

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2014-UP-143 (S.C. Ct. App. filed April 2, 2014)

11-GS-32-2535, 2536, 2537

THE STATE,

RESPONDENT,

V.

JEFFREY DODD THOMAS,

APPELLANT

APPELLATE CASE NO. 2014-001359

A P P E N D I X

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jeffrey Dodd Thomas, Appellant.

Appellate Case No. 2012-212428

Appeal From Lexington County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-143
Heard March 3, 2014 – Filed April 2, 2014

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Christina J. Catoe, of Columbia, for
Respondent.

PER CURIAM: Jeffrey Thomas appeals his conviction for manufacturing methamphetamine, arguing the trial court erred in denying his motion for a directed verdict on the charge of manufacturing methamphetamine because the

prosecution failed to present any direct evidence or substantial circumstantial evidence that he engaged in the production, preparation, propagation, compounding, conversion, or processing of any substance containing amphetamine or methamphetamine. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998) (providing that when ruling on a motion for directed verdict, the trial court is concerned with the existence of evidence rather than its weight); *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) ("[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." (emphasis omitted)); *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011) ("When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State."); *id.* (stating if there is any direct evidence or substantial circumstantial evidence that reasonably tends to prove the guilt of the accused, this court must find the case was properly submitted to the jury); S.C. Code Ann. § 44-53-110 (Supp. 2013) (defining manufacturing as "the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container"); S.C. Code Ann. § 44-53-375(D) (Supp. 2013) ("Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.").

AFFIRMED.

FEW, C.J., and SHORT and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JEFFREY DODD THOMAS,

APPELLANT

APPELLATE CASE NO. 2012-212428

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-143

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Petitioner seeks rehearing of this Court's opinion filed on April 2, 2014 affirming his conviction for manufacturing methamphetamine based upon this Court having overlooked or misapprehended the lack of evidence presented by the prosecution and the governing legal principles.

This Court issued a one paragraph opinion in this matter. After citing the governing case law concerning evaluations of motions for directed verdict, this Court cited the statutory definition of manufacturing and a statutory provision providing that "[p]ossession of equipment or paraphernalia used in the manufacture of ... methamphetamine is prima facie evidence of intent to

manufacture.” Thus, it appears this Court concluded the prosecution presented sufficient evidence to survive a directed verdict motion based simply upon Petitioner’s possession of items that could be used in the manufacture of methamphetamine and the statutory presumption of intent based upon the possession of those items. This was error. The trial court erred in failing to direct a verdict of acquittal in Appellant’s favor where the prosecution failed to present any direct or substantial circumstantial evidence that Appellant engaged in the production of the methamphetamine constructively in his possession.

As explicitly stated at trial, the state’s only theory was that Appellant had manufactured methamphetamine that was in his possession. The prosecutor stated unequivocally and specifically that the state was not pursuing any other theories permitted under the statute.¹ R. 238, lines 1-18; R. 286-287; R. 153, lines 18-25; R. 154, lines 15-20 (The prosecutor argued during the directed verdict motion that the methamphetamine’s “existence is proof that it was made, and the evidence that links him to making the manufacturing, to making the drug is the trail he left behind.”); R. 155, lines 15-21 (The prosecutor made clear that “if that meth had not been in the car,” then he would not have proceeded with the charge of manufacturing methamphetamine.); R. 226, lines 12-15; R. 226, lines 18-19; R. 227, lines 13-14; R. 228, lines 1-10; R. 253 (Court’s Exhibit #2) (During jury deliberations, the jury asked: “[I]s the state charging that [Appellant] was manufacturing in his

¹ South Carolina’s statutory scheme provides as follows concerning manufacturing of methamphetamine:

A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony.

S.C. Code Ann. § 44-53-375(B).

vehicle or just that he manufactured meth?" The prosecutor responded "[t]hat he manufactured meth in his, in your vehicle." The prosecutor then stated "[t]hat the State must prove that on or about this day he manufactured methamphetamine." The judge informed the jury that "the state must prove, beyond a reasonable doubt, that the defendant, on or about May 29, 2011, manufactured meth."). Thus, the prosecution was required to present direct or substantial circumstantial evidence that Appellant had engaged in the

production, preparation, propagation, compounding, conversion, or processing of a [methamphetamine], either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container

in order to survive a directed verdict motion.² See S.C. Code Ann. § 44-53-110 (defining "manufacture").

This Court appears to have erred in the same way as the trial court erred by relying solely upon the statute allowing possession of equipment or paraphernalia to supply prima facie evidence of intent in order to conclude that the prosecutor's weak circumstantial evidence case survived the directed verdict motion. Specifically, the statutory scheme provides "[p]ossession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture." S.C. Code Ann. § 44-53-375(D).³ As demonstrated below, the

² "'Methamphetamine' includes any salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine." S.C. Code Ann. § 44-53-110 (defining "methamphetamine").

³ "'Paraphernalia' means any instrument, device, article, or contrivance used, designed for use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes." The non-exhaustive list of paraphernalia includes items such as carburetion tubes and devices, cocaine spoons and vials, bongs, and ice pipes or chillers. S.C. Code Ann. § 44-53-110 (defining "paraphernalia").

items found in Appellant's truck, which the solicitor argued were paraphernalia, were not illegal and showed no evidence of having been used to manufacture methamphetamine.

After Officer Jessie Laintz arrested Appellant for trespassing, he conducted an inventory search of Appellant's truck in preparation for its towing. R. 7, lines 3-5. Laintz described the truck as "[a]n absolute mess" in terms of cleanliness. There were "[c]lothes everywhere, trash everywhere." Clothes were piled high in the driver's seat and trash almost completely filled the passenger seat. R. 13, lines 12-22; R. 14, lines 4-6. Laintz found an Altoids box containing four clear baggies, two of which had a white crystal-like substance in them, and two of which had a residue of white crystal-like substance.⁴ R. 7, lines 7 - 19. On the floor on the passenger side, Laintz found a large container of salt and a three-foot piece of clear tubing. In the center console of the truck, Laintz found lithium batteries. Under the driver's seat, Laintz found a full box of Sudogest containing ten pills. In the truck bed, Laintz found a starter fluid spray can with a hole in the bottom. In the back seating area of the truck, Laintz found a blue backpack. In the backpack, Laintz found coffee filters, a digital scale, and some papers. R. 7, line 25 - R. 8, line 11; R. 32, lines 18-25; R. 63, lines 19 - 21. All of the items recovered, except for the white crystal like substance, were the legal and available for purchase. R. 33, lines 13-15; R. 34, line 15 - R. 35, line 2. Regarding the plastic tubing, no tests were performed on the tubing to determine whether it had been used for any foreign substance. According to Laintz, the tubing had not been used for any foreign substance. R. 36, lines 4-13. Laintz did not smell any strong odors in the vehicle during his inventory search. He admitted that in his experience, the most distinguishing thing about a working

⁴ Emily Homer, a chemist at the sheriff's department, tested the two items found in the plastic bags inside of the Altoids container. She found 0.02 grams of methamphetamine in one bag and 0.08 grams of methamphetamine in the other bag. R. 98, lines 6 - 10. Homer did not test the bags containing possible residue. R. 98, lines 11 - 14.

methamphetamine lab is this smell of ether. R. 36, line 24 – R. 37, line 9. Another officer found a small green cylinder, one bottle of alcohol, and one box of aluminum foil. R. 57, line 16 – R. 58, line 9. This officer also observed one starter fluid can that had been punched and two others fluid cans in the bed of the vehicle. R. 58, lines 10 – 14.

Thomas Hamilton, the chief of the narcotics unit in Lexington County, testified as an expert in the production and distribution of methamphetamine, and disposal of the meth products. R. 119, lines 12-14; R. 120, line 24 – R. 121, line 11. Hamilton testified that the starting drug in the production of methamphetamine is pseudoephedrine hydrochloride, which can be purchased without a prescription. R. 123, lines 15-19.⁵ The base ingredient must be crushed, usually with a coffee grinder or blender. R. 124, lines 13-15. Next, a person must acquire ether. According to Hamilton, starter fluid cans contain a large amount of ether, which is removed from the cans by punching a hole in the bottom of the can to pour it out R. 125, lines 1-18. Coleman camping fuel also contains ether and may be used instead of starter fluid. R. 125, line 24 – R. 126, line 6. The next ingredient is ammonium nitrate, which is found in cold packs and fertilizer. R. 126, lines 7-20. According to Hamilton, sodium hydroxide, which is commonly called lye and found in drain openers, is a necessary ingredient in the manufacturing of methamphetamine. R. 126, line 22 – R. 127, line 2. Drain openers may be purchased at Wal-Mart or any hardware store. R. 127, lines 3-6. The final ingredient in the first step of the process is lithium metal, which is commonly found in camera batteries. In order to obtain the lithium, a person would have to open the batteries using wire cutters or pipe cutters, then remove the wadding to recover a gray thin sheet of metal. R. 127, lines 7-23.

⁵ Hamilton testified that “[t]he normal recipe that we see uses one to two boxes” of pseudoephedrine. R. 129, lines 7-11.

After acquiring all five of the necessary ingredients for the first step, one must combine the sodium hydroxide and ammonium nitrate in a bottle to create anhydrous ammonia. A second chemical reaction occurs in the bottle at the same time – the ammonia reacts with the lithium. Per Hamilton, “the ammonia with the lithium converts pseudoephedrine methamphetamine.” R. 124, lines 1-3; R. 128, lines 4-16. After these reactions, “the actual meth is inside that liquid.” R. 128, lines 17-21. The normal “cook time” for the first step is forty-five minutes to an hour. R. 129, lines 1-6. During this process, pressure builds and someone must continue to shake it to keep it reacting and vent it to release the pressure. R. 129, lines 12-20. Next, the mixture is strained using common household items, such as clothing or paper towels, to produce only a cloudy liquid. R. 130, lines 6-21.

The second step requires combining sulfuric acid, such as the type found in drain openers, with salt in a small bottle to produce hydrochloric acid. The second bottle must have a tube connected to it to allow the gas to exit. R. 131, lines 1-8. The acid gas then “bubble[s]” across the container containing the ether and methamphetamine solution. The hydrochloric acid bonds with the methamphetamine making methamphetamine hydrochloride, which is salt. This salt is not soluble in ether, and as a result, falls to the bottom. R. 131, lines 13-19. A coffee filter is then used to strain the fine salt from the liquid. The salt in the coffee filter is left to dry and the finished product is methamphetamine. R. 131, line 23 – R. 132, line 7.

Concerning the items recovered from Appellant’s truck, Hamilton testified that each item had a “legitimate legal lawful use.” R. 136, lines 1-2. Nevertheless, Hamilton testified that if the items were found in the same automobile, then the items would be “for the product of methamphetamine.” He based this opinion primarily on the “punched out ether can.” R. 136, line 22 – R. 137, line 5; R. 144, line 16 – R. 145, line 3. He admitted, however, that all of the items

necessary to create methamphetamine were not present. Importantly, ammonium nitrate, sodium hydroxide, and sulfuric acid were not present. R. 145, lines 4-11; R. 151, lines 12-15.⁶

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103S.C. 437, 88 S.E.2d 1 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

⁶ No one testified regarding finding bottles in the truck. A bottle, or container of some sort, would have been necessary for the manufacture of methamphetamine.

No published opinions have interpreted South Carolina's manufacturing methamphetamine statute. "[G]enerally, a crime includes both an actus reus component and a mens rea component." State v. Reid, 383 S.C. 285 n.2, 679 S.E.2d 194 n. 2 (Ct. App. 2009). In State v. Evans, 216 SC 328, 57 S.E.2d 756 (1950), the South Carolina Supreme Court overturned a conviction for manufacturing whiskey where the "evidence strongly tend[ed] to show an intention on the part of [Evans] to engage in the manufacture of liquor" but the prosecution failed to present any evidence of an overt act toward putting the intent into effect. "The law does not concern itself with the mere guilty intention, unconnected with any overt act." Id. at 332, 57 S.E.2d at 758. The only evidence against Evans was the testimony of three officers who saw Evans sitting around a little fire near the still. When Evans saw the police, he ran. In the area, officers found a 100-gallon copper still, two barrels of mash, tin tub buckets, shovels, and several other items. Additionally, officers found some whiskey in a small container on the site. The still showed evidence of usage approximately one week prior. In fact, the officers testified that everything was ready for meal and sugar to be added to the beer from the first batch to make a second one; however, neither meal nor sugar was found at the site. The state of the fermentation of the mash found at the site was favorable to be used for making whiskey. Nevertheless, the Court held "there is not a scintilla of evidence of any overt act on the part of [Evans], or anyone else in his presence, which would constitute the offense of manufacturing whiskey without a license." Id. at 331-332, 57 S.E.2d at 757.

Similarly, in State v. Quick, 199 S.C. 256, 19 S.E.2d 101 (1942), the South Carolina Supreme Court held Quick was entitled to a directed verdict on the charge of unlawful manufacture of intoxicating liquor where officers found two stills on Quick's property, and found Quick approaching the property by automobile, which contained five hundred pounds of sugar, a stack of mill feed, and three cases of yeast cakes. Id. at 256, 19 S.E.2d at 102. Neither of the stills was in

operation at the time the officers found them. One contained mash, and the other appeared to have been recently operated. The officers testified they did not know to whom the stills belonged. Id. The Court found the evidence “overwhelmingly tend[ed] to show an intention on the part of [Quick] to manufacture of liquor.” However, the Court determined that the state had failed to prove that Quick engaged in any overt act. Id.

Although the Court provided no definite rule as to what constituted an overt act, the Court explained that each case would depend upon the particular facts and inferences drawn therefrom “with a view to working substantial justice.” Id. The Court explained “the act must always amount to more than mere preparation, and move directly toward the commission of the crime.” Id.

There is a wide difference between the preparation for the commission of an offense and the commission of the offense itself, or even the attempt to commit. The preparation consists in devising or arranging the means or measures necessary for the commission of the crime; the attempt or overt act is the direct movement toward the commission, after the preparations are made.

Id. at 256, 19 S.E.2d at 103. The Court held that the testimony showed nothing more than an act by Quick in preparation to the commission of the crime and not an act proximately leading to its consummation. Id. The Court further found the jury instruction telling the jury that if it found Quick intended to manufacture intoxicating liquors illegally then Quick had violated the statute was an incorrect statement of the law. As provided by the Court, the statute made it unlawful for a person to manufacture liquor; however, the statute did not make it an offense to intend to manufacture liquor. Id. Therefore, Quick was entitled to a directed verdict.

On the other hand, our Supreme Court addressed the manufacture of liquor and found sufficient evidence to warrant denial of the directed verdict motion in State v. Jackson, 210 S.C. 214, 42 S.E.2d 230 (1947).

Ordinarily, the manufacture of alcoholic liquors would contemplate the finished product, but the rule has been established in this state that an overt act in the process

of manufacturing, is sufficient to show unlawful manufacture, and that each case must be decided dependent upon its particular facts, especially as to the issue whether a verdict of acquittal should be directed.

Id. at 218, 42 S.E.2d at 232. The South Carolina Supreme Court found the testimony of police officers tending to show that the initial steps involved in the manufacture of alcoholic liquors had been taken in that the mash in the still had nearly reached the stage of fermentation and all that remained to be done was to build a fire thereunder was sufficient for the case to go to the jury on the charge of the unlawful manufacture of alcoholic liquors. Id. at 221, 42 S.E.2d at 234.

In State v. Cunningham, 239 S.C. 212, 122, S.E.2d 289 (1961), Cunningham was charged with manufacturing alcoholic liquors and with unlawfully having in his possession one case of fruit jars being an apparatus, appliance, or device to be used for the purpose of manufacturing alcoholic liquors. The jury acquitted Cunningham of manufacturing liquor, but found him guilty of possession of one case of fruit jars to be used for the purpose of manufacturing alcoholic liquors. At the time, a statute declared that the unexplained possession of any apparatus, appliance, or any device commonly or generally used for the manufacture of prohibited alcoholic liquors was prima facie evidence of a violation of the possession statute. Id. at 213-214, 122 S.E.2d at 289.

One night, officers observed three unidentified men start working at a still. Shortly thereafter, two of the men, one of whom was later identified as Cunningham, walked away from the still. The two men saw the officers and ran. Cunningham was carrying two cases of new empty half-gallon fruit jars, which he dropped when he ran. Id. at 214-215, 122 S.E.2d at 290. The prosecution contended the fruit jars were to be used as receptacles for the liquor, and as such, would be an apparatus, appliance, or device used for the purpose of manufacturing liquor. However, no one testified as to what type of receptacle was being used to receive the liquor at this particular still. "In fact, there [was] no evidence that fruit jars [were] suitable for use in manufacturing liquor." The

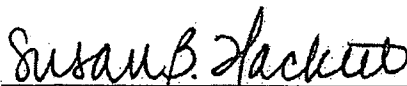
Court noted that the jars were “in common use in many if not most homes for other purposes.” Id. at 215, 122 S.E.2d at 290. In light of the jury’s acquittal of Cunningham of manufacturing, the most that could be said against him was that he was transporting the jars to the still for the purpose of transporting liquor already manufactured. However, such use would not be for the purpose of manufacturing liquor, which was what the statute required. Id.

The proper interpretation of section 44-53-375(D) is that possession of paraphernalia used in the manufacture of methamphetamine is prima facie evidence of intent or mens rea. Of course, the analysis does not end there. The law requires an actus reus coupled with this intent. The prosecution simply failed to present direct or substantial circumstantial evidence of any actus reus by Appellant in manufacturing methamphetamine. Located in various places within Appellant’s truck were items that could be used for manufacturing methamphetamine, but may be legally and innocently purchased and used. According to the officer’s testimony, the tubing did not appear to have been used for the manufacture of methamphetamine. The batteries were whole and intact, indicating they had not been opened to remove the lithium, which would have been necessary to manufacture methamphetamine. The coffee filters were unused – they showed no signs of having been used to strain or dry methamphetamine. The officer who searched Appellant’s vehicle testified he did not smell anything unusual, and that based upon his experience, working meth labs smell strongly of ether. The box of pseudoephedrine contained all of the pills with which it was sold – no pills were missing to indicate the product had been used in any way. Importantly, officers found no plastic or glass bottle in Appellant’s vehicle. Obviously, if officers found no bottle in the vehicle, then officers found no bottle containing residue or any appearance of being used in the manufacture of methamphetamine. Additionally, officers found no ammonium nitrate, sodium hydroxide, or sulfuric acid, all of which are required for the manufacture of methamphetamine.

Although Appellant possessed items that may be used to manufacture methamphetamine, the items are not illegal to possess and serve legitimate purposes outside the manufacture of methamphetamine. As explained by the trial, the prosecutor presented no evidence, such as residue or odor, to show indicia of manufacturing. The manufacturing methamphetamine statute requires the prosecution to prove an overt act. It is not enough for the prosecution to prove a guilty intention on the part of Appellant; rather, the prosecution must prove Appellant engaged in an overt act connected to a guilty intention. The prosecution simply failed to produce direct or substantial circumstantial evidence that Appellant manufactured the methamphetamine found in his constructive possession.

Therefore, Appellant respectfully requests this Court rehear the matter based upon the points addressed that were overlooked or misapprehended when this Court issued its opinion.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

This 17th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

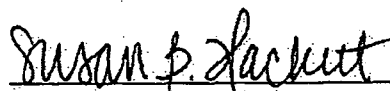
V.

JEFFREY DODD THOMAS,

APPELLANT

CERTIFICATE OF SERVICE

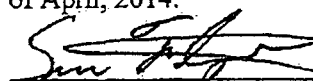
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Christina J. Catoe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Jeffrey Dodd Thomas, 117 Ira Caughman Rd, Leesville, SC 29070, this 17th day of April, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 17th day
of April, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Lexington County
The Honorable George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-143 (S.C. Ct. App. filed 4/2/14)
Appellate Case No. 2012-212428

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY DODD THOMAS,

APPELLANT.

RETURN TO PETITION FOR REHEARING

On April 2, 2014, this Court affirmed Appellant's conviction for manufacturing methamphetamine, finding Appellant's directed verdict motion was properly denied. Appellant submitted a Petition for Rehearing on April 17, 2014, arguing that this Court overlooked or misapprehended "the lack of evidence presented by the prosecution" and particularly the lack of evidence of an overt act, or the *actus reus* of the offense. To the contrary, this Court properly affirmed the denial of Appellant's directed verdict motion where, taken in the light most favorable to the State, there was sufficient evidence reasonably tending to prove both the *actus reus* and the *mens rea* of the offense of manufacturing methamphetamine.

In his Petition for Rehearing, Appellant contends that this Court's citation to S.C. Code § 44-53-375(D) (indicating that possession of paraphernalia used in the

manufacture of methamphetamine is prima facie evidence of intent to manufacture) indicates that this Court concluded the evidence was sufficient to surpass directed verdict based solely upon Petitioner's possession of paraphernalia and the resulting statutory presumption of intent. (See Petition for Rehearing, p. 1-2). To the contrary, the Court's citation to this statute at the end of its opinion did not suggest that the Court's decision to affirm the denial of the directed verdict motion was based solely on the *mens rea* aspect of the crime. In addition to the "intent" statute, this Court cited to several cases standing for the following propositions: that the trial judge is concerned with the existence of evidence rather than its weight; that the trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis; that the evidence and all reasonable inferences must be viewed in the light most favorable to the State; and that if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. It is clear that this Court found that substantial circumstantial evidence existed as to the entire offense, including both the *actus reus* and the *mens rea*; therefore there was no error.¹

The State agrees with Appellant that the intent statute, S.C. Code § 44-53-375(D), deals only with the *mens rea* aspect of the crime. (See Petition for Rehearing, p. 11). However, in addition to the statutory presumption of intent, the State presented substantial circumstantial evidence establishing that Appellant actually made

¹ Nor did the trial judge err by relying solely on the "intent" statute, as Appellant contends. (See Petition for Rehearing, p. 3). In fact, in ruling on the directed verdict motion, the trial judge stated that "[f]rankly I don't know what Subsection D of the statute adds to the equation. . . Someone can have the intent to commit a crime, but the crime is not committed until the crime is actually committed." (R. p. 169, lines 14-20). Later, after discussing jury charges, the trial judge stated that "this intent language, coupled with the other evidence in the case, is enough to, to get me past sponsoring an absurd result." (R. p. 172, lines 16-18) (emphasis added).

methamphetamine; i.e., that he committed the *actus reus* of the offense. Specifically, a truck registered to and driven by Appellant contained many of the materials necessary to make methamphetamine using the "shake and bake" method. (R. p. 7-8; p. 57-58; p. 65-70; p. 122-45). Most significantly, Appellant's truck contained an empty starter fluid can with a hole punched in the bottom. (R. p. 58, lines 10-12). The methamphetamine expert testified that the only reason to punch a hole in the bottom of a starter fluid can is to drain the liquid out for use in the production of methamphetamine. (R. p. 135, lines 3-5; p. 137, lines 3-5; p. 145, lines 1-3). The expert further testified that in his opinion, "especially because of the punched out [starter fluid] can," the items found in Appellant's truck were used for the production of methamphetamine. (R. p. 137, lines 1-5; p. 144, lines 16-25). Critically, Appellant's truck also contained the most telling evidence of all that Appellant had manufactured methamphetamine - the finished product, methamphetamine. (R. p. 98, lines 1-14).

As the solicitor pointed out below, methamphetamine is "not naturally occurring in nature" and "its existence is proof that it was made." (R. p. 154, lines 15-18). The fact that Appellant possessed the finished product, combined with the fact that he possessed many of the materials and equipment needed to make methamphetamine **and** possessed a starter fluid can that had been previously used in the manufacture of methamphetamine, created a reasonable inference that Appellant manufactured methamphetamine. (See R. p. 154, lines 16-20; p. 184, lines 3-15). Cf. State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (a jury can infer that a person found in unexplained possession of recently stolen property was the thief). The fact that Appellant did not possess all of the materials needed to make methamphetamine **in the future** was irrelevant because the

finished product - in conjunction with the drained-out can of starter fluid and the other items found in the truck supporting that Appellant was a manufacturer of methamphetamine - indicated Appellant had **already** manufactured methamphetamine and had disposed of the leftover trash, such as the bottle used to shake the chemicals for the initial chemical conversions. (See R. p. 128-29).

