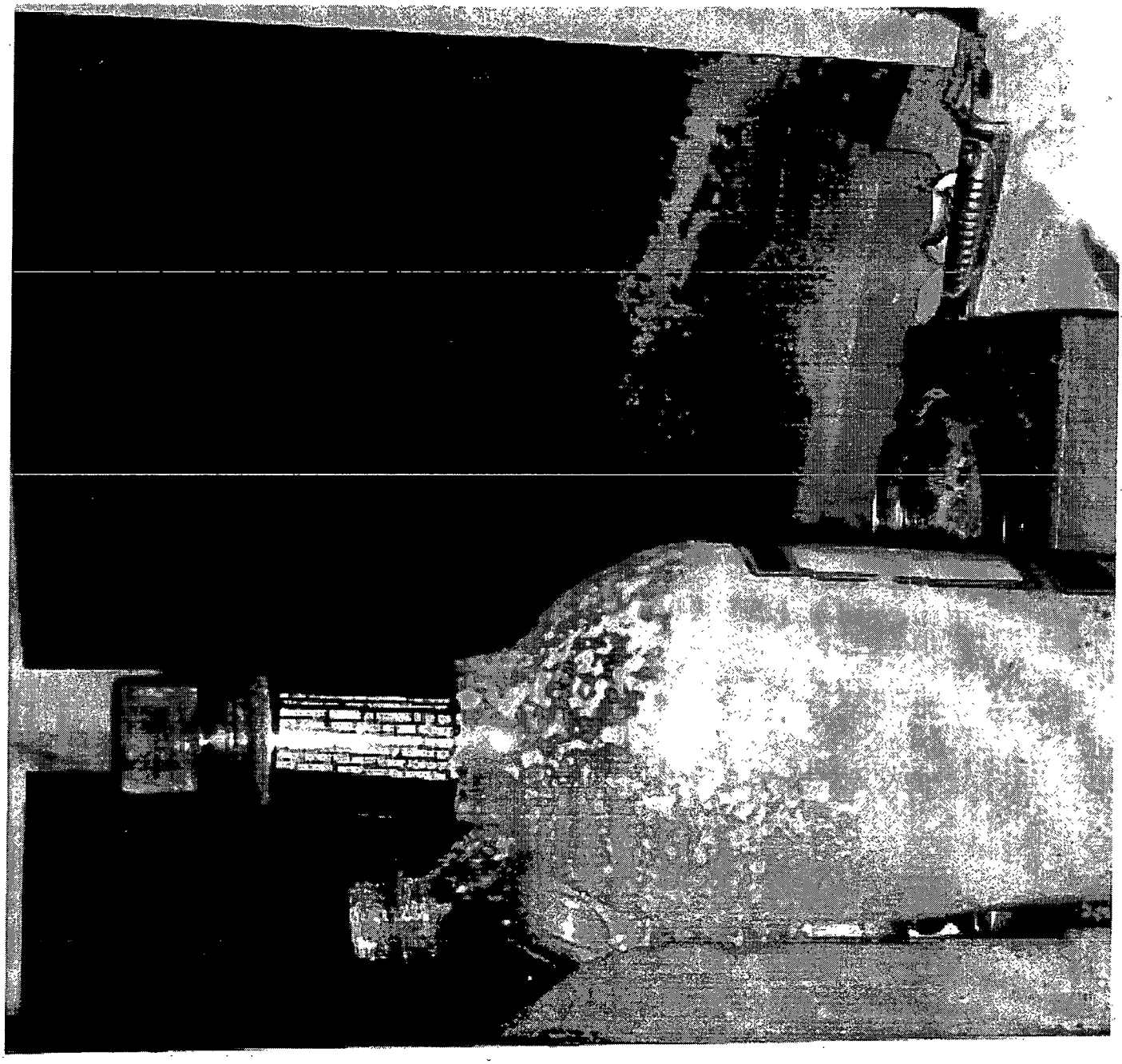

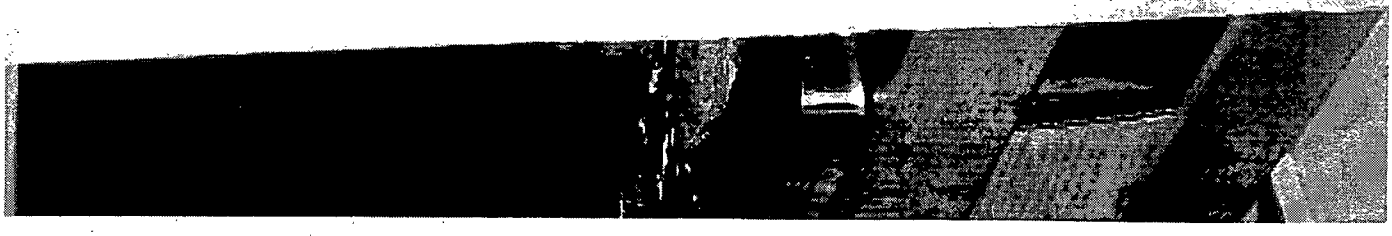

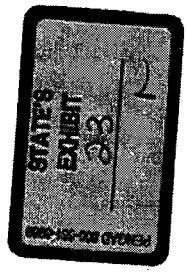
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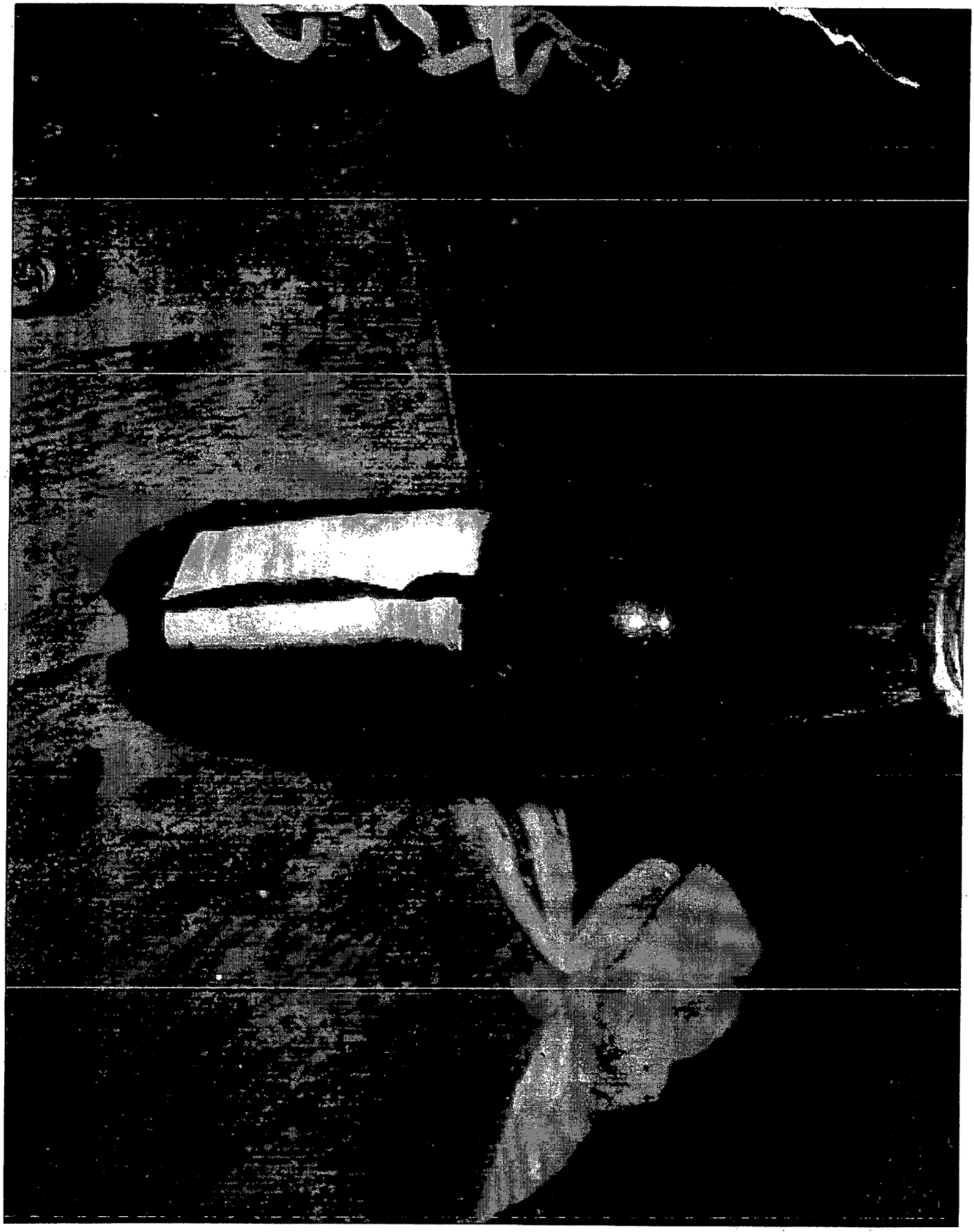

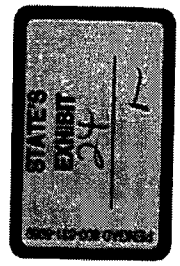
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions

The Hon. Lawton McIntosh, Circuit Court Judge

Case No. 2013-000817

The State. . . . . Respondent.

v.

Charles Cain . . . . . Appellant.

CERTIFICATE OF COUNSEL

The undersigned attorneys hereby certify that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

June 11, 2014

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ORIGINAL

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The Hon. Lawton McIntosh, Circuit Court Judge

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The State. . . . . Respondent.

v.

Charles Cain . . . . . Appellant.

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of June, 2014.

Brandon Hall
Administrative Specialist

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JUN 11 2014
SC Court of Appeals

SUBSCRIBED AND SWORN TO before me
this 11th day of June, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.