Notably, one of the attractive features of the “shake and bake” method of manufacturing methamphetamine is that a person can make their methamphetamine fairly quickly and with a lower risk of detection. (See R. p. 155, lines 9-10). Because Appellant made his methamphetamine in secret using this abbreviated method, the State was unable to present direct evidence regarding the precise facts surrounding its making. However, the State believes that the evidence it did present, taken in the light most favorable to the State and keeping in mind that a trial judge at the directed verdict stage need not be concerned with whether the evidence infers guilt to the exclusion of any other reasonable hypothesis,² constituted substantial circumstantial evidence regarding both the *actus reus* and *mens rea* of the offense of manufacturing methamphetamine. Therefore, this Court properly affirmed the trial judge’s denial of Appellant’s directed verdict motion.

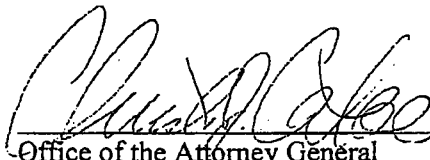
Based upon the foregoing, Respondent submits that this Court did not misapprehend or overlook any issues of fact or law. Therefore, this Court should deny Appellant’s Petition for Rehearing.

² See State v. Logan, 405 S.C. 83, 93, 747 S.E.2d 444, 449 (2013) (citing State v. Littlejohn to reaffirm the well-established principle that there is one test by which the jury measures circumstantial evidence and “quite another” by which the judge measures circumstantial evidence in considering a directed verdict motion).

Respectfully submitted,

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Attorney General

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A handwritten signature in black ink, appearing to read 'Christina J. Catoe', is written over a horizontal line.

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April 28, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Lexington County
The Honorable George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-143 (S.C. Ct. App. filed 4/2/14)
Appellate Case No. 2012-212428

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

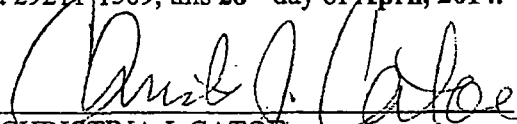
v.

JEFFREY DODD THOMAS,

APPELLANT.

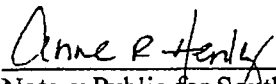
AFFIDAVIT OF SERVICE

The undersigned hereby certifies that a copy of Respondent's **Return to Petition for Rehearing** in the above-referenced matter has been served upon **Susan B. Hackett**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 28th day of April, 2014.


CHRISTINA J. CATOE
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SWORN to before me this 28th day of April, 2014.


Notary Public for South Carolina
My Commission Expires: 7/18/2017

The South Carolina Court of Appeals

The State, Respondent,

v.

Jeffrey Dodd Thomas, Appellant.

Appellate Case No. 2012-212428

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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon, Jr. J.
Paul E. Short, Jr. J.
John O. Steele J.

Columbia, South Carolina

cc:

Susan Barber Hackett, Esquire

Christina J. Catoe, Esquire

FILED

May 22, 2014

2002

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY DODD THOMAS,

APPELLANT

APPELLATE CASE NO. 2012-212428

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF LEXINGTON)

COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,)

5 PLAINTIFF,)

6 VS.)

7 JEFFREY DODD THOMAS,)

8 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2011-GS-32-2535 - 2537

11 May 22nd and 23rd, 2012
12 Spartanburg, South Carolina

14 B E F O R E :

15 THE HONORABLE GEORGE C. JAMES, JR., Judge, and a jury.

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

17 MICHAEL ROSS
18 ASSISTANT SOLICITOR
19 Attorney for the State

20 ROBERT T. WILLIAMS
21 ESQ.
22 Attorney for the Defendant

23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

1 about those two witnesses who should be here.

2 Thank you.

3 THE COURT: Thank you, Mr. Williams.

4 MR. WILLIAMS: Thank you, sir.

5 THE COURT: Mr. Ross, you may call your first witness.

6 SOLICITOR ROSS: Thank you, Your Honor.

7 The State calls Detective Jessie Laintz to the stand.

8 THE COURT: while he's coming up and being sworn, could
9 the lawyers come up here for just a minute?

10 You can go ahead and swear him in.

11 CLERK: Yes, sir.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 JESSIE LAINTZ, being first duly
15 sworn, testified as follows:

16 CLERK: Once you're seated, state your full name
17 spelling your last.

18 WITNESS: My name is Jessie Lee Laintz. Last name is
19 spelled L-A-I-N-T-Z.

20 DIRECT EXAMINATION

21 BY SOLICITOR ROSS:

22 Q Morning, detective.

23 How are you?

24 A Morning, sir. Good.

25 Yourself?

Jessie Laintz - Direct examination
by Solicitor Ross

1 Q I'm hanging in there.

2 You made the arrest in this case, is that right?

3 A Yes, sir, I did.

4 Q Now, before we get to how you made that arrest, can you
5 tell me what your present job duties are at the Sheriff's
6 Department?

7 A I'm a detective in the major crimes unit with Lexington
8 County Sheriff's Office.

9 Q And what type of crimes do you investigate?

10 A Anything from domestic violence to murder.

11 Q Now, were you in this position on May 29th, 2011?

12 A No, sir, I was not. I was a master deputy assistant
13 supervisor of the Lexington County south region at that
14 time.

15 Q And how many people did you supervise?

16 A Four.

17 Q And you said you supervised these folks over the south
18 region.

19 What part of the county is that?

20 A South region covers everything pretty much from Pelion
21 to West Columbia, keep on going down Edmond Highway, all the
22 way down to Swansea, down to that area. It's the southern
23 part of the county.

24 Q Were you on duty on May 29th, 2011?

25 A Yes, sir.

Jessie Laintz - Direct examination
by Solicitor Ross

1 Q And did you respond to a incident call in this case?

2 A Yes, I responded to which is in the
3 Horse's Neck area of Lexington County, southern part of the
4 county past Swansee. I responded there in reference to a
5 trespassing call.

6 Q Okay. And when you received this call what did you do
7 next?

8 A Upon receiving the call I checked our computer,
9 computer animated dispatch called our CAD system to look at
10 call history at that address. Something we usually do to
11 see what kind of history we have at that address. When I
12 did so I realized that, on May 20th, FTO Still, another
13 deputy, put the defendant on trespass notice at
14 Road.

15 Q So, that was just nine days before you made the arrest
16 in this case?

17 A Yes, sir.

18 Q Okay. And what did you do next?

19 A I responded to the call. When I arrived on scene I
20 noticed a white male who was later identified as the
21 defendant standing to the left-hand side of the trailer. He
22 was standing there and appeared to be yelling through a
23 window or yelling at the trailer. I made contact with him,
24 and I asked him for his name and date of birth and he
25 provided that to me.

Jessie Laintz - Direct examination
by Solicitor Ross

1 Q He gave you his name and date of birth?

2 A Yes, sir.

3 Q And what was his name?

4 A Jeffrey Dodd Thomas.

5 Q Okay. And after he gave you his name, what did you do
6 at that point?

7 A At that point in time I asked him if he knowed he was
8 on trespass notice and he said he did, but that Ms. Hutto
9 had invited him to the residence.

10 Q And how did she invite him to the residence?

11 A Via text message.

12 Q All right. And did you search -- did you check those
13 text messages?

14 A Yes, at that point in time I asked him if I could see
15 his cell phone and his identification to verify both what he
16 told me, about receiving the information via text message
17 and that his name and date of birth were correct. At that
18 point in time the defendant said it's over there in my
19 truck. He pointed towards a green Ford Ranger that was
20 there. I asked him if I could go get his cell phone and his
21 wallet and he said I could.

22 Q All right. And did you check the cell phone?

23 A I did. I checked the cell phone, went through it, and
24 the only thing I could see was information, if I can refer
25 to my notes here, there was a couple text messages from that

Jessie Laintz - Direct examination
by Solicitor Ross

1 morning and it was talking about someone's uncle and cuz.

2 Q Did you run the tag on the vehicle?

3 A I did, sir.

4 Q And who was it registered to?

5 A The vehicle tag was Robert, Victor, Kilo, RVK 769, and
6 it came back to a 1994 Ford Ranger and was registered to the
7 defendant.

8 Q Okay. And that's Jeffrey Dodd Thomas?

9 A Yes, sir.

10 Q Okay. So, you ran the tag, checked the cell phone,
11 what happened next?

12 A At that point in time I put him in a pair of handcuffs
13 and put him in the rear of my patrol vehicle, and I went and
14 talked to Ms. Hutto.

15 Q Okay. And after talking to Ms. Hutto did you place the
16 defendant under arrest?

17 A I did, for trespassing.

18 Q And what did you do with that vehicle at that point?

19 A At that point in time I -- the vehicle could not stay
20 there upon request of the landowner.

21 MR. WILLIAMS: Objection, Your Honor. Hearsay.

22 THE COURT: Yes, sir.

23 Q Without getting into anything Ms. Hutto said---

24 THE COURT: Sustained.

25 Q Without getting into anything Ms. Hutto told you, did

Jessie Laintz - Direct examination
by Solicitor Ross

1 you tow the vehicle at that point?

2 A Yes, sir.

3 Q Okay. And prior to towing the vehicle, did you
4 inventory the vehicle?

5 A Yes, sir.

6 Q Okay. What did you find in the inventory?

7 A During the inventory, if I can refer to my notes on
8 this, when I started inventorying the vehicle I found a,
9 approximately 1-inch by inch and a half Altoids container of
10 breath mints, and when I opened it up there was four clear
11 baggies in there. Two of them were tied off and two were
12 not. Two had a white crystal like substance in them. Two
13 had a residue of a white crystal like substance.

14 Q Let me interrupt you there.

15 A Yes, sir.

16 Q The Altoids can, where exactly in the vehicle was it
17 found?

18 A It was approximately 5-inches away from the defendant's
19 wallet.

20 Q And where was the Altoids can and the wallet in the
21 vehicle?

22 A It was sitting on a pile of clothing in the passenger
23 seat.

24 Q Okay. Continue with what you were saying.

25 A When -- I continued to inventory the vehicle. I end up

Jessie Laintz - Direct examination
by Solicitor Ross

1 finding a large container of salt, 3-foot of clear tubing
2 and both those items were on the passenger seat floor, two
3 Lithium batteries in the center console of the pickup truck,
4 a box of Sudogest with ten pills that were underneath the
5 driver's seat, a Napa starter fluid spray can that had a
6 hole in the bottom of it that was in the truck bed itself.
7 There was a blue backpack that was located in the back
8 seating area. It was an extended cab pickup truck. There
9 was a blue backpack that was located back there. In the
10 backpack, in the backpack I found coffee filters, a digital
11 scale, and some papers.

12 Q A what kind of scale?

13 A Digital.

14 Q Okay.

15 A Also during the inventory I found a rolled up cigarette
16 pack inside a tool box that was in the back seating area,
17 and it has several unknown pills in it, and then also three
18 unknown pills were found in an Ibuprofen bottle that was
19 right in the cubbyhole of the driver's door.

20 Q Okay. Once you found all these items, did you field
21 test what was in the Altoids tin can?

22 A Another deputy arrived on scene and he field tested it.

23 Q And who was that?

24 A Master Deputy McCaw.

25 Q Okay. And what did you do with all these items that

Jessie Laintz - Direct examination
by Solicitor Ross

1 you seized from the vehicle?

2 A All the seized items were turned over to our narcotic's
3 officer that responded to the scene, Hazewinkel.

4 Q Okay. What was that name?

5 A Sergeant Hazewinkel.

6 Q Okay. And how long did it take for him to get there?

7 A Quite a while. I'm gonna say at least 45 minutes.

8 (WHEREUPON, sixteen photographs were marked as State's
9 Exhibit Nos. 1 through 16 for identification purposes only
10 at this time.)

11 Q Okay. Detective, I'm gonna hand you some photographs
12 marked as State's Exhibit Nos. 1 through 10. If you could
13 please review these photographs.

14 A (Witness complies.)

15 Q Do these photographs accurately reflect what you saw at
16 the incident location at on May 29th, 2011?

17 A Yes, sir.

18 SOLICITOR ROSS: Your Honor, at this time we'd offer
19 State's 1 through 10 into evidence.

20 MR. WILLIAMS: Your Honor, there are several of those
21 pictures which we would object to coming in at this time
22 because---

23 THE COURT: Hand them over.

24 Yes, sir.

25 MR. WILLIAMS: The person who allegedly found these

Jessie Laintz - Direct examination
by Solicitor Ross

1 items has not testified. These appear to be pictures that
2 were taken I guess after all the police officers had come by
3 there, and I don't know exactly what this other officer's
4 gonna testify to yet in regards to whether he found these
5 items or not.

6 THE COURT: All right. You want to lay a little bit
7 more foundation?

8 Do you know what numbers you're objecting to---

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: ---please?

11 MR. WILLIAMS: Yes, sir, it's my understanding there's
12 another officer who found these items which allegedly are
13 drugs. So, anything that looks like---

14 THE COURT: Is he coming?

15 SOLICITOR ROSS: Yeah, right over there.

16 THE COURT: Well, you offer them -- which ones,
17 Mr. Williams, do you object to at this time?

18 MR. WILLIAMS: I'll put the ones on the right which I
19 would object to, Your Honor, till after there's a proper
20 foundation. These are okay, Your Honor, and these are the
21 ones that I would object to.

22 THE COURT: All right.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: The objection's overruled.

Jessie Laintz - Direct examination
by Solicitor Ross

1 Okay.

2 (WHEREUPON, State's Exhibit Nos. 1 through 10 were
3 received into evidence at this time.)

4 SOLICITOR ROSS: Your Honor, I'd ask to publish items,
5 Exhibits 1 through 10.

6 THE COURT: How are you going to do that?

7 SOLICITOR ROSS: On the projector.

8 THE COURT: On the projector.

9 All right. Mr. Williams, make sure the record's clear,
10 can you pull out those photographs again and give me the
11 numbers of the ones at this time so I can -- that will be
12 noted for the record.

13 MR. WILLIAMS: Yes, sir, the items that we would object
14 to at this point in time, Your Honor, would be Items 5, 6,
15 7, 8, 9, 10, and we have one item which has not been marked
16 as an exhibit, Your Honor.

17 THE COURT: Okay. That's not an issue right now,
18 right?

19 MR. WILLIAMS: I assume it's not being offered into
20 evidence.

21 THE COURT: Okay. Your objection is noted and it's
22 overruled.

23 Q Detective, I'm gonna give you a laser pointer as we
24 talk about these photographs. If you need to point to
25 anything feel free to use that.

Jessie Laintz - Direct examination
by Solicitor Ross

1 All right. This is State's No. 1.

2 Can you tell me what that's a photograph of, Detective
3 Laintz?

4 A That's the mailbox of the residence. It's a little
5 hard to see it, but right there it says 150.

6 Q Okay. And this is No. 2.

7 A That is the front of the residence as we're standing
8 from the road.

9 Q And where was the defendant standing when you first
10 approached?

11 A Right about there. He's actually on the other side.
12 We can call it the number two side, but I'll call it the
13 left side. He was actually pretty much right there in that
14 corner. There's a little tiny bathroom window about yea big
15 he was talking to through.

16 Q And this is No. 3.

17 A That's the same corner he was sitting on right there.
18 That's the vehicle and that's actually my patrol vehicle.
19 That's the green Ford Ranger right there.

20 Q Okay. And that's what he pointed to as what was his
21 car?

22 A Yes, sir.

23 Q And that's where you seized all those items from?

24 A Yes, sir.

25 Q Okay. Now there's a second car right there.

Jessie Laintz - Direct examination
by Solicitor Ross

1 whose vehicle is that?

2 A I believe that's Sergeant Hazewinkel.

3 Q And he's a narcotics officer?

4 A Yes, sir.

5 Q Okay. And this is State's No. 4.

6 A That, that's a picture of the rear of the vehicle with
7 the license tag.

8 Q Okay. And now we've got No. 5.

9 A where the Ibuprofen bottle is located on the top of the
10 cubby hole in the door. It's that cubby hole right there.
11 It's that---

12 Q Okay. Now, there appears to be some trash right here.
13 Can you describe, I guess for lack of a better term,
14 the cleanliness of that vehicle?

15 A An absolute mess.

16 Q Okay.

17 A Clothes everywhere, trash everywhere. The clothes in
18 the driver's seat were actually piled so high in the foot
19 area where, where you put your feet if you're sitting in the
20 passenger seat was nearly completely full with trash.

21 Q Okay.

22 A The bottom part of the dash.

23 Q And on those clothes, again, that's where you found the
24 wallet and the Altoids can?

25 A Yes, sir.

Jessie Laintz - Direct examination
by Solicitor Ross

1 Q Okay. This is No. 6.

2 A That's the rear cargo area. The -- I said it was an
3 extended cab. That's actually the front driver's seat
4 that's leaned forward now and that's the back area. You can
5 see there's a lot of clothing and other items just scattered
6 throughout.

7 Q Finally, No. 7, what do we have here?

8 A That's the Altoids container right there, and those are
9 the four bags, the two with the residue and the two that
10 were tied off that actually have the white crystal substance
11 still in them.

12 Q Now, what are these sitting on?

13 what is this structure here?

14 A That is the hood of the vehicle.

15 Q Okay. And tell me, what is this item that I'm pointing
16 at with my laser pointer, this item.

17 A I believe that's the field test kit that Master Deputy
18 McCaw used.

19 Q Okay. And you have your Altoids can right here?

20 A Yes, sir.

21 Q All right. I've got No. 8 I'd like to show you.

22 A Once again, it's a little hard to see. That's the,
23 that's the gold cigarette pack that was located in the tool
24 box and down in there there's white pills.

25 Q Okay. And I'm gonna hand you what has not yet been

Jessie Laintz - Direct examination
by Solicitor Ross

1 marked and I'd like to mark it for ID purposes.

2 (WHEREUPON, a photograph was marked as State's Exhibit
3 No. 17 for identification purposes only at this time.)

4 MR. WILLIAMS: Same objection as to No. 17 which is now
5 marked.

6 THE COURT: Seventeen, is that right?

7 SOLICITOR ROSS: Yes, Your Honor.

8 THE COURT: Okay.

9 Q Tell me what this is a photograph of.

10 THE COURT: Ask him first -- okay. Go ahead.

11 A That's a photograph of the cigarette container that
12 that's same cigarette.

13 Q Okay. Does this accurately reflect how that cigarette
14 container appeared when you seized it that day?

15 A Yes, sir.

16 SOLICITOR ROSS: Your Honor, at this time I'd move this
17 one into evidence.

18 THE COURT: Yes, sir, Mr. Williams.

19 MR. WILLIAMS: Your Honor, I withdraw that objection as
20 to 17.

21 THE COURT: Okay.

22 (WHEREUPON, State's Exhibit No. 17 was received into
23 evidence at this time.)

24 Q Could you tell the jury again what this is a photograph
25 of?

Jessie Laintz - Direct examination
by Solicitor Ross

1 A That's the cigarette container pouch, I'm not sure what
2 you want to call it, that's located in the tool box in the
3 back seat area of the truck. The picture before that that
4 had the pills in the bottom of it, they're actually located
5 right about there.

6 Q Okay. And this one, it may be hard to see on the
7 projector, but it's State's No. 9.

8 Can you tell the jury what that's a photograph of?

9 A Right there's an opening up, an opening of the backpack
10 and that's where the coffee filter's at. That was the blue
11 backpack that was located in the back seating area of the
12 pickup truck.

13 Q Okay. What else was in that backpack?

14 A A digital scale and some papers.

15 Q Okay. Now State's No. 10.

16 What is this a photograph of?

17 A That's that tamper evident bag that we have to use to
18 put into evidence, and right there you can kind of see the
19 outline of it. That is the Altoids box. That's a picture
20 of me showing that it was sealed.

21 Q Okay. Like to get into the chain of custody of these
22 items seized, Detective Laintz. First I'd like to start
23 with the Altoids tin can.

24 What did you do with that tin can once you seized it
25 from the seat?

Jessie Laintz - Direct examination
by Solicitor Ross

1 A When I seized it it went into a little grocery bag,
2 like a little paper bag that we have, and it went into the
3 trunk of my vehicle.

4 Q Before you seized it, before you placed it into that
5 paper bag or bag that you mentioned, did somebody field test
6 the contents?

7 A Yes, Master Deputy McCaw did.

8 Q And did you witness him field test it?

9 A Yes, sir, I did.

10 Q Okay. And from the point that you seized the Altoids
11 tin can to the point that you placed it in the back of your
12 patrol vehicle, was that, the can and the contents in the
13 can, was it in your care, custody, and control the whole
14 time?

15 A Yes, sir.

16 Q Did you alter or manipulate what was in that can at any
17 point in time?

18 A No, sir, I did not.

19 Q Did anybody else alter or manipulate what was in the
20 can?

21 A Except Master Deputy McCaw taking a small sample out of
22 it.

23 Q Did he add anything to it?

24 A No.

25 Q Other than the sample, did he take anything away?

Jessie Laintz - Direct examination
by Solicitor Ross

- 1 A No, sir.
- 2 Q Did you add anything to it?
- 3 A No.
- 4 Q Okay. And once you placed the tin can in the back of
- 5 your patrol vehicle, what did you do with it?
- 6 A At that point in time I transported the defendant up to
- 7 the jail, went to our sally port, dropped him off in the
- 8 jail for the booking process, left the jail and went to our
- 9 evidence room and placed the items, items into evidence.
- 10 Q Are you familiar with what a B.E.S.T. Kit is?
- 11 A Yes, sir.
- 12 Q Please tell the jury what you're talking about there.
- 13 A A B.E.S.T. Kit is -- it's a manila envelope that we
- 14 have to fill out and there's paperwork inside of it with one
- 15 of those tamper evident bags that's showing up there, and it
- 16 has the paperwork and everything that you have to fill out
- 17 to get the items tested, and it has a tracking number that's
- 18 on the outside of the envelope, and it's also on the tamper
- 19 evident bag, and it's just a trail to show you who has
- 20 custody of the items while it's being tested.
- 21 Q When you say tamper evident, what do you mean by that?
- 22 A If somebody tries to open it, it's a real sticky
- 23 substance, if someone tries to open it, it shows that
- 24 someone tried to, tried to mess with it.
- 25 Q And you mentioned a tracking number.

Jessie Laintz - Direct examination
by Solicitor Ross

1 Is that unique to every B.E.S.T. Kit?

2 A Yes.

3 Q And is the purpose to identify what you seized as
4 actually what is ultimately tested in a case?

5 A Yes.

6 Q Okay. Do you have the B.E.S.T. Kit with you?

7 A I do.

8 SOLICITOR ROSS: Your Honor, at this point I'd ask that
9 the witness be allowed to step down and demonstrate this
10 process of sealing a B.E.S.T. Kit and placing it into
11 evidence.

12 THE COURT: All right. Any objection?

13 MR. WILLIAMS: No, Your Honor.

14 THE COURT: All right. Step down and keep your, keep
15 your voice up for the court reporter's benefit and the
16 jury's benefit.

17 (Witness comes down from the stand.)

18 WITNESS: Yes, sir.

19 Where would you like me to go, Mr. Ross?

20 Q Right here please.

21 A This is the B.E.S.T. Kit right here. The is the one
22 that I actually got from evidence. Here's the tracking
23 number right here. That's the number that coincides with
24 this tamper evident bag. It's the same number that's up
25 here, and the same number that's down here. So, it's this

Jessie Laintz - Direct examination
by Solicitor Ross

1 kind of tracking system.

2 Here's the tamper evident bag. This is what you
3 actually put the evidence in, the item that you want to get
4 tested. You actually put it in this. Here are the forms
5 that you have to fill out. Set this down real quick.
6 Here's the form that you have to fill out.

7 This is just Sheriff's, Sheriff's Department lab
8 request form. It's -- the top information is who, what,
9 when, what the case number is, where we get it from, who we
10 get it from, and who's our victim.

11 This next part down here is what we want done with it.
12 It has anything from latent fingerprint, shoe impressions
13 all the way over to drug analysis other than marijuana, and
14 then we have a description of the area of what you would
15 fill out, what item you want to be tested, and say, for
16 example, we have an item that field test positive for
17 methamphetamines, we'd say white crystal like substance
18 consistent with that of methamphetamines.

19 At that point in time this form is completed, and then
20 we have to fill out this form, and this is what we call a
21 Form B, Rule 6. I don't know if that has anything
22 important, but that's what we call it. Up at the top
23 there's a control number. That's the same number that was
24 on that bag and the same number that's on that envelope.
25 Put that control number here.

Jessie Laintz - Direct examination
by Solicitor Ross

1 It says I certify that name, I put my name there, am
2 employed with, and it's the name of the agency, Lexington
3 County Sheriff's Department, and that on this date and this
4 time, this date and this year, I seized from, whoever we
5 took the items from, consistent to, was subject to a
6 warrant, unlawful arrest, otherwise, how we got the items in
7 our possession pretty much, and at or near the place to be
8 searched, where you got the items from.

9 And, once again, you described it, and then you sign
10 down here saying that yes, I was the one that took this and
11 I am the one that's putting it in here. After this, they're
12 several other forms that are in here. Those are for the
13 people that come after me to fill out the forms for the
14 chain of custody. So, that's all that we have to do with
15 these forms.

16 For the evidence, tamper evident bag -- you want me to
17 go ahead?

18 Q Please.

19 A You fill this, this top portion out right here. It
20 says person sealing the envelope, which would be myself, the
21 date you did it, and the contents. We'll say one Altoids
22 container with four clear crystal bags in it, and then your
23 control number. You keep this for yourself for your
24 tracking.

25 Q So, that's your receipt?

Jessie Laintz - Direct examination
by Solicitor Ross

1 A Yes, sir.

2 Q Okay.

3 A You would take your item in here -- I'm sorry. Let me
4 just -- you fill out this top portion right here. It has
5 agency, date, seal, case number, and persons -- print the
6 name of who's sealing the bag, and a signature of the person
7 that's sealing the bag. At that point in time you put your
8 items in here and make sure all your items are in there.
9 There's a little clear like foam that's right here. You
10 move that off, and you fold this down, and you want to get
11 it across here, and now the bag is sealed.

12 Q So, if I were to try and tamper with the contents of
13 this bag, at this point, would it be evident?

14 A Yes, it -- actually the words come across here. I'm
15 sorry. Something comes across here and says it's been
16 tampered with.

17 Q Okay. Thank you. If you could, please have a seat.

18 A (Witness returns to the stand.)

19 Q So, you had a B.E.S.T. Kit in this case against Mr.
20 Thomas, as you mentioned, a number.

21 What was the number of the B.E.S.T. Kit used in this
22 particular case?

23 A B.E.S.T. Kit's Number was C, as in Charlie, 014827.

24 Q Okay. And where did you seal the B.E.S.T. Kit?

25 A In the evidence room.

Jessie Laintz - Direct examination
by Solicitor Ross

1 Q All right. And what did you do with the B.E.S.T. Kit
2 after you sealed it?

3 A I placed the evidence into Locker Number 9. In our
4 evidence room we have a wall of lockers of all different
5 sizes. Put the item in there and there's a little push
6 button on it kind of like you go to an amusement park, those
7 kinds -- the ones you get a special key for except we don't
8 get a key. You shut it and push the push button and it's
9 locked.

10 Q Okay. And at the point you placed it in that locker,
11 from the point you seized the drugs to the point you placed
12 it in the locker, were they in your care, custody, and
13 control the whole time?

14 A Yes, sir.

15 Q And they're in the same condition from the point of
16 seizure to the point you placed them in that locked locker?

17 A Except for the small sample that was taken out for the
18 field test, yes.

19 Q Okay. Did you ever come into possession of that
20 B.E.S.T. Kit again?

21 A No.

22 Q Okay. Let me talk about the other items that were
23 seized from the vehicle.

24 what did you do with them?

25 A When Sergeant Hazewinkel arrived on scene the items

Jessie Laintz - Direct examination
by Solicitor Ross

1 were turned over to him.

2 Q Okay. And were they in the same condition when you
3 turned them over to Sergeant Hazewinkel as when you seized
4 them from the vehicle?

5 A Yes, sir.

6 Q Did you possess them the whole time?

7 A Until I gave them to him, yes, sir.

8 Q Did you alter or manipulate these items in anyway?

9 A No, sir.

10 Q Okay. Is Jeffrey Dodd Thomas in Court today?

11 A Yes, sir.

12 Q Could you point him out for me please?

13 A (Witness points.)

14 Q What type of shirt is he wearing?

15 A Blue and white horizontal stripe.

16 Q He's sitting there next to Mr. Williams?

17 A Yes, sir.

18 SOLICITOR ROSS: Your Honor, let the record reflect
19 that Detective Laintz is identified the defendant in this
20 case.

21 No further questions for this witness. Please answer
22 any questions Mr. Williams may have.

23 THE COURT: Mr. Williams.

24 MR. WILLIAMS: May it please the Court.

25 CROSS-EXAMINATION

Jessie Laintz - Cross-examination
by Mr. Williams

1 home?

2 A No, I did not go inside the mobile home.

3 Q Did the occupants inside the mobile home come out?

4 A No.

5 Q Did anyone -- okay. Did any other officer follow-up
6 with who the occupants were inside the mobile home to your
7 knowledge?

8 A No.

9 Q So, you don't know how many occupants were inside the
10 mobile home because you didn't go inside?

11 A No, I talked to one white female through the window and
12 that was all.

13 Q And, to your knowledge, no one went inside the mobile
14 home to see who all was in there?

15 A No.

16 Q Now, as I understand it, the truck which we were
17 looking at, and excuse my color vision problems, the color
18 was, that we saw on the truck on the picture, was it blue or
19 green?

20 A Green.

21 Q Okay. So, if it appears blue on sometimes it's
22 actually green is just how it kind of looks?

23 A Yes, sir.

24 Q It's a green truck?

25 A Yes, sir.

Jessie Laintz - Cross-examination
by Mr. Williams

1 BY MR. WILLIAMS:

2 Q Officer, when you arrived at I think it's
3 , you said that's in the south region, is that correct?

4 A Yes, sir.

5 Q And when you refer to the south region, I guess for
6 persons who don't always understand what the south region
7 is, what towns are near the south region?

8 A In the south region we have Dixianna, which is kind of
9 West Columbia, Cayce just a little bit, Pelion, Swansea, a
10 little part of Red Bank, and Gaston.

11 Q All right. But the area you went to is not in any
12 municipal town, is that correct?

13 A It is not.

14 Q It's in the county area?

15 A Yes, sir.

16 Q All right, sir. When you arrived there, I think you've
17 already testified that you found my client who was on the
18 side of the trailer or the mobile home?

19 A Yes, sir.

20 Q And it -- when you got up close to him was, was there
21 any evidence of intoxication or use of drugs or anything
22 like that?

23 A No, sir.

24 Q All right, sir. And did you -- did you go inside the
25 mobile home to talk to the occupants who were in the mobile

Jessie Laintz - Cross-examination
by Mr. Williams

1 Q So, the truck that we saw was indeed Jeffrey Dodd
2 Thomas' truck?

3 A He said it was, yes, sir.

4 Q All right. Now, as I understand it, you opened up the
5 truck door?

6 It was not locked, correct?

7 A I went to the driver's door that was unlocked, yes.

8 Q Okay. You opened it up and seated on the top of
9 clothing in the passenger seat, on top of clothing was the
10 Altoids can and his wallet?

11 A Yes, sir.

12 Q Now, did you open up the Altoids can at that point in
13 time?

14 A After he was placed under arrest and I was inventorying
15 the vehicle, that's when it was opened.

16 Q Did you take the Altoids can from the truck with you
17 when you came back to talk to Mr. Thomas?

18 A No, I didn't even see the Altoids at that point in
19 time.

20 Q But it was on top of the clothing?

21 A It was. There was a lot of items that were there.

22 Q But it was on top of the clothing?

23 There was nothing to obstruct its view, was there?

24 A No, when I went back there, no, there was not.

25 Q And when you were doing an inventory of items -- you're

Jessie Laintz - Cross-examination
by Mr. Williams

1 required to do an inventory of items if the person that you
2 have arrested or if you arrest someone, and if there's no
3 one there with the vehicle, is that correct, according to
4 your policy and procedures?

5 A Yes, sir, if it's gonna be left unattended.

6 Q If it's gonna be left unattended?

7 A Yes.

8 Q And, in this particular case, that's why you seized
9 this particular vehicle because it was gonna be left
10 unattended?

11 There was nobody there at the truck with Mr. Thomas at
12 the time was there?

13 A No, there was not.

14 Q Now, at what -- you -- when you arrested him, you
15 placed him in the back of your patrol car, is that correct?

16 A He was detained at the point in time he was in the back
17 of my patrol car. I wanted to talk to the victim in the
18 situation first. At that point in time he was not under
19 arrest.

20 Q Then you subsequently arrested him?

21 A Yes, sir.

22 Q You put him in the patrol car, your patrol car?

23 A Uh-huh. (Affirmative).

24 Q And, at this time, was anybody else on the scene
25 besides you and at least one lady that we know of who was

Jessie Laintz - Cross-examination
by Mr. Williams

1 inside the trailer, that you're aware of, and my client?

2 A That's all I know of.

3 Q All right. And is it at that point in stage, point in
4 time, is that when you started inventorying the vehicle?

5 A After I talked to Ms. Hutto I let the defendant know
6 that he was under arrest for trespassing---

7 Q Okay.

8 A ---and that's when I started inventorying the vehicle.

9 Q All right. At what point in time did any other officer
10 show up on the scene?

11 A Deputy McCaw showed up after I found the Altoids
12 container. I can not give you a time lapse. I can not
13 recall how long it was.

14 Q All right. So, you had found an Altoids container
15 which was on the top of the clothing?

16 A Yes, sir.

17 Q And with that, that Altoids can, what did you do when
18 you found it?

19 A Opened it up, looked at it. At that point in time I
20 believe I set it back down in the driver's seat and got my
21 radio and called Master Deputy McCaw, asked him to respond,
22 and waited for him and started to inventory the rest of the
23 vehicle then.

24 Q Okay. So, the first bit of inventory you did, you
25 found the Altoids can, first thing off, that's why you

Jessie Laintz - Cross-examination
by Mr. Williams

1 called McCaw to come there and help you inventory it?

2 A Yes, sir.

3 Q Now, you didn't inventory everything in the vehicle,
4 did you?

5 A No.

6 Q Does your policy and procedures state that you're
7 suppose to not inventory everything?

8 A It does not say we're not suppose to inventory
9 everything.

10 Q And when you secured this Altoids can, what did you do
11 with it?

12 A Opened it up, looked at the contents, and I put it on
13 the hood of the vehicle.

14 Q Okay. And then from the hood of the vehicle you took a
15 picture of it on the hood of the vehicle?

16 A Yes, sir.

17 Q Then from -- after taking a picture of it you took it
18 to -- you put it in a bag and then you took it to the
19 evidence room at the Lexington County Sheriff's Department?

20 A Essentially, yes.

21 Q Did you ask a -- you would be the arresting officer in
22 this case, is that correct?

23 A Yes, sir.

24 Q So, it's your case file?

25 You're in charge of everything that happens on it?

Jessie Laintz - Cross-examination
by Mr. Williams

1 A Yes, sir.

2 Q At any point in time did you ask anyone to do
3 fingerprint analysis to reveal who touched that Altoids can
4 or who had placed that Altoids can in the truck?

5 A No, sir, I did not.

6 Q All right, sir. Now, we've got Officer McCaw who is at
7 the scene at this point in time when you were inventorying
8 the vehicle, you and he, and I assume you both are
9 inventorying the vehicle and you got my client seated in the
10 back seat of this, of a, of a patrol car?

11 A The majority of the inventory was done before Master
12 Deputy McCaw arrived on the scene.

13 Q Okay. So, so, there wouldn't have been anybody else
14 there to inventory except you until McCaw gets there, is
15 that right?

16 A Yes, sir.

17 Q So, he didn't really inventory the, the items?

18 A No.

19 Q So, it's just you and my client there?

20 A Yes, sir.

21 Q And when you inventory these items, I think you've
22 referred to several items, which, in your mind, are of some
23 importance, salt container?

24 A Yes, sir.

25 Q Three foot of plastic pipe?

Jessie Laintz - Cross-examination
by Mr. Williams

1 A Plastic tubing, yes, sir.

2 Q Plastic tubing.

3 Cigarette pouch?

4 A Yes, sir.

5 Q Starter fluid?

6 A Yes, sir.

7 Q Of all the items that you, that you've listed that you
8 thought were of some importance, did you fingerprint any of
9 those items?

10 A No, sir, I did not.

11 Q Now, you placed some importance on the fact that there
12 was some Sudafed which was found in the truck, is that
13 correct?

14 A Yes, sir.

15 Q Exactly how many pills of Sudafed were found in the
16 truck?

17 A Ten pills that were inside that box.

18 Q Now, are you knowledgeable in regards to the total
19 amount of Sudafed that is sold in a box of Sudafed?

20 A No, I would say that that was the total number of
21 Sudafed pills that were used for that box.

22 Q Are you saying that the box contained ten pills and
23 that's, that's in that box?

24 A At least. I would have to look at the box and see how
25 many it was sold with, but --.

Jessie Laintz - Cross-examination
by Mr. Williams

1 Q But the box, if the box is introduced into evidence,
2 will have the list of the number of pills that were in the
3 box?

4 A I'm sure it would, yes, sir.

5 Q Was there any indication on the box to indicate to you
6 that that particular pills were illegal in anyway to
7 purchase?

8 A No, they're not.

9 Q Have you ever taken Sudafed?

10 A I have.

11 Q Did it help your cold?

12 A Yes, it did.

13 Q Are you aware of any pharmacy which is, in which you
14 understand it to be illegal to sell Sudafed?

15 A No.

16 Q But there was no fingerprint analysis done of this
17 Sudafed, correct?

18 A There was not.

19 Q Of the piping, plastic pipe?

20 A Was not, no.

21 Q Now, this blue bag which you said that you found in the
22 trunk or it was in the bed of the truck, is that correct?

23 A The blue bag was in the back cargo area, the extended
24 cab portion of the truck. I'm gonna call it the back seat.

25 Q All right. And I think you said there was cigarette,

Jessie Laintz - Cross-examination
by Mr. Williams

1 there was coffee filters in there?

2 A Yes, sir.

3 Q Did you fingerprint, did you fingerprint anything that
4 was in the bag?

5 A I did not.

6 Q Was there anything in the blue bag which had my
7 client's name on it?

8 A At that point in time I did not know, but apparently
9 later I was told there was.

10 Q You were told there was?

11 A Yes, sir.

12 Q But you didn't see anything, did you?

13 A No, I saw papers. That's what I saw.

14 Q And was there anything -- well, let me ask you this.

15 Were any of the items which you thought were of some
16 importance, was there anything illegal in the possession of
17 any of these items?

18 A Besides the methamphetamine, the white crystal like
19 substance that tested presumptively positive for
20 methamphetamine---

21 Q Yes.

22 A ---no.

23 Q So, they're items which you every, anybody could
24 purchase?

25 A Yes.

Jessie Laintz - Cross-examination
by Mr. Williams

1 Q Coffee filters aren't illegal, are they?

2 A They're not.

3 Q Unless Keurig makes them illegal.

4 So, there's absolutely nothing illegal about any item
5 that you found other than you said you found some plastic
6 items which tested, or I'm sorry, some items in a plastic
7 bag which tested positive for methamphetamine?

8 I assume, at some point in time, somebody's gonna come
9 in here and testify to that?

10 A Yes, sir.

11 Q Okay. Now -- and you did no fingerprint analysis?

12 A No, sir.

13 Q You don't know who all's in the trailer?

14 A No.

15 Q Do you plan on calling one woman who was at the trailer
16 to come and testify?

17 SOLICITOR ROSS: Objection, Your Honor. He's not
18 calling the case.

19 THE COURT: All right. In that form it's sustained.

20 Q Do you anticipate the lady who was in the trailer
21 coming to testify today?

22 A I do not know.

23 Q Did you perform -- the plastic tubing which you found,
24 describe to the jury what this plastic tubing looks like.

25 A It's about 3-foot of plastic tubing. It's a straw

Jessie Laintz - Cross-examination
by Mr. Williams

1 that's really thick plastic, a straw that is thicker plastic
2 then the plastic tubing you get from Ace Hardware or
3 anywhere like that.

4 Q Did you, did you perform any test or did you ask that
5 any test be performed on the inside of that plastic tubing
6 to verify whether or not it had been used for any type of
7 foreign substance?

8 A No, I did not.

9 Q Did it appear to you to have been used for any foreign
10 substance?

11 A It did not.

12 Q So, you didn't smell anything on this tubing?

13 A I don't think. I don't recall smelling it.

14 Q You said you found some Ibuprofen in the truck?

15 A It was an Ibuprofen bottle.

16 Q Ibuprofen bottle?

17 A Yes, sir.

18 Q And did you seize that?

19 A I turned it over to Sergeant Hazewinkel.

20 Q Do you take Ibuprofen?

21 A I do.

22 Q Do you have to get a prescription to get Ibuprofen?

23 A No.

24 Q And you, you didn't smell any strong odors coming from
25 the truck when you went over there and you were searching

Jessie Laintz - Cross-examination
by Mr. Williams

1 through it, did you?

2 A When I was doing an inventory I did not.

3 Q So, there was no odor of any -- now, have you ever been
4 around a, a working meth lab or a meth processing area?

5 A Yes, I have.

6 Q What is the most distinguished thing about that?

7 A The smell of Ether.

8 Q And you didn't smell anything in the truck?

9 A No.

10 MR. WILLIAMS: That's all the questions I have, Your
11 Honor.

12 THE COURT: Redirect?

13 SOLICITOR ROSS: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY SOLICITOR ROSS:

16 Q Sudafed's not illegal, but is it used to make
17 methamphetamine?

18 A Yes, sir.

19 Q Ether is not illegal, but is it used to make
20 methamphetamine?

21 A Yes, sir.

22 Q And Ether is contained in starter fluid cans, is that
23 right?

24 A Yes, sir.

25 Q To your knowledge, is tubing used to make

Jessie Laintz - Redirect examination
by Solicitor Ross

1 methamphetamine?

2 A Yes.

3 Q To your knowledge, is coffee or are coffee filters used
4 to make methamphetamine?

5 A Yes.

6 Q To your knowledge, are Lithium batteries used to make
7 methamphetamine?

8 A Yes, sir.

9 Q Are any of these problems, products illegal to possess?

10 A No, they are not.

11 Q But is it legal to make methamphetamine?

12 A It is.

13 Q Mr. Williams talked about getting fingerprints off of
14 these items.

15 Could you tell the jury why you did not do that?

16 A Didn't get fingerprints off the items because there was
17 located inside a truck where the defendant said it was his
18 vehicle. They were in there the entire time. I had eyes on
19 the vehicle the entire time I was there. The only time I
20 might not have is when I talked to our victim for
21 approximately a minute. Other than that I was next to or by
22 the vehicle the entire time, and at that point in time there
23 was no reason to do fingerprints.

24 Q You talked about that blue book bag.

25 You said there were some papers in that blue book bag,

Jessie Laintz - Redirect examination
by Solicitor Ross

- 1 is that right?
- 2 A There were.
- 3 Q Did you put those papers in there?
- 4 A No, I did not.
- 5 Q Did Deputy McCaw put those papers in there?
- 6 A No, sir, he did not.
- 7 Q Did Sergeant Hazewinkel put those papers in there?
- 8 A No, sir, he did not.
- 9 Q Okay. Now, you obtained a warrant for possession of
10 methamphetamine, is that right?
- 11 A Yes, sir.
- 12 Q Who obtained the warrants for the controlled substances
13 and the manufacturing charge?
- 14 A Sergeant Hazewinkel did.
- 15 Q Okay. So, you weren't in charge of those two crimes
16 that are being prosecuted today, is that right?
- 17 A No, sir.
- 18 Q Can you tell about the demeanor of the defendant when
19 you placed him in that patrol vehicle?
- 20 A Very unruly, rude, and boisterous.
- 21 Q When he was in the vehicle did he make any statement
22 regarding ownership of that car?
- 23 A He asked what are you gonna do with my truck.
- 24 Q Okay. Now, you spoke with a female in that residence?
- 25 A Yes, sir.

Jessie Laintz - Redirect examination
by Solicitor Ross

1 Q Were there any indications that there were anybody else
2 in that residence?

3 A No.

4 Q Did you subsequently speak with that female in the
5 trespassing case?

6 A Yes.

7 Q Tell me about that please.

8 Did that case go to court?

9 A It did.

10 MR. WILLIAMS: Objection, Your Honor.

11 THE COURT: Yes, sir.

12 MR. WILLIAMS: There's a matter of, I need to argue
13 outside the presence of the jury.

14 THE COURT: All right. Ladies and gentlemen, please go
15 to your jury room. Please do not discuss the case at all in
16 any form or fashion. Thank you.

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

19 THE COURT: All right. Complete your question please,
20 Mr. Ross.

21 Q How many times did you speak with this witness, Ms.
22 Hutto, prior to going to Court for trespassing?

23 A I believe it was once.

24 THE COURT: Okay.

25 Q And when you spoke with her, did she give you any

Jessie Laintz - Redirect examination
by Solicitor Ross

1 indication that the, to make you change your mind about
2 getting the charge, the methamphetamine charge, possession
3 of methamphetamine against the defendant?

4 A No.

5 Q Okay. Did she ever tell you that there was anyone else
6 in that mobile home?

7 A No.

8 Q Did she ever tell you anything that would make you
9 doubt that, doubt your having obtained a warrant against the
10 defendant?

11 A No.

12 SOLICITOR ROSS: Your Honor, that's my answer---

13 THE COURT: All right. Mr. Williams, your objection.

14 MR. WILLIAMS: Hearsay, Your Honor. I don't even know
15 where these questions are really based on.

16 THE COURT: Yes, sir.

17 SOLICITOR ROSS: The defendant is made a point, on
18 cross-examination, that the detective didn't enter the home
19 or follow-up with anyone after making the charges. I'm just
20 simply trying to show to the jury that he did follow-up with
21 her in prosecuting the trespassing case.

22 THE COURT: All right. Yes, sir, Mr. Williams.

23 MR. WILLIAMS: Your Honor, I think the point I was

24 making was that he didn't go inside the trailer to see who
25 all was there who might be potential either witnesses and/or

Jessie Laintz - Redirect examination
by Solicitor Ross

1 perpetrators of the crime.

2 THE COURT: All right. The objection to hearsay is
3 sustained.

4 SOLICITOR ROSS: Yes, sir.

5 THE COURT: All right. Okay. Any other -- will you,
6 will you have any other questions of the witness?

7 SOLICITOR ROSS: No, Your Honor.

8 THE COURT: Do you think you'll have any additional
9 cross?

10 MR. WILLIAMS: I have two additional cross, cross
11 questions.

12 THE COURT: Okay. All right. Well, you ready for the
13 jury to come back out?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: Anybody need to take a break?

16 SOLICITOR ROSS: No, Your Honor.

17 THE COURT: All right. You can bring in the jury if
18 they're ready. If they're not ready, we'll wait.

19 (Pause.)

20 THE COURT: And while, while we're waiting, in the next
21 40 minutes or so, do you think you'll be able to get another
22 witness or two in?

23 MR. WILLIAMS: One, maybe two, Your Honor.

24 THE COURT: Okay.

25 SOLICITOR ROSS: Your Honor, I do have one further

Jessie Laintz - Redirect examination
by Solicitor Ross

1 question just to---

2 THE COURT: Okay. Hold -- if they're coming, just hold
3 on to them.

4 Yes, sir.

5 SOLICITOR ROSS: Just to ensure that we've got
6 jurisdiction covered, I believe he's testified to it, I
7 would like to ask him that one more time just to ensure to
8 cover all my bases.

9 THE COURT: Well, I think that he testified about
10 southern, south section of the county, but you can go ahead
11 and ask him now if you---

12 SOLICITOR ROSS: Okay.

13 THE COURT: So, you're gonna put that in front of the
14 jury?

15 SOLICITOR ROSS: Yes, Your Honor.

16 THE COURT: Do you have any objection to that?

17 MR. WILLIAMS: No, sir.

18 THE COURT: All right. Whenever they're ready.

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

21 THE COURT: Okay. Additional questions?

22 SOLICITOR ROSS: Yes, Your Honor. One more.

23 CONTINUED REDIRECT EXAMINATION

24 BY SOLICITOR ROSS:

25 Q Detective Laintz, what county is in?

Jessie Laintz - Redirect examination
by Solicitor Ross

1 A Lexington County.

2 Q And that's where this incident occurred?

3 A Yes, sir.

4 Q At any point in time during that day did you go outside
5 of Lexington County?

6 A No, sir.

7 Q And that's Lexington County, South Carolina?

8 A Yes, sir.

9 Q Thank you. If you could, please answer any questions
10 Mr. Williams may have for you.

11 THE COURT: Mr. Williams.

12 MR. WILLIAMS: Just a couple questions.

13 RECROSS EXAMINATION

14 BY MR. WILLIAMS:

15 Q Officer, you testified that when you first met my
16 client there was no evidence of intoxication?

17 A No, there was not.

18 Q There was no evidence of use of drugs?

19 A No, there was not.

20 Q And that the only point in time -- well, I guess the
21 only thing you said about it I guess is his appearance or
22 his acting was after he was arrested, he became boisterous?

23 A Yes, sir.

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

25 THE COURT: Okay. Anything else?

Jessie Laintz - Recross examination
by Mr. Williams

1 SOLICITOR ROSS: No, Your Honor.

2 THE COURT: Thank you, sir. You can step down.

3 Next witness.

4 SOLICITOR ROSS: Thank you, Your Honor.

5 The State calls Master Deputy Matthew McCaw to the
6 stand.

7 MATTHEW MCCAWE, being first duly
8 sworn, testified as follows:

9 CLERK: Have a seat please, sir. Once you're seated,
10 state your full name, spelling your last for the record
11 please.

12 WITNESS: If I don't get stuck. My name is Matthew Lee
13 McCaw. Last name is spelled M-C-C-A-W.

14 DIRECT EXAMINATION

15 BY SOLICITOR ROSS:

16 Q Deputy McCaw, you did the field test in this case, is
17 that right?

18 A That's correct, yes, sir.

19 Q Before we get to that, can you tell me what you do for
20 the Sheriff's Department?

21 A I -- currently I'm a patrol supervisor of the south
22 region of Lexington County.

23 Q Okay. And were you in that position on May 29th,
24 2011?

25 A No, sir, I was not.

Matthew McCaw - Direct examination
by Solicitor Ross

1 Q Okay. How many officers do you supervision now?

2 A Currently there's five on a shift --

3 Q Okay.

4 A -- including myself.

5 Q What type of cases do you investigate?

6 A We're the initial responding arm of the Sheriff's
7 Office. It's anything from trespassers and littering to
8 murder. We're the first ones on the scenes. We're the eyes
9 and ears of the Sheriff's Office. So, we catch it all.

10 Q So, correct me if I'm wrong, on May 29th, 2011, you
11 were doing essentially what you do now only that you now
12 been, you're now the supervisor, is that right?

13 A That's correct, yes, sir.

14 Q Okay. And can you tell me what happened on May 29th,
15 2011, please?

16 A I was patrolling the south region of Lexington County
17 when Investigator Laintz, who was Master Deputy Laintz at
18 the time, contacted me, requested my assistance. He advised
19 me what he suspected, and due to my previous experience in
20 law enforcement, he requested that I come up there and
21 assist him with conducting a field test of the substance he
22 found and also confirming his suspicions.

23 Q You said your previous experience.

24 Can you go into that?

25 A I've been in law enforcement since 1998. I started out

Matthew McCaw - Direct examination
by Solicitor Ross

1 in Georgia where I worked for a number of years until 2009.
2 The last four years in Georgia in law enforcement I worked
3 narcotics as an investigator up around the Metro Atlanta
4 area during which time I also assisted in federal and other
5 state agencies and local agencies within Georgia and other
6 states with their investigations.

7 Q All right. What happened when you got to the scene
8 that day?

9 A Once I arrived on scene Investigator Laintz showed me
10 what he already located, which was on the hood of the
11 vehicle. I confirmed -- my suspicions were the same as his
12 as far as the substance in the plastic baggies, which he
13 informed me came from the Altoids can. I produced a ODV
14 narcotics test kit that I carry, which is specifically for
15 the testing of methamphetamines.

16 I took a small minute sample from one of the baggies,
17 which was placed in the test kit. I then tested it for the
18 presence of methamphetamines, which it showed a presumptive
19 positive. It's not a State, State administered chemical
20 test. It's just a field test that gives us a good baseline
21 to say yes, this item is what we believe it to be.

22 Q Can you tell me about the training you've received to
23 do that test?

24 A Part of the training I received when I was working in
25 narcotics was through the Regional Counter Drug Training

Matthew McCaw - Direct examination
by Solicitor Ross

1 Academy in Meridian, Mississippi. As -- when you go through
2 a narcotics investigator course, part of it is where they
3 actually go through the narco pouch. They explain to you
4 the proper way to actually field test different substances
5 to make sure that what you're doing is correctly dissolving
6 all the soluble stuff in the substance that you put inside
7 the pack, and each chemical reaction is done in a consistent
8 manner. You're doing it the same way each time to make sure
9 that the chemicals within the pack have time to react to the
10 substance you put in there, and the time, and the specified
11 order that they go in.

12 Q How much of the sample did you use to test?

13 A It only takes a very minute amount. You don't have to
14 put very much at all in it. It'd be the amount that you
15 could fit on the tip of a pen. As long as it's got a
16 illegal substance that you're testing for in that amount
17 that you're putting in there, it's not cut with something
18 else, and all you're getting is the cut portion of it,
19 basically where somebody's mixing a similar substance to
20 make it look like more than what it is, as long as you
21 actually had the illegal substance anywhere in that grain
22 that you throw in there, it will test and it will show
23 positive if that's the case.

24 Q Now, aside from taking that very small amount for your
25 test, did you take anything else out of that Altoids tin can

Matthew McCaw - Direct examination
by Solicitor Ross

1 or those baggies?

2 A I did not.

3 Q Did you add anything to the Altoids tin can or baggies?

4 A I did not.

5 Q Were they in the same condition as when you left the
6 Altoids tin can in the baggies as when you first got there?

7 A They were.

8 Q Okay. Did you assist in the inventory of the vehicle?

9 A I assisted Master Deputy Laintz, at the time
10 Investigator Laintz now, by just looking over, like I said,
11 where he'd been. I did not remove anything else from the
12 vehicle other than what was already removed. And, again, I
13 just confirmed his suspicions as far as the equipment used
14 in the manufacturing of methamphetamines.

15 Q So, how long does this test take to, to do?

16 A It can be done in a matter of maybe a minute and a half
17 total.

18 Q And the results of that test again were what?

19 A It showed a presumptive positive. It does this by
20 actually a color change.

21 Q And that was for methamphetamine?

22 A It was.

23 Q That's all the questions I have. If you could, please
24 answer anything Mr. Williams has for you.

25 MR. WILLIAMS: Just a couple questions.

Matthew McCaw - Cross-examination
by Mr. Williams

1 CROSS-EXAMINATION

2 BY MR. WILLIAMS:

3 Q It's been a long since time I was in the Army.

4 what, what do those emblems there indicate your rank
5 is?

6 A Master Deputy.

7 Q And you're in charge of more than just testing these
8 substances, aren't you?

9 You have other duties obviously?

10 A You're kind of losing me there.

11 Q Okay. You were called because one particular officer
12 knew you had experience in testing substances, is that
13 right?

14 A Yes, sir.

15 Q And your training that you had received was by virtue
16 of being on-the-job training?

17 You're certainly not a chemist or anything like that,
18 are you?

19 A No, sir, I'm not.

20 Q And you essentially have received some sort of packet
21 for police that allows you to -- and that's to test and see
22 if something is positive for a particular substance that you
23 think it might be positive for?

24 A I'm not quite tracking what you mean by packing.

25 Q All right. The substance that you were testing, is

Matthew McCaw - Cross-examination
by Mr. Williams

1 there a different solution that you would use if you were
2 testing it for something else?

3 A These packs are specific for whichever substance,
4 whichever agent you want to test for. I'm not actually
5 mixing chemicals and pouring them in the package if you may.

6 MR. WILLIAMS: I would love to see it if I could.
7 Can I see it?

8 WITNESS: Yes, sir.

9 Q This is the 922, which is specifically for MDMAI,
10 methamphetamines, meaning you wouldn't use that to test
11 cocaine.

12 Q Okay.

13 A You wouldn't use that to test marijuana. It's
14 specifically for that, either methamphetamine or MDMAI,
15 Ecstasy. If you try to test something other than those in
16 there, it's gonna come back or it should come back with a
17 presumptive negative meaning it should not come back, in this
18 case, a deep dark blue. If you get anything other than a
19 deep dark blue it's considered a presumptive negative.

20 Q So, it, it actually does test -- this particular narco
21 pack actually tests and determines Ecstasy or
22 methamphetamine?

23 I mean it would test positive if you had either one of
24 those substances in there?

25 A That's correct. It's testing for amphetamines.

Matthew McCaw - Cross-examination
by Mr. Williams

1 Q All right. And Ecstasy, Ecstasy has methamphetamine in
2 it?

3 A It's got the amphetamines in it.

4 Q Okay. And the way -- in terms of, of how a test is --
5 the only thing you can tell is that the color indicates that
6 it's present in whatever substance you're testing?

7 A It's a presumptive positive. It's not the State
8 administered, but it's a presumptive positive.

9 Q And it doesn't indicate a percentage?

10 A It does not.

11 Q So, anything which had meth in it or, or any items of
12 meth in it would test, would turn that color that you eye
13 and see?

14 A If it has methamphetamine in it, and it tests it, it's
15 in the pack, it will show up a presumptive positive or it
16 should show up a presumptive positive.

17 Q And do, do you save those items once you test it
18 meaning is there like a little strip like if you're checking
19 somebody for being pregnant or something like that?

20 I mean do you save the strip to look at it or, or---

21 A Actually with these narco pouches, if you actually let
22 them sit more than five, ten minutes, though the chemicals
23 themselves will react and it actually changes back to a
24 different color. It will go to a purple color. So you can
25 only -- it's only valuable on the initial. It's whatever

Matthew McCaw - Cross-examination
by Mr. Williams

1 the initial color was. If you photograph it, obviously it
2 will last longer.

3 Q Did you photograph these items?

4 A I did not personally photograph any of these items.

5 Q All right. And did anyone photograph these items?

6 A Yes, sir, to my knowledge it was.

7 Q All right. And essentially you suspect what the item
8 is before you decide which pouch to use?

9 A I have my educated guess as to what the item might
10 of -- of course, I have other test kits for cocaine.

11 Q How many plastic bags did you see?

12 A There were four plastic bags that I saw.

13 Q And were, were there substances in all four plastic
14 bags?

15 A There was.

16 Q And how did you know which plastic bag to test?

17 A I just picked one that had substance in it and I tested
18 that substance.

19 Q All right, sir. Now, were you -- are you trained in
20 fingerprint analysis?

21 A No, sir, I'm not.

22 Q To your knowledge did anyone do any type of fingerprint
23 analysis on these bags?

24 A To my knowledge, no, it was not.

25 Q Do you have anybody that works at the Sheriff's

Matthew McCaw - Cross-examination
by Mr. Williams

1 Department who's qualified to perform fingerprint analysis?

2 A To my knowledge we do.

3 Q And that's all you did in this particular case, you
4 tested the substance and you went behind the other officer
5 in regards to where he had searched

6 A That's correct.

7 MR. WILLIAMS: That's all the questions I have, Your
8 Honor.

9 THE COURT: Redirect.

10 SOLICITOR ROSS: No, Your Honor.

11 THE COURT: All right. Thank you, sir. You can step
12 down.

13 WITNESS: Thank you.

14 THE COURT: Next witness.

15 SOLICITOR ROSS: Thank you, Your Honor.

16 The State calls Sergeant Richard Hazewinkel to the
17 stand please.

18 RICHARD HAZEWINKEl, being first duly
19 sworn, testified as follows:

20 CLERK: Have a seat please, sir. Once you're seated,
21 state your full name spelling your last.

22 WITNESS: My name is Richard Thomas Hazewinkel. My
23 last name is spelled H-A-Z-E-W-I-N-K-E-L.

24 DIRECT EXAMINATION

25 BY SOLICITOR ROSS:

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 Q Sergeant Hazewinkel, you were the on-call narcotics
2 officer on the day the defendant was arrested, is that
3 right?

4 A Yes, sir.

5 Q Before we get to what you did that day, can you tell me
6 what your present job duties are?

7 A I'm a patrol sergeant for Town of Lexington Police
8 Department.

9 Q And what does that mean?

10 A I'm basically the supervisor for a specific shift that
11 I'm on for the officers who are on that shift.

12 Q Okay. What type of cases do you investigate?

13 A Any, anything that comes through the 9-1-1 dispatch
14 that we get sent to. It could be anything from a minor
15 vehicle accident to an armed robbery in progress.

16 Q How many officers do you supervise now?

17 A Right now, usually four to five on a shift.

18 Q Now, are you in the same position now as May 29th,
19 2011?

20 A No, sir.

21 Q What were you doing then?

22 A At the time of that date I was actually a detective. I
23 was assigned to the Lexington County Multi-Agency Narcotic
24 Enforcement Team, and worked with narcotics, illegal
25 substances.

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 Q Now, what type of illegal substances would you
2 investigate as a narcotic's officer?

3 A Anything we get called from to any type of illegal
4 drug. It could be from somebody growing marijuana in a
5 house to manufacturing any type of substances. It could be
6 anything substance related.

7 Q How long were you in that position as a narcotic's
8 officer?

9 A I was actually there about a year and a half.

10 Q Okay. Tell me what, what happened on the day in
11 question, May 29th, 2011.

12 A Well, again, sir, I was on call. I was actually at my
13 house, and my phone rang. It was on the weekend. So -- I
14 believe it was on the weekend, and I answered the phone and
15 Deputy Laintz had -- I end up talking to Deputy Laintz, and
16 he said he was out at the in Lexington
17 County, and said he thought he, he had found some narcotics
18 or some illegal substances, and he believed that he had
19 found some items associated with the manufacturing of
20 methamphetamine, and asked if I'd come over there.

21 So, I told him I would. I got dressed and drove over
22 there, but I live on one side of the county, and it took me
23 probably 45 minutes, guessing, to get over. It took me a
24 little while to get down there.

25 Q Okay. What happened when you got there?

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 A I, I arrived on scene and parked behind the deputy's
2 vehicle. At the time the deputy's vehicle and the
3 defendant's truck were in the driveway, and I walked up to
4 the, Deputy Laintz and he had certain items that he said
5 that he found from the vehicle. They were sitting on the
6 hood of the pickup truck.

7 And, at that point, he told me that, you know, the
8 individual -- I'm out here for a trespassing call, and I've
9 got these items. And he also indicated that he had found
10 what he believed to be a small quantity of methamphetamine.
11 So, at that point I started looking at the items that he had
12 located from the vehicle.

13 Q All right. And did you take possession of those items?

14 A I took possession of the ones that, that I entered into
15 evidence.

16 Q Okay. Specifically what did you take possession of?

17 A There was a large backpack. It was a black and blue
18 Jansport backpack, and it had a quantity of items inside
19 the, the backpack.

20 Do you want me to tell you those items?

21 Q Please do.

22 A Inside the backpack was a H&R Block tax paperwork. It
23 said -- it had the name it was prepared for. It was Jeffrey
24 D. Thomas was listed on the paperwork. One 26-ounce
25 container of Morton iodized salt, one clear plastic tube,

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 one small green cylinder, one 16-fluid ounce bottle of
2 Isopropyl alcohol about a quarter full, one 55-square feet
3 box of Reynolds aluminum foil, white coffee filters, one
4 Energizer AA ultimate lithium battery, one Energizer AAA
5 advanced lithium battery, one box of Sudogest 12-hour
6 decongestant containing a blister pack of ten 120-milligram
7 of Pseudoephedrine tablets, and a black and silver in color
8 U.S. magnum 1,000XR digital scale. That's the items that
9 were inside the backpack.

10 In addition, I observed one of the -- there, there was
11 one starter fluid can that had been punched that was found
12 by Deputy Laintz, and I also observed two other cans of
13 starter fluid in the bed of the vehicle. So, I took those
14 two -- they were in the bed of the vehicle.

15 Q So, you personally observed those in the bed of the
16 truck?

17 A In the bed, yes, sir.

18 Q All right. What else did you -- what else did you
19 seize that day?

20 A The USA Gold cigarette pack was given to me by Deputy
21 Laintz, and inside the pack I observed one small round white
22 pill labeled GG over 225, and I actually called U.S.C.
23 poison control to, just to get an idea of maybe if they knew
24 what type of pills that they thought these pills would be,
25 and they said that one was some type of---

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 MR. WILLIAMS: Objection to hearsay, Your Honor.

2 THE COURT: Sustained.

3 Q Please don't go into anything that---

4 A Yes, sir.

5 Q ---poison control told you.

6 A Five small oval white tablets labeled S beside 900, and
7 then the Ibuprofen bottle that I was, I was given by Deputy
8 Laintz I found five rust in color small round pills labeled
9 1-2, and a white cylinder shaped unmarked -- three white
10 cylinder shaped unmarked pills containing a white in color
11 powder that looked like kind of like capsules like a -- like
12 the powder had been put into the capsules.

13 Q And what did you do with these items?

14 A I took possession of them. I put them in a -- I carry
15 some like paper bags that you use at a grocery store in my
16 vehicle. I put them in the bed of my truck.

17 Q And when you put---

18 A Trail box.

19 Q What did you do with them next?

20 A I, I locked the door to the truck, and I'm standing
21 right next to the truck anyway talking to Deputy Laintz, and
22 I informed him that I was going back to, to take these items
23 and submit them into a B.E.S.T. Kit for the certain items to
24 get them tested to see if there was any controlled
25 substances in some of those items.

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 Q What items did you place in the B.E.S.T. Kit?

2 A Inside of the B.E.S.T. Kit I placed the, the USA Gold
3 cigarette pack which contained the pills that I stated
4 earlier that were inside of it, and also Ibuprofen bottle
5 that contained pills inside of it.

6 Q What was the B.E.S.T. Kit number that was used?

7 A C020709.

8 Q And after you placed those items in the B.E.S.T. Kit,
9 did you seal it?

10 A Yes, sir, I did.

11 Q And what did you do with it at that point?

12 A I took it to the Sheriff's Department evidence room and
13 submitted it into evidence.

14 Q Okay. From the point that you turned it into the
15 evidence -- from the point that you seized the items from
16 the hood of that truck to the point that you placed them
17 into evidence, placed them in the B.E.S.T. Kit bag and then
18 into evidence, were they in your care, custody, and control
19 the whole time?

20 A Yes, sir.

21 Q Did you alter or manipulate those items in anyway?

22 A No, sir.

23 Q Did anybody else alter or manipulate them?

24 A No, sir.

25 Q Were they in the same condition from the point of

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 seizure to the point you turned them into evidence?

2 A They were; yes, sir.

3 Q Okay. What did you do with the other items in the
4 case?

5 A Also submitted, along with the B.E.S.T. Kit, the box of
6 Sudogest 12-hour decongestant with the ten pills in the
7 blister pack, and the black and silver in color U.S. Magnum
8 1,000 XR digital scale, and the H&R Block tax paperwork
9 prepared for Jeffrey, Jeffrey D. Thomas. The other, the
10 other items I photographed and then they were sent for
11 destruction.

12 Q So, the three items that you also turned in, the
13 Sudogest pack, the tax form and the digital scales, you
14 don't place those in the B.E.S.T. bag, do you?

15 A No, sir.

16 Q Okay. Were they in your care, custody, and control
17 from the point you seized them from the hood of that truck
18 to the point you turned them into evidence?

19 A Yes, sir.

20 Q Were they in the same condition from the point of
21 seizure to the point you turned them into evidence?

22 A Yes, sir.

23 Q Okay. You've mentioned some photographs.

24 Did you personally take some photographs---

25 A I -- yes, sir.

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 Q ---in this case?

2 A I did.

3 Q And where were these taken?

4 A Several of the photographs were taken actually on scene
5 at and then some of the photographs were
6 taken on, on my desk in my office.

7 Q Okay. Were you in Court when Detective Laintz went
8 over some of those photographs?

9 A Yes, sir.

10 Q Did you personally take some of those that were
11 discussed?

12 A Some of them, yes, sir.

13 Q Okay. Sergeant, I'm handing you what's been marked as
14 State's Exhibits 11, 12, 13, 14, 15 and 16.

15 Would you please take a look at these?

16 A (Witness complies.)

17 THE COURT: Those are all for ID, correct?

18 SOLICITOR ROSS: Yes, Your Honor.

19 Q Are these the photographs that you took that day?

20 A I did take these photographs.

21 Q And do they accurately reflect what you seized that
22 day?

23 A Yes, sir.

24 SOLICITOR ROSS: Your Honor, at this time I'd move
25 these exhibits into evidence as well.

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 MR. WILLIAMS: No objection.

2 THE COURT: All right. Eleven through sixteen are in.

3 (WHEREUPON, State's Exhibit Nos. 11 through 16 were
4 received into evidence at this time.)

5 SOLICITOR ROSS: Your Honor, I'd also like to publish
6 these to the jury on the projector.

7 THE COURT: Yes, sir.

8 Q All right. Now, Sergeant Hazewinkel, this projector is
9 not doing a great job on the color of these items involved,
10 but can you explain everything here in this picture?

11 A It's the Jansport backpack. Right here is paperwork
12 from H&R Block. This is the Isopropyl alcohol. It's a
13 metal cylinder. This is more iodized salt. It's clear
14 plastic tubing. It's the box of Sudo, Sudogest. This is
15 the blister pack, the actual pack that you would take the
16 pill out of it's blister pack, and these are the ten pills,
17 Pseudoephedrine pills.

18 Q Now, let me ask you this, sergeant.

19 In this Sudogest pack, were any of the pills taken out
20 of the pack?

21 A No, sir, they just looked just like that right there.

22 Q Okay.

23 A It's still enclosed in the blister pack.

24 Q And what else do you have here?

25 What is that?

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 A These are coffee filters. It's Reynolds wrap. These
2 are a couple of Lithium batteries, and this is a digital
3 scale.

4 Q Okay. Now I'm gonna show you State's 12.
5 What are these?

6 A Those are our starter fluid cans.

7 Q And now No. 13.

8 A That is a picture of the starter fluid can that was
9 originally seized by Deputy Laintz. It had a hole punched
10 on the side near the bottom.

11 Q And this right here, that's the punched hole?

12 A Yes, sir.

13 Q Okay. And as a narcotics officer, are you trained to
14 look for punched holes in starter fluid cans?

15 A Yes, sir.

16 Q What is this photograph of?

17 A That is the USA Gold cigarette pack, and this is a set
18 of pills that are similar, and this is one pill by itself
19 that's different.

20 Q And you sent -- these pills were tested, right?

21 A Yes, sir, I did.

22 Q What we got here?

23 A This is an H&R Block tax paperwork that I observed
24 inside of the Jansport bag, and this is the, where it says
25 prepared for, Jeffrey D. Thomas.

Richard Hazewinkel - Direct examination
by Solicitor Ross

1 Q And this piece of paper, was it the same bag as the
2 digital scale?

3 A That's correct.

4 Q And, finally, what do we have here?

5 What is this name right here at the top of that?

6 A It says Jeffrey D. Thomas.

7 Q Okay. What warrants did you obtain in this case?

8 A I obtained a warrant for manufacturing methamphetamine
9 first offense and possession of controlled substance
10 scheduled first offense.

11 Q What about possession of methamphetamine?

12 Who obtained that warrant?

13 A That was Deputy Laintz.

14 Q Okay. That's all the questions I have for you,
15 Sergeant. If you would, please answer anything Mr. Williams
16 has for you.

17 MR. WILLIAMS: May it please the Court?

18 CROSS-EXAMINATION

19 BY MR. WILLIAMS:

20 Q Sergeant Hazewinkel, as I understand it you were at
21 home, you received a phone call from the officer on the
22 scene, and you're being brought out there because of your
23 expertise in regards to narcotics and drugs and things of
24 that nature, and when you arrived there you find all these
25 items, which are out on the hood -- was it the hood or the

Richard Hazewinkel - Cross-examination
by Mr. Williams

1 trunk of the car, of the truck?

2 A Yes, sir, the hood of the truck

3 Q It was on the hood of the truck.

4 Now, I want you to think back clearly about this or
5 maybe I misunderstood.

6 Did you say that these items were in a backpack?

7 A Some of the items were in a backpack.

8 Q Tell me which items were in the backpack.

9 A When I received possession of the backpack, the H&R
10 Block tax paperwork, the 26-ounce container of Morton
11 iodized salt, clear plastic tube, small green cylinder.

12 Q Go slowly please.

13 Can you go -- start again with the---

14 A I can. Yes, sir, the tax paperwork prepared for
15 Jeffrey D. Thomas.

16 Q All right.

17 A One 26-ounce container of Morton iodized salt.

18 Q All right.

19 A One clear plastic tube, one small green cylinder, one
20 16-fluid ounce bottle of Isopropyl alcohol, one 55-square
21 food box of Reynolds wrap aluminum foil, white coffee
22 filters, one Energizer AA ultimate Lithium battery, one
23 Energizer AAA advanced Lithium battery, one box of Sudogest
24 12R decongestant containing a blister pack of ten,
25 120-milligram Pseudoephedrine tablets, and a black and

Richard Hazewinkel - Cross-examination
by Mr. Williams

1 silver in color U.S. Magnum 1,000 XR digital scale.

2 Q And was it your impression, once you received this book
3 bag, that all the items had been found in this manner in
4 this book bag?

5 A No, sir, these are the items -- when I received the
6 book bag, those items were in the book bag when I received
7 it. As to where they were prior to that, my arrival is by
8 the officer who actually seized them, which is Detective
9 Laintz.

10 Q All right. So, the items were not all in the book bag
11 when they were originally found, were they?

12 SOLICITOR ROSS: Objection, Your Honor. He can't answer
13 that. He wasn't at the scene.

14 THE COURT: He can ask him if he knows.

15 Q Do you know?

16 A I, I don't know, sir. I -- when I took possession of
17 everything, I know that they were seized by Deputy Laintz,
18 but I could not tell you where in the vehicle he seized that
19 from, sir. I do not know.

20 Q And have you had the opportunity to review the incident
21 reports with the, with Officer Laintz before coming to
22 testify today?

23 A I have the copy of the incident report on me right now,
24 yes, sir.

25 Q And what you're testifying to is that, when you seized

Richard Hazewinkel - Cross-examination
by Mr. Williams

1 the bag, there were all like that, but they may or may not
2 have been like that when they were found in the truck?

3 A That is correct.

4 Q And the person who would know how they were found in
5 the truck would be Officer Laintz, isn't that correct?

6 A Yes, sir.

7 Q So, if they were not in that book bag when you found
8 it, that means somebody else had moved them around,
9 manipulated them, or done something with those items to put
10 them in the book bag?

11 A The items were already manipulated because they were on
12 the hood of the truck when I arrived when they were seized.

13 Q And, and the items -- but if they were, if they were in
14 the book bag when you received it, and if they weren't in
15 the book bag when they were found, then somebody else had
16 already messed with the items, hadn't they?

17 A Sir, all I can tell you is to what I observed when I
18 got there. Those, those questions, anything prior to that,
19 sir, you'd have to ask Deputy Laintz.

20 Q You don't know if those tax preparation paperwork were,
21 was in the book bag before you got there or if it was in
22 some other location and was placed in the book bag, do you?

23 A I believe it was in the book bag if I'm not mistaken. I
24 think the deputy -- I'd asked him if he had seen the, any of
25 the paperwork and he doesn't recall seeing the paperwork,

Richard Hazewinkel - Cross-examination
by Mr. Williams

1 and I'm the one who actually opened up the entire book bag.
2 He did not. And, so, the paperwork had to have been in the
3 book bag.

4 Q So, it's your testimony that the deputy did not open up
5 the book bag, is that correct?

6 A The, the deputy did not go through the entire book bag.
7 As to what part of the book bag he may of gone through I
8 don't, I don't recall.

9 Q Well, if the deputy didn't open up the book bag, then
10 those items that we just, that you just testified to would
11 of been in the book bag when they were found in the truck,
12 wouldn't they?

13 A You'd have to ask the deputy, sir. I don't know. I
14 can -- all I can tell you, sir, is that these are what the
15 items were when I arrived there and they were on the hood of
16 the truck.

17 Q Do you know of any reason why you would take numerous
18 items and put them in a book bag, in one particular book
19 bag?

20 I mean would, would there be a purpose in doing that to
21 your knowledge?

22 A I have no idea, sir. I -- what, what are you trying to
23 ask me?

24 I'm sorry. I'm not trying---

25 Q Well, why did you seize the tax preparation paperwork?

Richard Hazewinkel - Cross-examination
by Mr. Williams

1 A Just to show the name, the Jeffrey D. Thomas that was
2 on the tax paperwork. You have the defendant who was on
3 scene along with his vehicle that was on scene, and
4 paperwork in there even showing his name on it.

5 Q All right. And it was in a book bag which had these
6 other items in it, correct?

7 A That's correct, yes, sir.

8 Q And the reason you would bring that in is to indicate
9 maybe whose items they were, right?

10 A It was in his truck. So --.

11 Q And those items in the book bag, you, you would be
12 inclined to be wanting to show that they must of been the
13 guys who had the tax preparation paperwork there?

14 A That's correct.

15 Q So, if the items were not in the book bag when they
16 were originally found, and they were placed in the book bag
17 along with tax paperwork, then someone is manipulating the
18 scene, aren't they?

19 A No, sir, the items were already seized. They were
20 seized by Deputy Laintz who had placed the items on the hood
21 of the vehicle. He had already taken control of them cause,
22 again, he's the who had found them. The only two items that
23 I observed that I took from the vehicle were in the bed of
24 the truck were two starter fluid cans.

25 Q Did you perform any test on any of the items?

Richard Hazewinkel - Cross-examination
by Mr. Williams

1 A No, sir, I did not. I submitted the, the pills for,
2 for analysis through the Sheriff's Department. Me
3 personally doing that I did not, no, sir.

4 Q And you didn't find any items in the search, did you?

5 A I found two starter fluid cans in the bed of the truck.

6 Q So, those were the only two items that you've talked
7 about that were not in the book bag?

8 A That's, that's correct, sir. Everything else in the
9 USA Gold cigarette pack and the Ibuprofen bottle were not in
10 the book bag either.

11 Q Where were they?

12 A They were on the hood of the truck along with the
13 punched can.

14 Q I don't have any other questions.

15 THE COURT: Redirect.

16 SOLICITOR ROSS: No, Your Honor.

17 THE COURT: All right. You can step down.

18 Any other witnesses at this time, Mr. Ross?

19 SOLICITOR ROSS: Yes, sir, Your Honor.

20 The State would call Ms. Candy Kyzer to the stand
21 please.

22 THE COURT: All right.

23 CANDY KYZER, being first duly sworn,
24 testified as follows:

25 CLERK: Have a seat please, ma'am. Once you're seated,

Candy Kyzer - Direct examination
by Solicitor Ross

1 state your full name spelling your last for the record.

2 WITNESS: Candy Kyzer. K-Y-Z-E-R.

3 DIRECT EXAMINATION

4 BY SOLICITOR ROSS:

5 Q Ms. Kyzer, you're the evidence custodian at Lexington
6 Sheriff's Department, right?

7 A I'm one of three of them.

8 Q Okay. Can you tell me what your job duties are in that
9 capacity?

10 A We over -- when we're not there, the deputies have
11 lockers that they can put evidence in or in a box, and in
12 morning time we can come in and open up the lockers, get the
13 items out, go through the bar code program, and make sure
14 everything's entered like it's suppose to be, and printout
15 bar code labels, and put that on the items and then store it
16 in its proper location. We do the same thing if we're there
17 and the deputy brings in items too. Then we also sign out
18 items for individuals that come in and test, and we take
19 items to SLED for them to process too.

20 Q Okay. So essentially you receive evidence from
21 officers, store it for trial, and store it for testing, is
22 that right?

23 A That's correct.

24 Q Okay. Did you receive evidence in this particular case
25 against Mr. Thomas?

Candy Kyzer - Direct examination
by Solicitor Ross

- 1 A I did.
- 2 Q And did receive any -- did you receive any B.E.S.T. Kit
- 3 bags?
- 4 A Yes, I did.
- 5 Q Tell me what B.E.S.T. Kit number you received and when,
- 6 B.E.S.T. Kit numbers rather?
- 7 A Okay. I received B.E.S.T. Kit Number C014827.
- 8 Q When did you receive that?
- 9 A On June the 3rd of 2011 is when I signed it in.
- 10 Q And from where did you receive it?
- 11 A It was in the locker.
- 12 Q Okay. Now, evidence that's stored in a locker, if an
- 13 officer places it in a locker and then you subsequently
- 14 check it out, anybody else handle that evidence?
- 15 A No, what it is is we have all different size lockers
- 16 for the deputies to place items in when we're not there.
- 17 They can open up the locker from their side, put the items
- 18 in there, and then shut the door, and push the button and
- 19 it's locked. Nobody can actually open it until we come in
- 20 and open it from our side.
- 21 Q So, when you received this B.E.S.T. Kit, was it in the
- 22 same condition as when the officer dropped it off?
- 23 A Yes.
- 24 Q Okay. And what did you do with it when you received
- 25 it?

Candy Kyzer - Direct examination
by Solicitor Ross

1 A Went through and made sure that everything, as far as
2 the seals, were in tact and they were. All the paperwork
3 was filled out like it was suppose to be, and then we go
4 through and put it into the system, put the location where
5 we're gonna store it at, and print out bar code labels and
6 put the labels on the B.E.S.T. Kit and then stored it in the
7 location.

8 Q Okay. And did you subsequently handle this B.E.S.T.
9 Kit again?

10 A Yes, I did.

11 Q And tell me about that please.

12 A Part of our job is, like I said earlier, to sign out
13 items whenever they're ready to be tested, whether it's for
14 drug analysis or latent prints, any kind of testing that
15 they want to do onto it. Back on, let's see, June the
16 7th of 2011 I signed the B.E.S.T. Kit out to Emily Homer,
17 which is our chemist, for her to test the B.E.S.T. Kit.

18 Q Okay. When you relinquished possession of it to Ms.
19 Homer, was it in the same condition as when that officer
20 first placed it in the locker?

21 A It was. The seals were still in tact.

22 Q Okay. Did anyone else come into possession of that
23 item?

24 A No.

25 Q Okay. Did you ever receive this particular B.E.S.T.

Candy Kyzer - Direct examination
by Solicitor Ross

1 Kit after it was tested?

2 A Yes, I did.

3 Q And when was that?

4 A On June 21st of 2011 I signed it back in from Emily.

5 Q Okay. And is it, is it in the same condition now as
6 when you received it back into evidence?

7 A Yes, it is.

8 Q You -- do you have that B.E.S.T. Kit with you?

9 A I do.

10 Q May I take a look at it to mark it for evidence?

11 A (Witness complies.)

12 (WHEREUPON, the B.E.S.T. Kit was marked as State's
13 Exhibit No. 18 for identification purposes only at this
14 time.)

15 Q I'm handing you State's Exhibit No. 18 for ID purposes.
16 Can you take a look at this?

17 A Okay.

18 Q That's the B.E.S.T. Kit you were just talking about,
19 right?

20 A That's correct.

21 Q Okay. You can put it back in the folder please.

22 A (Witness complies.)

23 Q Now, was there a second B.E.S.T. Kit turned in in this
24 case?

25 A Yes, it was.

Candy Kyzer - Direct examination
by Solicitor Ross

1 Q And when was that one turned in?

2 A On May the 29th it was signed in by Beth Harmon.

3 Q Who is Beth Harmon?

4 A She's another evidence custodian.

5 Q Okay. So, she's a co-worker?

6 A Yes.

7 Q And what did she do with it?

8 A She signed it in and then put the bar code labels on,
9 made sure everything was in order as far as the paperwork
10 and the seals being in tact, and then stored it in the
11 proper location waiting for it to be tested.

12 Q Now, when she took possession of it, was it in the same
13 condition as when the officer turned it in?

14 A I would have to say so because she wouldn't have signed
15 it in without, with the seals being broke.

16 Q Okay. And did you subsequently check this item out?

17 A Yes, I did.

18 Q And when did you do that?

19 A On June the 7th---

20 Q And when did you---

21 A ---2011.

22 Q And what did you sign it out for?

23 A I signed it out to Emily Homer for her to test.

24 Q And prior to signing it out to test, did you check the
25 labels and the seals?

Candy Kyzer - Direct examination
by Solicitor Ross

1 A Yes, and they were still in tact.

2 Q Did you ever receive this item again?

3 A I did, back on June the 21st, 2011.

4 Q Okay. And is it in the same condition now as when you
5 received it on June 21st, 2011?

6 A Yes, it is.

7 Q And did you bring it to court today?

8 A I did.

9 SOLICITOR ROSS: I ask that this be marked for ID
10 purposes please.

11 THE COURT: Nineteen?

12 COURT REPORTER: Yes, sir.

13 (WHEREUPON, the B.E.S.T. Kit was marked as State's
14 Exhibit No. 19 for identification purposes only at this
15 time.)

16 Q Handing you State's No. 19 for ID.

17 Is that the B.E.S.T. Kit we were just talking about?

18 A Yes, it is.

19 Q Now, you mentioned that before you turned this B.E.S.T.
20 kit in to the chemist for testing the seals were still in
21 tact, is that correct?

22 A That's correct.

23 Q Does that mean that it would be in the same condition
24 as when you turned it in as from the point that it was
25 originally sealed?

Candy Kyzer - Direct examination
by Solicitor Ross

- 1 A Yes.
- 2 Q Okay. Were any other items received in this case?
- 3 A Yes, there was.
- 4 Q Can you tell me what evidence was received?
- 5 A We received a -- it was Sudogest 12-hour decongestant
- 6 box, and a digital scale and some paperwork.
- 7 Q Did you bring those to court?
- 8 A Yes, I did.
- 9 Q Are they in the same condition now as when they were
- 10 first turned in?
- 11 A Yes.
- 12 Q Have they been within the care, custody, and control of
- 13 the evidence room the whole time?
- 14 A Yes, it has.
- 15 Q Has anyone signed them out to handle these items?
- 16 A No, they have not been signed out.
- 17 Q And do you have them with you?
- 18 A Yes.
- 19 Q May I take a look at them please?
- 20 A (Witness complies.)
- 21 (WHEREUPON, a B.E.S.T. Kit was marked as State's
- 22 Exhibit No. 20 for identification purposes only at this
- 23 time.)
- 24 Q I'm handing you State's No. 20.
- 25 Is that the Sudogest box, inside that folder, is that

Candy Kyzer - Direct examination
by Solicitor Ross

1 the Sudogest box you received?

2 A Yes, it is.

3 SOLICITOR ROSS: Your Honor, at this time we'd move No.
4 20 into evidence.

5 THE COURT: All right. Have you moved 18 and 19 into
6 evidence yet?

7 SOLICITOR ROSS: Not yet, Your Honor.

8 THE COURT: All right.

9 MR. WILLIAMS: No objection as to 20, Your Honor.

10 THE COURT: Twenty is in.

11 (WHEREUPON, State's Exhibit No. 20 was received into
12 evidence at this time.)

13 SOLICITOR ROSS: Mr. Williams.

14 MR. WILLIAMS: My only objection, Your Honor, is in
15 regard---

16 THE COURT: What are you referring to now?

17 MR. WILLIAMS: Exhibit No. 21.

18 THE COURT: Okay.

19 MR. WILLIAMS: The only objection would be as to how
20 it's marked as exhibits. Perhaps maybe a separate exhibit
21 because it appears to be more than---

22 THE COURT: All right. We can separately mark those
23 21-A and B?

24 Does that suit you, Mr. Ross?

25 SOLICITOR ROSS: Yes, sir, it is.

Candy Kyzer - Direct examination
by Solicitor Ross

1 THE COURT: Okay. Get her to do it. You can put a
2 companion sticker or the court reporter can do it however
3 it's easier for her.

4 where's the sticker that's No. 21?

5 Is it outside the envelope?

6 SOLICITOR ROSS: It's on the envelope, Your Honor.

7 THE COURT: All right. You can internally mark the
8 other, other one.

9 SOLICITOR ROSS: Okay.

10 THE COURT: Are there one, two, or three items in
11 there?

12 MR. WILLIAMS: Two items.

13 SOLICITOR ROSS: Two.

14 THE COURT: So, one will be A and one will be B, 21-A
15 and 21-B.

16 (WHEREUPON, the two B.E.S.T. Kits were now marked as
17 State's Exhibit Nos. 21-A and 21-B and both were received
18 into evidence at this time.)

19 SOLICITOR ROSS: And, Your Honor, I believe I've moved
20 these into evidence. I don't know if he's objecting.

21 MR. WILLIAMS: I have no objection other than how they
22 were packaged.

23 THE COURT: Which one is 21-A?

24 SOLICITOR ROSS: 21-A is the tax form.

25 THE COURT: Okay.

Candy Kyzer - Direct examination
by Solicitor Ross

1 SOLICITOR ROSS: 21-Bravo is the digital scale.

2 THE COURT: All right.

3 MR. WILLIAMS: No objection as marked.

4 THE COURT: Those are in.

5 SOLICITOR ROSS: Your Honor, that's all the questions I
6 have for this witness.

7 THE COURT: Mr. Williams.

8 MR. WILLIAMS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q Ma'am, you had absolutely nothing to do with this case
12 in regards to the search or the finding of these items that
13 were submitted to you?

14 A No, I did not.

15 Q And your role in this was as an evidence clerk, if you
16 will?

17 You did no testing?

18 A No, I did not.

19 Q So, other than knowing certain items were turned in to
20 you and that they were turned over to somebody else, that
21 would be the extent of your testimony?

22 A That's correct.

23 MR. WILLIAMS: That's all the questions I have, Your
24 Honor.

25 THE COURT: Redirect.

1 SOLICITOR ROSS: None, Your Honor.

2 THE COURT: All right. Thank you, ma'am. You can step
3 down.

4 SOLICITOR ROSS: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: All right. Ladies and gentlemen, we're
9 gonna stop now for lunch, and I want to talk to you about a
10 couple of things.

11 We're gonna get back together at 2:15. So, if you can
12 be -- please be back in your jury room at 2:15, and we'll
13 start at that time. Hopefully then or soon as possible
14 thereafter.

15 Between now and then you may not discuss this case with
16 anyone. That includes amongst yourselves either in the jury
17 room or going to your cars or coming back. If you should go
18 to work or go home, wherever you might go, somebody might
19 know you're on jury duty. You can not talk about this case
20 at all. Don't even bring up who anybody is, who any of the
21 lawyers are, anything about it at all. Don't bring up what
22 the charge is. Just tell anybody who may ask you it you
23 can't talk about it because I'll tell you this. If you do
24 start talking about it, you'll be violating my instructions
25 not to do that, and typically that comes back to bite you.

1 So, please don't do that cause you've sworn an oath to
2 try this case according to the evidence and the law which
3 you will get right here in this courtroom.

4 All right. Don't undertake to do any type of research
5 at all on any issues or people involved in this case.
6 That's using the Internet or whatever other research device
7 that you might have access to. Don't do that at all.
8 Nothing about any of the charges, any of the subject matter
9 that's been covered, or any of the witnesses who have
10 testified.

11 So, please be back at 2:15 and we'll get started
12 promptly at that time.

13 Thank you.

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

16 THE COURT: All right. How many more witnesses does
17 the State have?

18 SOLICITOR ROSS: Two from the State, Your Honor.

19 THE COURT: And potentially two from the defendant?

20 MR. WILLIAMS: That's correct, Your Honor.

21 THE COURT: All right. You know more about the case
22 than I do.

23 Is there anyway that you'll be in a position to, for us
24 to complete this case today?

25 SOLICITOR ROSS: Should be, sir.

1 THE COURT: All right. Do you have -- does anybody
2 have any charges that they would like to, to hand up or at
3 least give me an idea what you might want that would, in
4 your judgment, be separate from my standard charge?

5 SOLICITOR ROSS: I'm sure your standard charge covers
6 it, but if you could charge that control -- something to the
7 effect that if you owned premises---

8 THE COURT: Constructive possession?

9 SOLICITOR ROSS: Constructive possession, yes, Your
10 Honor.

11 THE COURT: We'll go over that in more detail, but I,
12 under the circumstances, I would give a constructive
13 possession charge.

14 Mr. Williams, can you think of anything that you might
15 be asking for?

16 MR. WILLIAMS: No, sir, other than the standard, but is
17 Your Honor anticipating charging this afternoon?

18 THE COURT: That's what I wanted to find out. I know
19 that Mr. Wedekind had a case that he wanted to start
20 tomorrow and I'm going on what I've been told. I have not
21 spoken to him. I usually don't like, especially when it's
22 in the middle of the week, to argue and charge once we're
23 around the four o'clock time. I think that sometimes juries
24 tend to be watching the clock instead of considering the
25 evidence.

1 MR. WILLIAMS: We can---

2 THE COURT: So, I---

3 MR. WILLIAMS: We can complete---

4 THE COURT: If witnesses could be ten minute witnesses.
5 They could be hour long witnesses. I don't know.

6 MR. WILLIAMS: For the Court's edification, Your Honor,
7 I strongly believe that we can complete all the testimony
8 today without getting too bound up. That was -- my, my only
9 question I had was the charge and deliberation time.

10 THE COURT: All right. I think -- and plus, while I'm
11 thinking about it, talk to your client about the issues that
12 I'm gonna discuss with him about his rights.

13 Are there going to be any criminal convictions that you
14 would seek to introduce if the defendant does testify?

15 SOLICITOR ROSS: I believe they're all outside the ten
16 year---

17 THE COURT: Okay.

18 SOLICITOR ROSS: ---time period, Your Honor..

19 THE COURT: All right. Okay. Well, you've got -- who
20 are your last two witnesses?

21 SOLICITOR ROSS: Your Honor, I'm gonna call the
22 chemist. I'm gonna call Lieutenant Thomas Hamilton as an
23 expert in meth production.

24 THE COURT: Okay.

25 SOLICITOR ROSS: For the Court's situation on this, on

1 the -- during my direct of Lieutenant Hamilton I would like
2 to use a Power Point presentation to demonstrate exactly how
3 one makes methamphetamine.

4 THE COURT: Now, they're different ways to make meth,
5 right?

6 SOLICITOR ROSS: Yes, Your Honor.

7 THE COURT: And he's gonna talk about those?

8 SOLICITOR ROSS: He's gonna focus on the new method
9 that's seen around the county now. The shake and bake
10 style.

11 THE COURT: Okay.

12 SOLICITOR ROSS: I have copies of the slides if you'd
13 like to look at them, Your Honor.

14 THE COURT: Are you gonna be objecting to that, Mr.
15 Williams?

16 MR. WILLIAMS: I would, Your Honor, and, and the reason
17 really I would be objecting is that in your normal mobile
18 meth cases, you normally have some substance or some liquid.
19 This is one case where there's none of that. It's just the
20 items themselves.

21 THE COURT: Okay. I'm not gonna rule on that. I know
22 that you want to argue it more fully.

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: But that's certainly good for cross, but
25 not perhaps ironclad on admissibility.

1 MR. WILLIAMS: Yes, sir.

2 THE COURT: But what I was looking for was the evidence
3 about a jug or a bottle. I'm familiar with the shake and
4 bake method, not personally, but I've seen it demonstrated
5 before. I even had a plea in this courthouse where somebody
6 in the jury box, the defendant was making fun of the other
7 defendant who was pleading about his rudimentary method of
8 making his meth. And, so, that was quite enlightening.

9 But in any event, we'll, we'll air all that out.

10 SOLICITOR ROSS: All right, sir.

11 THE COURT: We may not be able to get to the jury
12 today. Sounds like we probably won't. We'll have plenty of
13 time. I'm not gonna rush anybody.

14 MR. WILLIAMS: Yes, Your Honor.

15 THE COURT: Okay. Thank you. I'll see you at -- if
16 you could be back at about five after 2:00.

17 SOLICITOR ROSS: Yes, sir.

18 THE COURT: We'll know better where we are.

19 SOLICITOR ROSS: Yes, sir.

20 THE COURT: Thank you.

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

22 THE COURT: Anything we need to discuss before we begin
23 with the jury?

24 SOLICITOR ROSS: Not from the State, Your Honor.

25 MR. WILLIAMS: Nothing from the defendant, Your Honor.

1 THE COURT: There was something about an issue of the
2 testimony of Lieutenant Hamilton.

3 Is he gonna be your next witness?

4 SOLICITOR ROSS: No, he's gonna be my last witness. My
5 next witness isn't actually in the courtroom.

6 THE COURT: Oh, I know it's early. So --.

7 SOLICITOR ROSS: It's the chemist in this case, Your
8 Honor.

9 THE COURT: Okay. And what you're objecting to that
10 Mr. Ross was summarizing about the supposed testimony of the
11 Lieutenant, he was gonna talk about how to make meth and you
12 objected. I think you said your objection was that they
13 didn't find residue or smell anything in there.

14 MR. WILLIAMS: That, that the -- this is one of the --
15 this is one of the only cases I've seen where there was no
16 liquid of any kind, it was just product, and I'm not sure he
17 had everything needed to make meth.

18 THE COURT: Well, I guess we'll find out. But the -- I
19 guess what I wanted to do, not to cut you short on your,
20 certainly your right to make an objection, is for some type
21 of hearing or testimony outside the presence of the jury, if
22 he was gonna be the next witness, perhaps we could of
23 covered a little bit, that more thoroughly. But I
24 understand you're gonna try it in the order that you think
25 is appropriate, and as soon as she gets here, if all the

1 jury's here, we can get started a little bit earlier.

2 SOLICITOR ROSS: Okay.

3 THE COURT: I think she might be out in the hall.

4 SOLICITOR ROSS: She probably is. I'll check, Your
5 Honor---

6 THE COURT: How, how many jurors are we waiting on?

7 BAILIFF: I think we got them all, Your Honor. I'll
8 check and see.

9 THE COURT: Okay. All right. Well, I'm not putting
10 any pressure on y'all. I'm just gonna sit right here
11 instead of walking back down the hall.

12 SOLICITOR ROSS: Well, Your Honor, just to be clear,
13 when Lieutenant Hamilton does testify, I would look to show
14 a Power Point for the jury to explain the process regardless
15 of whether, what was seized on the scene this day. We would
16 like to---

17 THE COURT: Are you gonna offer him as an expert?

18 SOLICITOR ROSS: We're gonna offer him as an expert and
19 then we're gonna go into the process and would like to do it
20 on the, on the board here with a Power Point.

21 THE COURT: Okay.

22 MR. WILLIAMS: Yeah, my concern is that his testimony
23 will not be related to those items that were found in the
24 vehicle. If there's more than one way to make meth, and if
25 the items which were found in the truck are not the items

1 that -- he's gonna testify about some other ways to make
2 meth, then his testimony would not be relevant.

3 THE COURT: Well, I don't know if I agree or disagree.
4 We're yet to find out, but it seems to me that some of that
5 would be right up your alley and it may help you --

6 MR. WILLIAMS: True.

7 THE COURT: -- or you may try to use it to help you.

8 MR. WILLIAMS: That's true.

9 THE COURT: So --.

10 MR. WILLIAMS: That's true.

11 THE COURT: So, we'll, we'll take it as it comes.

12 SOLICITOR ROSS: Yes, sir.

13 THE COURT: Y'all, y'all will know how to, to lay the
14 foundation and attack the foundation.

15 SOLICITOR ROSS: I'll locate the witness.

16 THE COURT: Can somebody go outside and look for her?

17 BAILIFF: We have all the jurors, Your Honor.

18 (Pause.)

19 THE COURT: All right. Okay. You ready to go, Mr.
20 Ross?

21 SOLICITOR ROSS: I'm ready, sir.

22 THE COURT: Mr. Williams?

23 MR. WILLIAMS: I am, Your Honor.

24 THE COURT: All right. Bring in the jury, and you want
25 to go ahead and bring them in. I'm gonna appoint Mr. Perdue

1 as the foreman of the jury.

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

4 THE COURT: All right. Ladies and gentlemen, we are
5 ready to move forward. I think we do have everybody.

6 Mr. Perdue, I'm gonna appoint you as the foreman of the
7 jury. Next time you come in, and every time thereafter, not
8 right now, you'll be sitting, sitting in the, on the front
9 row closest to the door. Frankly you can sit wherever you
10 want, but when the verdict is returned, that would be your
11 position to sit in, sir. Otherwise you can sit wherever you
12 like to sit.

13 Okay. Mr. Ross, you ready to go?

14 SOLICITOR ROSS: Yes, Your Honor.

15 THE COURT: Call your next witness.

16 SOLICITOR ROSS: State calls Emily Homer to the stand.

17 EMILY HOMER, being first duly sworn,
18 testified as follows:

19 CLERK: Have a seat. Once you're seated, state your
20 full name spelling your last on the record.

21 WITNESS: Emily Homer. H-O-M-E-R.

22 DIRECT EXAMINATION

23 BY SOLICITOR ROSS:

24 Q Good afternoon, Ms. Homer.

25 How are you?

Emily Homer - Direct examination
by Solicitor Ross

1 A Good.

2 How are you?

3 Q I'm doing great. Thanks.

4 You're the chemist at the Sheriff's Department, is that
5 correct?

6 A Yes.

7 Q And you performed test in this case, didn't you?

8 A Yes.

9 Q Before I get into those tests I'd like to ask you some
10 questions about your qualifications for this job.

11 Can you tell me about your, your experience and your
12 education please?

13 A My education is I have a Bachelor's in Chemistry
14 through the University of South Carolina. Also have a
15 Master's in, for Organic Chemistry from the University of
16 South Carolina. I have training in specifically drug
17 analysis from SLED and the -- I've been certified as a drug
18 analyst through SLED, the South Carolina Law Enforcement
19 Division, and I've also been trained by the DEA as a drug
20 analyst and I'm also---

21 Q What is -- what is the DEA?

22 What is that?

23 A The Drug Enforcement Agency. It's a federal group---

24 Q Okay.

25 A ---in---

Emily Homer - Direct examination
by Solicitor Ross

1 Q Continue please.

2 A I'm also a law enforcement officer with the Sheriff's
3 Department, and I have---

4 Q How long have you been employed with the Sheriff's
5 Department?

6 A It will be eight years or seven years this November.
7 Sorry. It's many years past and --.

8 Q For all those years have you been a chemist?

9 A Yes, I've been a chemist since I graduated undergrad in
10 2000.

11 Q Okay. What type of drugs do you test?

12 A Well, I can, I can look at any drug when, when -- I
13 specifically, in the lab, I mainly identify controlled
14 substances. Those that are prescription or controlled as
15 far as controlled Schedules I through V.

16 Q Do you test for methamphetamine?

17 A Yes.

18 Q Okay. Do you test for crack cocaine?

19 A Yes.

20 Q What other drugs do you test for?

21 A Well, there's marijuana. There -- and that, the active
22 ingredient, tetrahydrocannabinol. There's LSD. There's
23 PCP. There's different Benzodiazepines, things such as your
24 Alprazolam, which is Xanax. Diazepam. I mean there's lots
25 of drugs.

Emily Homer - Direct examination
by Solicitor Ross

1 Q Have you been qualified as an expert in drug analysis
2 in State and Circuit or Federal Court?

3 A Yes.

4 Q How many times?

5 A Fifteen.

6 Q Is that in State Court, Federal Court, or what's the
7 breakdown?

8 A Once Federal and the rest State Court.

9 SOLICITOR ROSS: Your Honor, at this time we'd like to
10 offer her as an expert in drug analysis.

11 MR. WILLIAMS: No objections.

12 THE COURT: All right. Ladies and gentlemen, let me
13 have your attention for just a few moments.

14 This witness is qualified as an expert in the field of
15 drug analysis. Typically, during the course of the trial, a
16 witness is not permitted to give opinions. In other words,
17 a witness is typically limited to saying to what the person
18 saw or heard or smelled or touched.

19 There's an exception in the Rules of Evidence for
20 someone who is qualified, by education, training, or
21 experience in a particular field, that type of witness,
22 called an expert witness, can give opinions, and can give
23 the reasons for those opinions.

24 Now, that does not mean that you are bound by the
25 testimony of an expert just because it comes from an expert.

Emily Homer - Direct examination
by Solicitor Ross

1 You give the expert witness' testimony the weight that you
2 believe it is entitled to.

3 All right. Go ahead. She's qualified as an expert in
4 drug analysis.

5 Q Ms. Homer, before we get to the test you performed in
6 this case, can you explain to the jury the handling
7 procedures you employed when you receive, receive drugs to
8 test?

9 A You mean when, when I take it from the evidence room?

10 Q Yes, the, the quality control procedures you use to
11 ensure that drugs aren't contaminated or lost or that anyone
12 else could tamper with those drugs.

13 A Well, well, drugs especially you have to be more, more
14 careful with them based on -- I'm not a lawyer, but I think
15 there's an official term of fungible or something, and it's
16 why---

17 Q Fungible evidence.

18 A Fungible evidence. That essentially you have to make
19 sure that they're, they're not handled the wrong way. They
20 can be -- you know, you don't want to drop a whole bunch of
21 powder on the floor, right.

22 So, what we use in the, at the Sheriff's Department is
23 called a B.E.S.T. Kit. It's B-E-S-T. It stands for Best
24 Evidence Sampling Technique, and it -- we use a, a plastic
25 bag that has seals that are already imprinted along the

Emily Homer - Direct examination
by Solicitor Ross

1 sides to show that -- it is not -- it's not tamper proof.
2 But it's tampered evident. You should be able to tell if
3 somebody has messed with the seal to try and tamper with the
4 items placed in that bag which, which are usually the drug
5 evidence.

6 Q When you receive drugs, do you store these in a locker
7 of any, of any type?

8 A I have a safe. And that when I, when I take drugs or
9 what evidence from the evidence room, I immediately bring it
10 back to my lab, and if I don't start working on it that day,
11 then I'll store it in a safe that's in the lab that I only
12 have a combination for, and the lab itself too has, is
13 locked with -- we call it a proxy card and they're only two
14 people that can come and go from the lab. It's myself and
15 my boss.

16 Q Did you receive two B.E.S.T. Kits to test in this case?

17 A Do you have the B.E.S.T. Kit numbers?

18 Q C014827, did you test the contents of this B.E.S.T.
19 Kit?

20 A Yes.

21 Q And when did you first receive this B.E.S.T. Kit?

22 A On June 7th, 2011.

23 Q Okay. And when did you do the testing on the contents
24 of this B.E.S.T. Kit?

25 A I actually did the testing on June 7th.

Emily Homer - Direct examination
by Solicitor Ross

1 Q Okay. And from the point that you received it to the
2 point that you opened it up and did the testing in this
3 case, was this B.E.S.T. Kit within your care, custody, and
4 control the whole time?

5 A Yes.

6 Q What test did you do on the contents of this B.E.S.T.
7 kit?

8 A Two confirmatory tests and one presumptive screening.

9 Q And what's a confirmatory test and a presumptive
10 screening?

11 Can you explain that a little bit?

12 A Presumptive screening sort of gives me -- you know, you
13 hear the road officers say that it's presumptive positive.
14 That's actually just giving kind of an idea of, of a drug
15 group and mainly what we employ is just -- and it's -- I
16 don't rely on just the presumptive screening. It -- a lot
17 of times my, the second step, my confirmatory screening,
18 where I use two different instruments, will either confirm
19 that presumptive screening or, or deny it. But it really
20 just mainly gives me an idea. It's nothing -- I don't fall
21 completely on it. It's just it may or may not be cocaine.

22 But then when I take it to a -- I have two different
23 instruments that I use for my confirmatory screening. Those
24 two instruments will give me a hundred percent, without a
25 doubt, this is that drug or this isn't that drug.

Emily Homer - Direct examination
by Solicitor Ross

1 Q So, based on your test, did you come to any conclusions
2 as to what was in that B.E.S.T. Kit?

3 A Item 1.1 I found methamphetamine .02 grams, and 1.2 --
4 and I -- do I need to read what it was?

5 Q Please.

6 what, what did you find?

7 A Okay. 1.1 was a tied plastic bag that was inside of
8 the Altoids tin, and that was .02 grams of methamphetamine.
9 1.2 was, was another tied plastic bag inside of that tin
10 container, and it was .08 grams of methamphetamine.

11 Q Okay. Was there anything else in that B.E.S.T. Kit?

12 A It looks like there was two Ziploc bags, but I didn't
13 do any analysis on those. They were just containing
14 possible residue.

15 Q Okay. Why didn't you do any analysis on the, on those
16 two?

17 A Because the weights. I mean even if it was or wasn't a
18 drug, it wouldn't make a difference with the amount of
19 weight of methamphetamine I already found.

20 Q Okay. What happened -- what do you do once you open a
21 bag, test the contents, what do you do with the contents of
22 the bag and the bag itself?

23 A I'll repackage it into another bag that I seal, and the
24 way I do the seal is that -- if y'all've ever had a Ziploc
25 bag and you put some heat on it, if it's already got writing

Emily Homer - Direct examination
by Solicitor Ross

1 on it, that writing may get distorted if it's on the
2 outside. So, what I do is I'll seal -- I'll write on it the
3 date on the inside of the bag that I've sealed it, and then
4 I'll heat seal that so that you can, if that seal is been
5 tampered with, then my writing would be distorted.

6 Q Okay. Ms. Homer, I'm gonna show you what's been marked
7 for ID as State's Exhibit No. 18.

8 Can you take a look at that please?

9 A (Witness complies.)

10 Q Okay. Had you had a chance to look at it?

11 A Uh-huh. (Affirmative).

12 Q Is that the B.E.S.T. Kit that we were just talking
13 about?

14 A Yes.

15 Q Is it in the same condition now as when you sealed it
16 after your testing?

17 A Yeah, you can, can see that my seal actually makes the
18 writing a little bit darker so that seal is, was still
19 present.

20 SOLICITOR ROSS: Okay. Your Honor, at this time we'd
21 offer State's 18 into evidence.

22 MR. WILLIAMS: No objection, Your Honor.

23 THE COURT: Eighteen is in.

24 (WHEREUPON, State's Exhibit No. 18 was received into
25 evidence at this time.)

Emily Homer - Direct examination
by Solicitor Ross

1 THE COURT: Is that C014827?

2 SOLICITOR ROSS: Yes, Your Honor.

3 THE COURT: Okay. All right. Go ahead.

4 Q Now, is there a second B.E.S.T. Kit that you tested in
5 this case, Ms. Homer?

6 A That's C020709.

7 Q And when did you receive it?

8 A That's correct. That's the right -- we're talking
9 about that, the C020709, right?

10 Q Yes, ma'am.

11 A On June 7th, 2011.

12 Q And when did you perform the test on the contents of
13 that B.E.S.T. Kit?

14 A On June 7th.

15 Q Okay. And from the point that you received it to the
16 point you did the testing, did anyone else come into
17 possession of that item?

18 A No.

19 Q What test did you perform?

20 A Both a presumptive and one confirmatory.

21 Q Okay. I'd like to direct your attention on your report
22 to Item 1.2. Specifically 1.2.1.

23 A Uh-huh. (Affirmative).

24 Q Can you tell me what the finding of that item was?

25 A Alprazolam.

Emily Homer - Direct examination
by Solicitor Ross

1 Q Now, what is Alprazolam?

2 A Alprazolam is a Benzodiazepine. It's a, a -- I'm not a
3 doctor or a pharmacist, but it's in the group of -- they're
4 considered to be depressants. Common name for Alprazolam is
5 Xanax.

6 Q I'm gonna hand you -- one second.

7 (Pause.)

8 Q What's been marked as State's No. 19.

9 Please take a look at what we have here.

10 A It's the B.E.S.T. Kit that---

11 Q That's the B.E.S.T. Kit we were just talking about?

12 A Uh-huh. (Affirmative).

13 Q Is it in the same condition now as when you sealed it
14 after your testing?

15 A Yes, it is.

16 Q And how do you know that?

17 A Cause my seal's still in tact on the bottom of the bag.

18 SOLICITOR ROSS: Okay. Your Honor, at this time we'd
19 offer No. 19 into evidence.

20 MR. WILLIAMS: Your Honor, could I have one more second
21 looking at this?

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. WILLIAMS: No objection, Your Honor.

25 THE COURT: Okay. Nineteen is in evidence.

Emily Homer - Direct examination
by Solicitor Ross

1 (WHEREUPON, State's Exhibit No. 19 was received into
2 evidence at this time.)

3 Q So, an item in this, in this kit tested positive for
4 Alprazolam, is that right?

5 A Uh-huh. (Affirmative).

6 Q And that's the same thing as Xanax?

7 A Yes, sir, one of -- the common name of Alprazolam is
8 Xanax.

9 Q Did you do any reports for these two B.E.S.T. Kits that
10 you tested?

11 A Yes, two different reports.

12 Q Is it your regular business practice to prepare reports
13 for all the drugs that you test?

14 A Yes.

15 Q And as the chemist, are you the custodian of these
16 reports?

17 A Yes.

18 Q Did you bring them into Court today?

19 A Yes, I did.

20 Q May I take a look at them please?

21 A This is the last one.

22 (WHEREUPON, two reports were marked as State's Exhibit
23 Nos. 22 and 23. Both of the above exhibits were for
24 identification purposes only at this time.)

25 Q Ms. Homer, I'm handing you State's No. 23.

Emily Homer - Direct examination
by Solicitor Ross

1 Is that the report you did on the B.E.S.T. Kit with
2 methamphetamine in it?

3 A Yes.

4 SOLICITOR ROSS: Your Honor, at this time I'd offer 23
5 into evidence.

6 MR. WILLIAMS: Without objection, Your Honor.

7 THE COURT: It's in.

8 (WHEREUPON, State's Exhibit No. 23 was received into
9 evidence at this time.)

10 Q Now I'm handing you State's No. 22.

11 Is that the report you did on the other B.E.S.T. Kit?

12 A Yes.

13 SOLICITOR ROSS: Your Honor, at this time I'd offer
14 that one into evidence.

15 MR. WILLIAMS: Without objection.

16 THE COURT: All right. It's in.

17 (WHEREUPON, State's Exhibit No. 22 was received into
18 evidence at this time.)

19 Q No further questions for you, Ms. Homer. Please answer
20 anything Mr. Williams might have.

21 MR. WILLIAMS: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q Good afternoon, Ms. Homer

Emily Homer - Cross-examination
by Mr. Williams

1 A Hi.

2 Q The -- as I understand your, I guess your role in this,
3 you're the chemist?

4 A (Witness nods affirmatively.)

5 Q You have simply analyzed what items have been presented
6 to you at Lexington County Sheriff's Department, right?

7 A Right.

8 Q You didn't find it?

9 You did nothing with these items other than chemically
10 test them?

11 A Right. I mean I just -- whatever items are submitted
12 to me --.

13 Q You, you don't know where they came from?

14 A (Witness nods negatively.)

15 Q I mean you don't, do you?

16 A Other than the case number and sometimes I'm given a
17 location, but I'm not -- I don't want a lot of information.
18 I'm suppose to be an unbiased opinion of strictly just the
19 evidence.

20 Q And you certainly weren't there when they were found?

21 A No.

22 Q If I could, the -- essentially Exhibits No. 22 and
23 Exhibits No. 23 are your summaries, if you will, of, of what
24 you analyzed, is that correct?

25 A Yes.

Emily Homer - Cross-examination
by Mr. Williams

1 Q Now, I note that in one of the exhibits, and we'll --
2 well, we'll take them one-by-one.

3 we'll -- let's see. Exhibit 19, in Exhibit 19, you
4 have several items which are in the B.E.S.T. Kit, and, if
5 you would, would you tell the jury, all of the items which
6 are in the B.E.S.T. Kit -- let me hand you the thing. I
7 don't want it to get out of it's exhibit number.

8 A well, it's hard to see through the B.E.S.T. Kit at this
9 point, but I have Item 1 was one Ziploc bag that contained
10 Item 1.1 was a medicine bottle labeled Ibuprofen.

11 Q Let me, let me ask you to go slow if I could.

12 So, you've got one item in that bag?

13 A Right.

14 Q which contains a medicine bottle of Ibuprofen?

15 A Yes, if you look at my, my items, if I notate something
16 as one, then that, and then something 1.1 or 1.2, then those
17 are items within item one.

18 Q Okay. So, you have a bottle of Ibuprofen.

19 was there Ibuprofen in there?

20 A well, it was labeled Ibuprofen. Let's see if -- yes.

21 Q And how many -- were there capsules or were there---

22 A Tablets.

23 Q Tablets.

24 How many tablets of Ibuprofen were there?

25 A I found five red round tablets.

Emily Homer - Cross-examination
by Mr. Williams

1 Q All right. And Ibuprofen, for the jury's edification,
2 is what?

3 What's the common -- is that Advil or is that Tylenol
4 or what is it?

5 A Well, a common name would be Advil. It's usually
6 Ibuprofen.

7 Q All right. And you don't, you don't require any type
8 of prescription to have Advil, do you?

9 A No.

10 Q So, part of your B.E.S.T. Kit contains Ibuprofen with
11 something in it which probably we've, we've all got at home,
12 is that right?

13 A Yes, but also within that item was Alprazolam.

14 Q All right. And Alprazolam, was it in the Ibuprofen
15 bottle?

16 A Yes.

17 Q All right. And the, the Alprazolam is, I think you
18 said---

19 A Alprazolam.

20 Q Alprazolam?

21 A Yeah, they're Benzodiazepines.

22 Q So, you're saying that you opened up the container, the
23 Ibuprofen container, and inside that container is when you
24 found five Ibuprofen and some Al, and some Alpra---

25 A Well, actually -- let's see. So, the medicine bottle

Emily Homer - Cross-examination
by Mr. Williams

1 contained -- well, the Ibuprofen contained one, two, three,
2 four, four different items, and then I had a USA Gold
3 cigarette wrapper that contained the Alprazolam and
4 Promethazine.

5 Q So, you did not find the Alprazolam inside the
6 Ibuprofen bottle?

7 A Well, I'm sorry. They actually -- they were inside the
8 main Ziploc bag that was labeled Item 1.

9 Q Okay. So, if we can go real slow---

10 A Yeah, sorry. We had two---

11 Q Inside the Ibuprofen bottle there was Ibuprofen?

12 A There was Ibuprofen and two different things of gelatin
13 capsules. Well, excuse me, one, two, three different
14 gelatin capsules, but I didn't find any controlled substance
15 in this.

16 Q So, in the bottle that's marked Ibuprofen, there was
17 Ibuprofen?

18 A uh-huh. (Affirmative).

19 Q Three capsules which had no controlled substances in
20 them?

21 A Right.

22 Q Okay. All right. Now, what else is contained in that,
23 in that B.E.S.T. Kit, B.E.S.T. Bag I should say?

24 A There's also a USA Gold cigarette wrapper that
25 contained the five tablets of Alprazolam and one tablet of

Emily Homer - Cross-examination
by Mr. Williams

1 Promethazine.

2 Q Now, did you open up the cigarette pouch and find those
3 pills in the cigarette pouch?

4 A Cigarette pouch, the cigarette -- there's a---

5 Q Pouch.

6 A There's -- I'm just going -- I labeled it as a USA, USA
7 Gold cigarette wrapper containing those two items. So, that
8 must of been inside---

9 Q I'm asking what you recall.

10 A ---the wrapper.

11 Q You did the testing, you opened it up, what did you
12 find in the---

13 A Yeah, I'm just going by what my notes are. I don't
14 memorize my cases.

15 Q Okay.

16 A I get over, you know --

17 Q That's, that's fine.

18 A -- 500, 600 cases a year. I'm just reading off of my
19 notes.

20 Q So, so, you don't remember whether or not the pills
21 were inside the cigarette container?

22 A Well, they must of been because I put containing.

23 Q Could someone have told you that they were in the
24 cigarette container?

25 A No.

Emily Homer - Cross-examination
by Mr. Williams

1 Q No one could of told you they were in there?

2 A No, I don't go by what anybody tells me.

3 Q So---

4 A I go by what I see.

5 Q So, you opened it up and you found the Alprazolam
6 inside the cigarette box container which -- and the
7 cigarette box container's made out of paper, right?

8 A It has a cigarette wrapper.

9 Q Okay. Wrapper.

10 A Let's see. I've got to actually open it to see what it
11 looks like now.

12 Q I don't care if you don't care.

13 A I mean I just---

14 Q You want to open it up?

15 Q I just need scissors. I mean it's up to y'all.

16 SOLICITOR ROSS: Your Honor, may I approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: All right. You can go ahead, and, Mr.
21 Williams, you may continue with the witness.

22 She said she needs some scissors?

23 MR. WILLIAMS: She does, Your Honor, and I was thinking
24 maybe a clerk might have one over here. I know Mrs. Hope
25 probably does.

Emily Homer - Cross-examination
by Mr. Williams

1 WITNESS: Did y'all need this sealed back up
2 afterwards?

3 THE COURT: Yes, ma'am.

4 WITNESS: I don't have a sealer.

5 THE COURT: Well, we'll, we'll take care of that --

6 WITNESS: Okay.

7 THE COURT: -- somehow.

8 Just identify, Mr. Williams, if you would with the
9 witness, exactly what's in there so the record will be
10 clear.

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: Exactly what she's taken out.

13 This is No. 19?

14 MR. WILLIAMS: Yes, sir.

15 Q You came prepared with the gloves.

16 A Yeah, I always carry them.

17 You want me to take everything out?

18 Q Please.

19 A Okay. So, here's the USA Gold cigarette wrapper.

20 Q All right. And what is that material made out of?

21 Is it, is it paper with some sort of plastic around it?

22 A I guess -- I don't analyze the paper and plastic.

23 Q Just---

24 A Yeah.

25 Q I'm just asking as to whether or not you might have

- 1 done some sort of fingerprint analysis on the cigarette
2 pack.
- 3 A No, I'm not trained to do fingerprint analysis.
- 4 Q Do you have persons at the Sheriff's Department who do?
- 5 A Not routinely on drugs. They have to have specifically
6 have asked.
- 7 Q Someone has to ask them to do it?
- 8 A Uh-huh. (Affirmative).
- 9 Q Okay. Go ahead.
- 10 A And then I've got a Ziploc bag. I must of repacked
11 Item 1.2.1 and 1.2.2.
- 12 Q And what are those items, 1.1 and 1.2?
- 13 A Well, it's 1.2.1, which is the Alprazolam, and 1.2.2
14 was the Promethazine.
- 15 Q All right. What is Promethazine?
- 16 What is that?
- 17 A A prescription -- give me a second to take it out. I
18 don't handle any drug evidence without gloves on. I
19 wouldn't recommend -- research that I found said that it's
20 an antihistamine. It's prescription.
- 21 Q So, it's an antihistamine versus a decongestant like
22 Sudafed?
- 23 A I, I don't know.
- 24 Q Okay.
- 25 A I'm not pharmacist.

Emily Homer - Cross-examination
by Mr. Williams

1 Q All right.

2 A So --.

3 Q Do you know whether or not this particular one is one
4 which is allowed to be sold over-the-counter or not like
5 Zyrtec and Claritin?

6 A I don't know for sure, but I believe it's, it's
7 prescription. Usually you need a prescription to get a
8 prescription.

9 Q Do you have that listed?

10 Do you have a book somewhere that says that only these
11 are prescribed and these you can get over-the-counter?

12 A Yeah, I'm, I'm not a pharmacist. So, you know, mainly
13 I know what drugs are controlled keeping track of what
14 prescriptions are out. There's hundred of thousands of
15 prescriptions that they're, could possibly be. So, I---

16 Q So, you're not qualified to say if this is something
17 that can be sold without a prescription not just like---

18 A I don't keep track of whether or not it can -- you
19 know, the certain drugs are -- I rely on my references in
20 that, but mainly I identify controlled drugs.

21 Q Do you have any reference -- did you note any reference
22 that you could not purchase this over-the-counter---

23 A I didn't try to---

24 Q ---or could purchase it over-the-counter?

25 A I don't know if you can or not now. Like I said, I

Emily Homer - Cross-examination
by Mr. Williams

1 mainly keep up with the laws as far as it goes to controlled
2 substances.

3 Q Okay.

4 A Whether or not something is purchased over-the-counter,
5 it doesn't actually have to go through state laws to -- I
6 mean it's---

7 Q Would that change---

8 A It has to do with patents and---

9 Q Would that change it from being a controlled substance
10 or not if it was, if you were able to purchase it
11 over-the-counter versus having to purchase it from a
12 pharmacist?

13 A Well, controlled substances is, is dictated by the
14 State Legislature.

15 Q Okay.

16 A Not -- they don't dictate prescriptions normally.

17 Q Okay. Now, you found those two items inside, as, as
18 your notes indicate, you found them inside that cigarette
19 wrapper, which is all tied up, is that right?

20 All wrapped up -- was it wrapped up or was it, was it
21 just like it is now or did you, you know -- do you remember?

22 A If I put that it contained then it was inside of it.

23 Q Okay. What else did you find in Item, in Item 19?

24 A Nineteen?

25 Q Exhibit 19?

Emily Homer - Cross-examination
by Mr. Williams

1 A Oh.

2 Q Is that it?

3 A So, this B.E.S.T. Kit was Exhibit 19?

4 Q Yes, ma'am.

5 A The Ziploc bag, the medicine bottle labeled Ibuprofen,
6 and my labels on each item matched with the labeling on the
7 report.

8 Q Were you aware as to whether or not there were any
9 other drug containers which may or may not have been found
10 in the vehicle that was attributed to my client?

11 Do you know whether or not there was any other drug
12 containers that were found?

13 A I know that both of these B.E.S.T. Kits had the same
14 case number.

15 Q You don't know if there were any other medication
16 bottles that were, you found, do you?

17 A All I know, like I, like I stated, I'm, I'm told just
18 the evidence that comes to me. I'm not told anything else
19 that's collected at the scene or not, not told any other
20 information other than what the evidence that comes to me.

21 Q If you, if you would put all that back together so we
22 don't lose it please, ma'am.

23 A And I've cut the seal off completely, but you should be
24 able to see the seal also in the bag.

25 Q Thank you.

Emily Homer - Cross-examination
by Mr. Williams

1 Referring to Exhibit No. 18 --.

2 A Am I gonna have to open this one too?

3 Q No.

4 A Should I put them up?

5 Q No. No, you may not. You may not.

6 Are you able to know the answer to this without opening
7 it?

8 It appears that there are small plastic bags inside
9 that bag with a handwriting on it. Starts with an A or
10 something.

11 A Do you need this back?

12 Q I didn't know if you needed it.

13 Okay. Do you---

14 A I'm sorry. What did you ask me there. There appears
15 to be small bags in there, and it looks like there's a
16 handwriting on it that starts with an A, A something written
17 on there.

18 A The -- you mean my handwriting of labeling---

19 Q Yes.

20 A ---the bags?

21 Q Yes.

22 A That's actually the lab number and then the item
23 number.

24 Q Okay.

25 A That one.

Emily Homer - Cross-examination
by Mr. Williams

- 1 Q That word under, on the bottom.
- 2 A Oh, that's added.
- 3 Q Added.
- 4 A Added. If I add, if I need to repack the evidence,
5 that, you know, it's tied in a Ziploc bag, I'm sure that it
6 wouldn't benefit anybody if the powder is just loose in
7 there. So, I've got Ziploc bags in my lab that I use to
8 repack powder substances or sometimes I have other repack
9 containers I use to repack liquid substances just so that
10 it's, it's -- it doesn't fall around everywhere---
- 11 Q Where do the---
- 12 A ---and the items of evidence are still separate.
- 13 Q What did you add to that?
- 14 A The Ziploc bag.
- 15 Q So, the bag is added?
- 16 You didn't add substance to it?
- 17 A No, I didn't add substance. I added a Ziploc bag to
18 hold everything.
- 19 Q Okay.
- 20 A Just---
- 21 Q All right. And the only items that you have in that
22 exhibit are a ten, and is that the, the methamphetamine that
23 was determined to be methamphetamine?
- 24 A Well, if you refer to the report, Item 1 was the tin,
25 and then Item 1.1 was the tied plastic bag that contained

Emily Homer - Cross-examination
by Mr. Williams

1 the methamphetamine, .02-gram, and then 1.2, because it's
2 the subunit of my Item 1---

3 Q Okay.

4 A ---and it's, again, against methamphetamine, .08 grams,
5 and then Item 1.3 was two Ziploc bags.

6 Q Okay. So, that, that, that constitutes the entire
7 exhibit that, that you have there?

8 A Yes.

9 Q Did you test anything else -- well, strike that. Let
10 me be a little more specific.

11 These two, these two items that we have talked about
12 are the two items that you tested, which are applicable in
13 this particular case, you didn't do fingerprint analysis or
14 any other testing on these items?

15 A No, I don't do fingerprint analysis.

16 Q And you didn't -- you don't know if there were other
17 prescriptions which were found at the scene or not?

18 A Like I said, I'm not -- all I'm told is -- I just
19 strictly get the evidence. I'm told of an incident date,
20 suspect name, sometimes location, not usually, case numbers.
21 I'm the -- I'm, as a general rule, I don't want to hear
22 about anything else in the case.

23 Q There's nothing in your information that says that
24 these were found in a book bag or they were found on the
25 seat or anything like that, is there?

Emily Homer - Cross-examination
by Mr. Williams

1 A If they do label or notate anywhere on the actual
2 evidence itself I'll notate that in the report. All I know
3 is that it was pursuant to lawful arrest, tow inventory.

4 Q Okay. So, nothing about where it was found other than
5 tow inventory?

6 A Other than tow inventory.

7 Q Thank you, ma'am.

8 THE COURT: Redirect.

9 SOLICITOR ROSS: No, Your Honor.

10 THE COURT: All right. Thank you, ma'am. You can step
11 down. Make sure all that's --

12 WITNESS: Do what?

13 THE COURT: -- back in that envelope with the brown
14 envelope.

15 Could you help her out, Mr. Ross?

16 SOLICITOR ROSS: Yes, Your Honor. Will do, sir.

17 WITNESS: And the other B.E.S.T. Kit needs to be
18 sealed.

19 THE COURT: It does. All right. We'll have to get
20 somebody to do that for or I don't, don't have the
21 capabilities to do it myself.

22 All right. Anything else from the witness, Mr. Ross?

23 SOLICITOR ROSS: No, sir.

24 THE COURT: Thank you, ma'am.

25 You can call your next witness.

Thomas Hamilton - Direct examination
by Solicitor Ross

1 SOLICITOR ROSS: State calls Lieutenant Thomas Hamilton
2 to the stand.

3 THOMAS HAMILTON, being first duly
4 sworn, testified as follows:

5 CLERK: Have a seat please, sir. Once you're seated,
6 state your full name for the record spelling your last.

7 WITNESS: My name is Thomas Hamilton. H-A-M-I-L-T-O-N.

8 DIRECT EXAMINATION

9 BY SOLICITOR ROSS:

10 Q Good afternoon, lieutenant, how are you?

11 A Doing fine, sir.

12 Q You're the chief of the narcotics unit in Lexington
13 County, is that correct?

14 A Yes, sir.

15 Q You weren't involved in the arrest in this particular
16 case though, were you?

17 A No, sir.

18 Q Okay. Can you tell me a little bit about your formal
19 training in narcotics please?

20 A I started in narcotics back in 1997 as a investigator,
21 worked doing undercover work, making regular cases as well
22 as working narcotic's cases to include methamphetamine and
23 other types of drugs.

24 Back in 2001 approximately we started seeing meth labs
25 being made in Lexington County. I personally went to meth

Thomas Hamilton - Direct examination
by Solicitor Ross

1 lab technician class in September 20th, 2002. That class
2 was given in Quantico, Virginia by the drug enforcement
3 agency and then certified as a technician.

4 Q How long is that class?

5 A That class is a 40-hour class.

6 Q Okay.

7 A Since that time I have worked on over 200 labs. I have
8 also had other training in the fields of chemicals, chemical
9 interactions, and things like that. I am a HAZMAT
10 technician through South Carolina Fire Academy. I am a
11 HAZMAT technician instructor through the South Carolina Fire
12 Academy. I am a bomb technician. I am also a homemade
13 explosive technician both through the FBI, Federal Bureau of
14 Investigations, and the ATF, the Alcohol, Tobacco, and
15 Firearms.

16 Q How many agents do you supervise as chief of the
17 narcotics unit?

18 A I have, I have 12 agents that report to me.

19 Q Have you been qualified as an expert in State or
20 Federal Courts as an expert in methamphetamine production?

21 A I've been qualified in both State and Federal Court
22 for, towards the production, dangers, hazards in the
23 production of methamphetamine.

24 SOLICITOR ROSS: Your Honor, at this time we'd offer
25 him as an expert in the production, distribution of

Thomas Hamilton - Direct examination
by Solicitor Ross

1 methamphetamine as well as the disposal of meth products.

2 THE COURT: Mr. Williams, any questions at this time or
3 any objection?

4 MR. WILLIAMS: Neither.

5 THE COURT: All right. Ladies and gentlemen, the
6 witness is qualified in the field of the production -- is it
7 disposal?

8 SOLICITOR ROSS: Procedure, distribution, and disposal,
9 Your Honor.

10 THE COURT: All right. He's qualified as an expert in
11 that field.

12 Ladies and gentlemen, again, I remind you that you,
13 that these witnesses can give opinions and the reasons for
14 those opinions. That does not mean that you are bound by
15 them. You give them the weight that you believe they're
16 entitled to.

17 Q Lieutenant Hamilton, are you familiar with the shake
18 and bake method of making methamphetamine?

19 A Yes, sir, I am.

20 Q And how does that differ from other methods?

21 A Originally when the production methods were first
22 started being seen here in Lexington County, back in '01 as
23 I said, we had a anhydrous ammonia method. Also referred to
24 as the Birch or Nazi method.

25 with the change in the laws for the acquiring

Thomas Hamilton - Direct examination
by Solicitor Ross

1 Pseudoephedrine Hydrochloride, which is in, in cold
2 medicine, the one behind the counter that you have to show
3 your driver's license for, with that being more of a
4 controlled substance, and you being limited by government,
5 the laws, we saw a new production method. It is referred to
6 as either the one pot, the two liter, or the shake and bake.
7 It is designed around smaller amounts of pills.

8 Q Prior to testifying today in Court, did you review a
9 Power Point presentation explaining how to produce meth
10 pursuant to the shake and bake way?

11 A Yes, sir, I did.

12 Q Would that assist you in explaining how to make
13 methamphetamine to the jury?

14 A Yes, it would.

15 SOLICITOR ROSS: Your Honor, at this time I'd like to
16 show that Power Point as demonstrative evidence.

17 THE COURT: Mr. Williams.

18 MR. WILLIAMS: Your Honor, at, at this point we would
19 have no objection. I mean we certainly have seen the whole
20 thing cause it's quite lengthy.

21 THE COURT: All right.

22 MR. WILLIAMS: But if there's a problem that develops.
23 I will stand up and object.

24 THE COURT: Okay. Thank you.

25 MR. WILLIAMS: Thank you.

Thomas Hamilton - Direct examination
by Solicitor Ross

1 THE COURT: Do you need the witness to step down or to
2 stay where he is?

3 SOLICITOR ROSS: I'll defer to the witness.

4 WITNESS: I'm fine.

5 Q Okay. You have that laser?

6 A Yes, sir.

7 SOLICITOR ROSS: Beg the Court's indulgence while I set
8 this up, Your Honor.

9 (Pause.)

10 Q All right. Lieutenant, this is the title slide. I'm
11 gonna go ahead and jump right into it.

12 You comfortable?

13 A Yes, sir.

14 Q All right. Tell me about this first line here.

15 A As I was talking about Pseudoephedrine Hydrochloride is
16 the starting drug, if you will, in the production of
17 methamphetamine. It is a substance that can be purchased
18 from pharmacies or other retailers. It does not require a
19 prescription, but there are limits on the amount that you
20 can buy. Plus you have to show an ID and you have to sign
21 for it.

22 There are seven, several chemical reactions and we'll
23 discuss that as we go through her in the conversion of
24 Pseudoephedrine Hydrochloride into Methamphetamine
25 Hydrochloride.

Thomas Hamilton - Direct examination
by Solicitor Ross

1 Normally speaking, they will use a plastic bottle.
2 Some have even used glass. But usually it's a plastic
3 bottle for the conversions.

4 Now, this is a picture of a name brand of
5 Pseudoephedrine. There are many different names, many
6 different sellers of this. Many of them are generic
7 depending upon where you go, whether it be Walgreens, Revco,
8 CVS. This just happens to be a name brand.

9 If you look on the box you can see there it says
10 Pseudoephedrine Hydrochloride. That's a 12-hour. Normally
11 the 12-hour ones are 120 milligrams per tablet.

12 Q So, this is the base ingredient to make the drug?

13 A That is the base ingredient. Now, that is normally
14 crushed up. Whether it be, as in this slide, coffee grinder
15 or other. It can be blenders. We've seen them use hammers
16 and pieces of wood to crush the pills down so that they can
17 get the Pseudoephedrine out of the reaction.

18 Q So, this Mr. Coffee thing right here, this is just an
19 example of what can be used?

20 It doesn't have to be used, right?

21 A No, sir, it can be anything, like I said, if you have
22 the time and the will, they could use two rocks.

23 Q All right. We're gonna move to the next slide.

24 Is that okay?

25 A Yes, sir.

Thomas Hamilton - Direct examination
by Solicitor Ross

1 Q Now, this will be flammable liquid, solvent, that is
2 normally used in it. It's either gonna be starter fluid,
3 which is Ethyl Ether or Coleman fuel, which is another
4 petroleum distillate. Both of these chemicals are very very
5 good solvents. They're very flammable also, which is caused
6 problems throughout the years.

7 Starter fluid cans, the name brands running from all
8 the manufacturers and the different auto parts place, but
9 they're all starter fluid and they all contain somewhere
10 between 85 to 95 percent Ethyl Ether as their main
11 ingredient, which is what they want. When they remove the
12 Ether from this, the normal way that they do, that we have
13 seen is they will punch a hole in the bottom of the can to
14 pour it out. Normal use for this would be to spray it. But
15 if you need all of the liquid, which is what you need in
16 this production method, they will turn it upside down, spray
17 off the, extra gas off of it, depressurize it, punch a hole
18 in the bottom, pour it out.

19 Q So, why can't you just spray?

20 Why do you just punch a hole in the bottom?

21 A Number one, you would lose a good bit of it to the
22 atmosphere because it is aerosolized when you spray it. The
23 other reason, time restraint. One should be quick.

24 Q And this picture here, this Coleman camping fuel, is
25 this just another product that contains Ether?

Thomas Hamilton - Direct examination
by Solicitor Ross

1 A Actually it is another petroleum distillate. It's not
2 necessarily Ether, but it is another solvent that they can
3 use.

4 Q So, you can use either one of these two?

5 A Yes, sir, both of them are commonly found. It's
6 usually almost always one of those two.

7 Q Okay. Next slide here is ammonium nitrate.

8 Can you explain that please?

9 A Ammonium nitrate, in this picture, these are cold
10 packs. When I say cold packs, when you crush them they turn
11 cold and you put it on a aching knee or something. That is
12 what I'm talking about a cold pack. Inside of there is
13 ammonium nitrate and water.

14 Ammonium nitrate is commonly found as a fertilizer, but
15 it is rather hard to get as a fertilizer because it's used
16 in explosive, info, and things of that nature. So, the
17 people producing that found out ammonium nitrate is in cold
18 packs. Some of the cold packs do not contain ammonium
19 nitrate and they contain urea. People who normally produce
20 meth will tell you which one has which.

21 Q What is this one here?

22 A Sodium hydroxide, lye. It is commonly found in
23 numerous drain openers. Red Devil Lye is one of the common
24 ones. This is a picture of a, of a different brand. It is
25 a basic substance. In other words, it, it eats organic

Thomas Hamilton - Direct examination
by Solicitor Ross

1 matter because it is not neutral. It's basic -- it has a PH
2 number of greater than seven.

3 Q And where can you get a product like this?

4 Can I buy this at Wal-Mart or anything?

5 A Wal-Mart, any of your hardware stores, any place that
6 has drain cleaners out.

7 Q All right. What's the final ingredient?

8 A Lithium metal. Lithium metal is commonly found in
9 camera batteries. They are all marked as Lithium batteries.
10 It is a Class D metal. In other words, when you expose it
11 to water, it starts on fire. Once again, another one of the
12 dangers in production that we deal with. It is a gray metal
13 that starts to turn black as it oxidizes and it gets
14 moisture on it.

15 Q Now, what does somebody do?

16 Do they just drop the battery in the, in the Coke
17 bottle or, or do they, do they remove the strips from the
18 battery itself?

19 A They will normally open the batteries, cut them open,
20 wire cutters or other types of items. Sometimes we've seen
21 them use pipe cutters to open them. They will open them,
22 pull out the wadding, which is a white paper, and inside of
23 that is a gray thin sheet of metal.

24 Q So, those are the only five ingredients you need?

25 A For the, for the first step in this production, the

Thomas Hamilton - Direct examination
by Solicitor Ross

1 first conversion into, from Pseudoephedrine Hydrochloride
2 into methamphetamine.

3 Q Can you explain this slide here?

4 A What occurs basically, sodium hydroxide and ammonium
5 nitrate are incompatible. Those two chemicals don't like
6 each other.

7 what happens is, is if a reaction occurs between them
8 two, which is usually started by a small amount of water, it
9 produces Anhydrous Ammonia. Anhydrous is just a fancy word
10 for without water. It's pure ammonia.

11 The ammonia you use in your sink at the house is about
12 five percent. Anhydrous Ammonia is a hundred percent
13 ammonia. The ammonia then reacts with the Lithium. That
14 second chemical conversion, that both of those are going on
15 at the same time in this bottle, but the ammonia with the
16 Lithium converts Pseudoephedrine methamphetamine.

17 Now, once it is methamphetamine, it is now miscible,
18 mixable, inside Ether. So, the actual meth is inside that
19 liquid. That's why it gives it kind of a cloudy hue where
20 it's not clear and opaque like Ether or a solvent normally
21 would be. So, it's actually meth inside the liquid.

22 Q And, so, this is called meth oil?

23 A One of the terms that, that people have used for it has
24 been meth oil or, or hot Ether or different names that they
25 will refer it as.

Thomas Hamilton - Direct examination
by Solicitor Ross

1 Q How long does it take for these chemical reactions to
2 occur to the point where you get meth oil?

3 A Normally, with this method, you're talking about 45
4 minutes. You can do it in a shorter period of time, but you
5 will not render as much Pseudoephedrine in methamphetamine.
6 But a normal cook time is 45 minutes to an hour.

7 Q How much Sudafed would you need to make methamphetamine
8 under this method?

9 A The normal recipe that we see uses one to two boxes.

10 Q So, with one box you can make methamphetamine?

11 A Yes, sir.

12 Q Now, when all these chemical reactions are going on in
13 this bottle here, is that dangerous?

14 A Yes, sir, pressure builds up inside the bottle. They
15 have to continue to shake it to keep it reacting, but they
16 also have to vent it. If you don't open the cap, Ether, the
17 container will fail going kaboom, or the actual reaction
18 will stop because of the pressure. So, they vent it, shake
19 it, vent it, shake it, and that goes on for, like I said, 45
20 minutes to an hour.

21 Q Now, during your experience as the chief in Lexington
22 County, have you ever responded to cases where it does go
23 kaboom?

24 A Yes, sir, we have seen both over pressure failures
25 where container will fail. We've also had high order

Thomas Hamilton - Direct examination
by Solicitor Ross

1 detonations because of the flammability of the liquids where
2 it's made a nice firewall and burned the occupants of the
3 location, the suspects that were cooking it.

4 Q Have I jumped a step here?

5 Is this the second step?

6 A Normally what we, what they'll do is they will strain
7 that off, that, that bottle with all the stuff. They strain
8 that liquid off. Like I said, the methamphetamine is
9 actually in the liquid. It is miscible, mixable like sugar
10 and water is. Meth, in this form, in Ether, is mixable.
11 So, it's a cloudy liquid.

12 Now, they will strain that off. A number of things
13 that we have seen them use in that step is strainers to
14 include clothing, paper towels, all kind of different
15 things.

16 Q So, what are they straining?

17 A The liquid is, is what you want. The trash, the
18 leftover Ammonium Nitrate, the leftover Sodium Hydroxide,
19 all that stuff is trash. The leftover pieces of lithium are
20 trash. You want just that liquid that has that cloudy
21 powder inside of it. Now---

22 Q Now, after it's strained is it ready for step two?

23 A Yes, sir.

24 Q Now tell me what we have here.

25 A This is the next step in the production of

Thomas Hamilton - Direct examination
by Solicitor Ross

1 methamphetamine. If you take Sulfuric Acid, which is liquid
2 fire, or another type of drain openers that has Sulfuric
3 Acid in it, and you add salt, what you produce is
4 Hydrochloric Acid. It's HCL. You can also use Uratic Acid,
5 which is battery acid and tin foil. A combination of either
6 one of those will produce Hydrochloric Acid.

7 You do that in the container like this, a small little
8 Coke bottle there with the tubing coming off of it. The
9 tubing is for the gas to come out. The reaction will begin
10 at normal room temperature. You don't add any heat. But it
11 produces heat on its own. Hydrochloric Acid turns into a
12 gas at 86 degrees Fahrenheit.

13 Now, this gas comes off and they'll bubble this across
14 that Ether. We talked about the container with the Ether
15 with the meth in it. Well, that acid gas comes across it.
16 The Hydrochloric, HCL, bonds with methamphetamine making it
17 methamphetamine Hydrochloride. That's a salt. A salt is
18 not mixable in the petroleum product, the Ether. So, it
19 falls to the bottom.

20 Now, this is what they usually call snowing because
21 this means the meth is coming out. It goes to the bottom of
22 the container. It comes out of the liquid.

23 Now, to get this out of here they'll use coffee
24 filters. They strain this through coffee filters and the
25 reason they use a finer strain in this is cause they don't

Thomas Hamilton - Direct examination
by Solicitor Ross

1 want to lose any of that meth. They use that nice fine
2 coffee filter that gives all the powder.

3 So, the liquid is usually discarded. The meth that's
4 in the coffee filter is left out to dry, and that is their
5 finished product. They can use hair dryers or something
6 else to attempt to speed up the drying process, but they
7 generally do not because of the, because of fire.

8 Q Now, tell me something, lieutenant, does somebody need
9 advanced chemical training to do this process?

10 A No, sir, we have found numerous people over the years
11 that have a written down recipe or have memorized it. They
12 have no clue whatsoever the chemical reactions they're,
13 they're doing. They -- when you speak to them, they have no
14 idea other than the fact they've been shown to put this item
15 with that item.

16 Often times they don't know, other than name brands, of
17 what to buy. They don't know that there's any drain cleaner
18 besides Liquid Fire that can be used with Sulphuric Acid.
19 All they know is Liquid Fire is what they need or, you know,
20 they may not even know that you could use a different type
21 of salt rather than table salt. All they know is certain
22 steps, put it together, and magically you get
23 methamphetamine.

24 Q Thanks, lieutenant.

25 Is there anything else you need from the Power Point?

Thomas Hamilton - Direct examination
by Solicitor Ross

1 A No, sir.

2 Q Lieutenant, I'm gonna show you several pictures that
3 have already been admitted into evidence, and I'd like to
4 ask for your opinion on what these photographs mean to you.

5 If you please step down while we go over these with
6 you.

7 A (Witness complies.)

8 THE COURT: Be sure to keep your voice up.

9 Okay?

10 WITNESS: Yes, sir.

11 Q They first photograph -- and if you could square to
12 where you see the jury. This is No. 11.

13 Can you explain all the items in this photograph and
14 what that means to you?

15 A Okay. As you see here, the Sudogest, which states on
16 here Pseudoephedrine Hydrochloride Extended Release, and it
17 actually says it's 120-milligram, which is normally for
18 12-hours. As we talked about, that is the basic starting
19 thing. That's what you're going to convert into
20 methamphetamine production.

21 You have your Lithium batteries, which are commonly
22 sold as camera batteries. You have aluminum foil. Like I
23 said, aluminum foil and Muriatic Acid, produce Hydrochloric
24 Acid. You have salt, which are used as Sulphuric Acid,
25 which produce Hydrochloric Acid. You also have this tubing

Thomas Hamilton - Direct examination
by Solicitor Ross

1 here which is commonly used in your gas, what we call gas
2 generator because it generates the gas as, as a gas. Also
3 here you have a camp fuel container.

4 Now, here you have alcohol, which is Isopropyl alcohol.
5 I know of cases where people have used Isopropyl alcohol in
6 place of Ether or camp fuel. Now, they do that one time.
7 That is a water base product. Alcohol, with -- if you use
8 that with the batteries, you will have a cottage stock
9 failure and a large explosion, and coffee filters right
10 here, which these are the kind, kind you commonly find with
11 the straining out of the meth at the end.

12 Q Did you cover this item right here down in the corner?

13 A And this is a digital scale. Digital scales we run
14 across all the time in narcotics work. It's usually used to
15 weigh out drugs. These are the small point couple grams
16 of -- these are small scales that are usually used in small
17 scale distribution. We don't find any users who carry
18 scales with them. If you sell drugs, you weigh the drugs
19 as---

20 Q Let me show you a second photograph. This is No. 13.

21 If you could please explain what that means to you to
22 the jury.

23 A This is a container, as you see on the very top
24 left-hand part of the container, is starter fluid, which, as
25 I talked about, is there.

Thomas Hamilton - Direct examination
by Solicitor Ross

1 Now, as I talked about before, you can see a punch hole
2 right here in the bottom of it where it's been punched out
3 to be used. Obviously this was punched and already been
4 used. I know of no other reason, other than manufacturing
5 meth, where you punch out Ether cans.

6 Q Do you train your narcotics agents to look for a
7 puncture hole in the bottom of a starter fluid can?

8 A Yes, sir, I train both my narcotics agents plus my
9 officers from Lexington County Sheriff's Departments as well
10 as other jurisdictions in reference to this being a big
11 indicator of the production of meth.

12 Q Okay. Now I'm gonna show you State's No. 7. Tell me
13 what you see there and what that means.

14 A What I see is multiple baggies. These, these two have
15 a powder inside of them. These two have a residue inside of
16 them -- the -- which is just a, some kind of chem there.
17 But these baggies appear to be -- normally they'll pull off
18 the end of the Ziploc bag, put drugs in it, and tie it up.
19 That's how we often find them when we find them for sale,
20 the individual baggies.

21 Q Okay. You can have a seat please.

22 A Yeah.

23 (Witness returns to the stand.)

24 Q Now -- and we talked about these items here in State's
25 No. 11.

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1 Does each one have a legitimate legal lawful use?

2 A Yes, sir.

3 Q Okay. I would ask your expert opinion on this though.

4 If I were to give you a hypothetical, and the
5 hypothetical was that each one of those items on that
6 photograph I just showed you came out of the same vehicle,
7 would it be your expert opinion that those items were for
8 lawful use or for the illegal production of methamphetamine?

9 MR. WILLIAMS: Your Honor, I'm gonna object to the
10 answer to this question right here. It calls for a legal
11 conclusion.

12 THE COURT: All right. Ladies and gentlemen, please
13 step to your jury room. This is a good time to take a
14 recess anyway. You may not discuss the case.

15 Okay.

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

18 THE COURT: All right. At this point you don't need to
19 rephrase it. Just restate the question, and then,
20 Mr. Williams, we'll hear the answer and we'll go forward.
21 Just restate it please.

22 Q Lieutenant Hamilton, I just showed you that photograph.
23 I'm gonna ask you a hypothetical.

24 If I were to tell you that each one of those items on
25 the photograph were found in the same automobile, would it

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1 be your expert opinion that the items were for illegal use
2 of those products or for the production of methamphetamine?

3 A It would be my -- in my opinion, that it would be for
4 the product of methamphetamine. Specifically -- especially
5 because of the punched out Ether can.

6 Q Okay.

7 THE COURT: All right. Mr. Williams, your objection or
8 do you have questions at this point?

9 MR. WILLIAMS: I have no questions.

10 THE COURT: Okay.

11 MR. WILLIAMS: Your Honor, the objection is that it
12 calls for a legal conclusion. I don't object to this
13 witness testifying that you can use these items in the
14 production of methamphetamine. But I think he's asking the
15 ultimate question by asking if this is the lawful use of
16 these items because it, in themselves, that does not
17 constitute a violation of the law, and that's what the
18 jury's suppose to determine.

19 THE COURT: All right. Let me see the picture.

20 MR. WILLIAMS: Or -- judge, I'm sorry, or the judge,
21 I'm sorry, or the judge to determine.

22 THE COURT: All right. Mr. Ross, his, his opinion is,
23 is that these were involved or being used for illegal
24 purposes, specifically to make meth, because---

25 SOLICITOR ROSS: Of the combination, Your Honor.

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1 MR. WILLIAMS: He said because the can had a hole in it
2 is what he said.

3 I don't need any help from the defendant.

4 So, first of all, respond to his objection that this is
5 a, going to the ultimate conclusion for the jury to reach.

6 SOLICITOR ROSS: Your Honor, I don't think it goes to
7 the ultimate conclusion. Under State versus Commander,
8 which is a recent decision out of Richland County. That
9 dealt with a homicide.

10 THE COURT: He stated an opinion on the ultimate issue,
11 but it -- isn't, isn't your question more argument to the
12 jury than it is an expert opinion?

13 He's already said these things are commonly used in the
14 shake and bake method of manufacturing meth. One plus one
15 is got to equal two. That's your argument to the jury.

16 How does the witness get to make that argument for you?

17 SOLICITOR ROSS: Yes, sir, the, the analogy that I would
18 use is that this is -- his opinion that these items were
19 used to produce meth is similar to a coroner's opinion that
20 the cause of death was a homicide. I don't think it gets to
21 the ultimate real conclusion, and I think it would fall
22 under the Court's reason in State versus Commander, Your
23 Honor.

24 THE COURT: All right.

25 SOLICITOR ROSS: And it would be the combination of --

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1 not only the, the punched hole---

2 THE COURT: In Commander you're talking about the
3 witness can give an opinion on the ultimate issues.

4 SOLICITOR ROSS: He, he can---

5 THE COURT: On the ultimate -- he can give -- in other
6 words, an expert gives an opinion. I think the rules permit
7 the expert to give an opinion on an ultimate issue. That's
8 not fatal to the question.

9 What does Commander say?

10 SOLICITOR ROSS: Commander says that a coroner can state
11 that the cause of death was homicide.

12 THE COURT: Somebody killed the person?

13 SOLICITOR ROSS: Yes, Your Honor, and the defense
14 argued the same thing that Mr. Williams is arguing that that
15 was an ultimate conclusion of law for the jury to decide,
16 and the Court overruled that and said no, he could testify
17 to the cause of death and this is similar to, to that case,
18 Your Honor.

19 THE COURT: All right.

20 Okay. Mr. Williams.

21 MR. WILLIAMS: Your Honor, I think that's a little
22 different because homicide is not necessarily illegal. A
23 homicide---

24 THE COURT: It's not. It's not always illegal.

25 MR. WILLIAMS: It's not always illegal. In this

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1 particular case, the, the production of meth is always
2 illegal.

3 THE COURT: All right. Anything else?

4 SOLICITOR ROSS: I would just note that -- I'm sure
5 there is some exception for a lawful legal production of
6 methamphetamine. For example, a laboratory, pharmaceutical
7 company may be able to make it. I'm not sure.

8 MR. WILLIAMS: But they're allowed by statute and by
9 qualifications of the persons involved. I assume by
10 licensing also, which would be part of that.

11 THE COURT: Okay. All right. Anything else before we
12 take a break?

13 SOLICITOR ROSS: No, Your Honor.

14 THE COURT: All right. Lieutenant, you can step down,
15 but you may not discuss your testimony with anyone at all.
16 Of course, you'll be subject to questioning about that not
17 in the jury's presence initially. But that's your right.

18 Okay. I'll be back in just a few minutes.

19 MR. WILLIAMS: Thank you, Your Honor.

20 THE COURT: We'll break -- let's break for ten minutes.
21 Let's go ahead and use this afternoon -- how long do you
22 think your cross will take, Mr. Williams?

23 MR. WILLIAMS: I'm short, judge. Probably 15 minutes.

24 THE COURT: And then we'll be talking -- will you rest
25 at that time?

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1 SOLICITOR ROSS: Yes, Your Honor.

2 THE COURT: And then you'll call your witnesses?

3 MR. WILLIAMS: After I do motions, Your Honor.

4 THE COURT: All right. And that will be the next order
5 of business?

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: All right. Thank you.

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

9 THE COURT: All right. Hand the exhibit back if you
10 had it.

11 All right. Any further argument, Mr. Williams?

12 MR. WILLIAMS: No, Your Honor.

13 THE COURT: Anything else, Mr. Ross?

14 SOLICITOR ROSS: Judge, I noted Commander that's
15 relevant to this issue, and the testimony does not speak to
16 the defendant's state of mind, and I don't think Lieutenant
17 Hamilton's testimony would speak to Mr. Thomas' state of
18 mind in this.

19 THE COURT: All right. They're two, they're two -- I
20 know they're two civil cases that deal with this Rule 704.
21 It's a case called Gazes versus Dillard's Department,
22 Department Store, 2000 Court of Appeals decision found at
23 341 S.C. 507, and also Knoke, K-N-O-K-E, versus SC
24 Department of Parks, Recreation, and Tourism, 324 S.C. 136.
25 Gazes case I believe dealt with a defective escalator,

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1 and I believe the Knoke dealt with a smoke detector in the
2 cabin, and in those cases the Courts held, as they did in
3 Commander, that an expert's opinion can embrace an ultimate
4 issue to be determined by the jury, and I think that this
5 witness' purported testimony that, based on his experience
6 and training, that because of the presence of this can with
7 a hole in the bottom, and the other items that lead him to
8 conclude that these items had been used in the production of
9 meth.

10 I'm gonna allow the question over your objection, and
11 it's not my job to determine this, but to me, that may
12 prompt more fertile cross-examination than would otherwise
13 occur. That's none of my business I guess is the easiest
14 way to put it. So, I'm gonna overrule Mr. Williams
15 objection, and allow the question.

16 It's two minutes until 4:00. I know that the
17 solicitor, somebody from the Solicitor's Office is gonna up
18 here close to 4:00.

19 Have, have they talked to you gentlemen about when you
20 think you might be finished because if they come in and
21 start looking around like I need to talk to somebody, I want
22 them to be able to tell Mrs. Frick or her to tell them that
23 we think we'll be finished with the testimony this
24 afternoon, and that we'll be ready to argue and charge in
25 the morning so that the dominoes can start falling on when

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1 the rest of the panel comes back in for the next case.

2 So, so, we avoid that and me having to stop and confer
3 with everybody up here, you're probably about finished?

4 SOLICITOR ROSS: Yes, sir, this is my last witness,
5 Your Honor.

6 THE COURT: And you've got to cross and I'm not gonna
7 hold you to any time. You got two witnesses.

8 Are they here?

9 MR. WILLIAMS: They are here.

10 THE COURT: Okay.

11 MR. WILLIAMS: I, I think you would be accurate, Your
12 Honor, in saying we could easily finish the testimony today.

13 THE COURT: Okay. So, Mrs. Frick, if they do -- if the
14 lawyers do come in with that look on their faces, you can
15 just tell them whatever you want to tell them and the jury's
16 gonna come back at 11:00, 11:15, OR 11:30.

17 (Pause.)

18 THE COURT: Anything else before we begin?

19 SOLICITOR ROSS: No, Your Honor.

20 THE COURT: Mr. Williams, your objection is duly noted.
21 If you feel compelled to make it again after he re-asks the
22 question, you know how the appellate process works
23 sometimes, if they think you didn't preserve it, certainly
24 I'll take no offense at you restating that.

25 MR. WILLIAMS: Thank you, Your Honor.

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by Solicitor Ross

1 THE COURT: Okay. You can bring in the jury.

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

4 THE COURT: Okay. We're ready to move forward, ladies
5 and gentlemen.

6 Mr. Ross, you can continue.

7 SOLICITOR ROSS: Yes, Your Honor.

8 CONTINUED DIRECT EXAMINATION

9 BY SOLICITOR ROSS:

10 Q I believe we were looking at Exhibit No. 11 and also
11 No. 13. Let's show these to you, lieutenant. Just have
12 these on hand.

13 Now, Lieutenant Hamilton, does each item in those
14 photographs, do they have legitimate lawful uses?

15 A Yes, sir, they do.

16 Q I'm gonna ask a hypothetical. If I were to tell you
17 that each one of these items was found in the same vehicle,
18 what would be your expert opinion?

19 Is this common, a combination of items be consistent
20 with lawful use or were they consistent with the production
21 of methamphetamine?

22 MR. WILLIAMS: Your Honor, if you'd note my objection.

23 THE COURT: Yes, sir, thank you.

24 A In my opinion these items were for the use of the
25 production of methamphetamine. The -- specifically the

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1 Ether can that is punched out, I know of no other reason,
2 other than production of meth, that people punch out Ether
3 cans.

4 Q Now, do you have everything here that you would need to
5 make that?

6 A No, sir.

7 Q How long would it take for you to get everything you
8 needed to make meth?

9 A A stop at Wal-Mart, Walgreens, or numerous other
10 locations. Probably take you about ten minutes to pick up
11 your Ammonium Nitrate, Sodium Hydroxide, and Sulfuric Acid.

12 Q Now, the end product of this process, does it end up
13 looking a little bit like this?

14 A Yes, sir.

15 Q Just a couple more questions.

16 You mentioned the digital scales.

17 How are -- how is that relevant to a drug case?

18 Is that consistent with sales or personal use?

19 A Normally with sales.

20 Q Multiple bags, is that consistent with sales or
21 personal use?

22 A With the sales.

23 Q And, finally, are you familiar with the term reversal?

24 A Yes, I am.

25 Q What is a reversal?

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by Solicitor Ross

1 A When we do reversals, basically what we do, as law
2 enforcement, is we are the ones who are selling an item.
3 Instead of normally -- our normal operations is we buy drugs
4 through the use of undercover officers, informants, and
5 things of that nature. But, in certain situations,
6 especially where there's a high volume of traffic, we will
7 do reversals. We will put somebody, somebody who is in an
8 undercover capacity---

9 MR. WILLIAMS: Your Honor, I'm gonna object to his
10 qualifications to answer that question cause he hasn't been
11 qualified along those lines of the questions he's being
12 asked now in regards to reversals.

13 THE COURT: Yes, Mr. Ross.

14 SOLICITOR ROSS: Your Honor, I think you qualified him
15 in production, distribution, and disposal. So, distribution
16 would be part of that.

17 THE COURT: All right. Objection is overruled.

18 A I apologize. When we do reversals, we have an
19 undercover officer who sells a product similar to -- it's
20 not real drugs, number one. We don't use real drugs when we
21 sell them. But we will sell them a product that appears to
22 be a real drug in exchange for money and then arrest them at
23 that time with attempt to possess.

24 Q And why do y'all do reversals?

25 A There are a number of reasons. One of the reasons

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1 being obviously to target the user of the drugs who are the
2 ones who fuel the drug economy. The second reason would be
3 for the information they are to provide as to who else
4 they're buying from besides that location.

5 Q Now, the reason I ask you about this process of
6 reversals, have you ever, in your law enforcement
7 experience, ever had a situation where somebody tries to buy
8 drugs from you on a reversal and they bring in digital
9 scales in that transaction?

10 A No, sir, not that I can recall.

11 Q Thank you, Lieutenant. If you could, please answer any
12 questions Mr. Williams has for you.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Just a -- actually just a couple questions, Lieutenant.
16 It's my understanding that you had absolutely no
17 contact with this particular case meaning you didn't find
18 any of these drugs, you didn't, or, or items, you didn't
19 test any of these items?

20 You were not involved in this case other than standing
21 up here and testifying about the making of meth?

22 A My involvement in this case is that, at the time of the
23 incident, Sergeant Hazewinkel was then answering to me. All
24 case files, prior to coming up to the solicitor's office, go
25 through the sergeant that works for me and then through me.

Thomas Hamilton - Cross-examination
by Mr. Williams

1 I audit them, make sure everything appears to be case
2 worthy. That is -- I was not out on the scene nor had any
3 contact with the defendant.

4 Q All right. Well, since it came through you, are you
5 saying that you approved all the investigating, all the
6 investigative reports and things of that nature which were
7 subsequently turned in?

8 A I looked over all of them, yes, sir.

9 Q Are you familiar with the investigative reports on this
10 particular case?

11 A I am familiar with them, yes, sir.

12 Q Do you have them present with you?

13 A Yes, sir.

14 Q Where -- are you familiar with where the items were
15 found in the vehicle?

16 A No, sir, I was not out on the scene as I testified to
17 earlier.

18 Q Would you look at your investigative reports perhaps on
19 Page 21 of 57?

20 A I don't have them numbered the way you do, sir.

21 Q Are you familiar with that investigative report?

22 A This report was written by Investigator Laintz, who is
23 master deputy. I go over the investigative reports with my
24 people.

25 Q So---

Thomas Hamilton - Cross-examination
by Mr. Williams

1 A Sergeant Hazewinkel.

2 Q So, you're saying that the part of the case which dealt
3 with what items were found in the truck you did not have --
4 you did not -- you didn't look at the investigative reports?

5 You didn't make any type of decisions on whether or not
6 there was sufficient, I guess, stuff that goes in your
7 reports and proceed with the case?

8 A Did I look at the---

9 Q Investigative reports.

10 A The original report, yes, sir, I did.

11 Q So, you did look at them?

12 A Oh, yes, sir, but we refer to the investigative report
13 as being investigator writing. This was a road deputy. I
14 apologize for the confusion on the terminology, sir.

15 Q I'm just asking you something simple.

16 A Yes, sir.

17 Q Where was the Sudafed found?

18 A It states here that it was under the driver's seat.

19 Q Where was the tubing found?

20 SOLICITOR ROSS: Objection, Your Honor. This is calling
21 for hearsay.

22 THE COURT: Overruled.

23 A The tubing, floor of the passenger front seat.

24 Q Okay.

25 A Three feet of clear tubing on the front floor of the

Thomas Hamilton - Cross-examination
by Mr. Williams

1 passenger front seat.

2 Q where were the Lithium batteries found?

3 A Center console.

4 Q What, what items, to your knowledge in looking at the
5 incident report, were actually found in a book bag?

6 A In the original report I don't see anything in the, in
7 a book bag.

8 Q So, there's nothing, as far as you can tell, from the
9 investigative report, that was found in the book bag?

10 A From this report I don't see a book bag mentioned.

11 Q And where was the cigarette pack found?

12 A Tool box, back seating area of the vehicle.

13 Q So, that wasn't found in a book bag?

14 A No, sir, not from the reports I have here.

15 Q What medicines were turned over to the jail when he was
16 arrested and booked at the jail?

17 A It does not list the type of drugs. It just says three
18 pill bottles.

19 Q With his name on them?

20 A Uh-huh. (Affirmative).

21 Q So, when he was arrested he had three prescription drug
22 bottles which were turned over to the jail and he was placed
23 in the jail?

24 A He had three prescription. That's what it says.

25 Q And it doesn't say what those prescriptions were for?

Thomas Hamilton - Cross-examination
by Mr. Williams

1 A No, sir.

2 Q Do you know where the salt and the tubing were found?

3 A As I read earlier, the tubing was in the front
4 floorboard. The floor of the passenger front seat. It says
5 the salt and it doesn't exactly say where the salt is with
6 the---

7 Q All---

8 A ---where the---

9 Q All these items certainly weren't found in the book
10 bag, were they?

11 A No, sir.

12 Q And as I understand your testimony, with the items that
13 were found in the truck, you could not make methamphetamine
14 just with the items that were found in the truck?

15 A No, sir, that's what I testified to.

16 MR. WILLIAMS: That's all the questions I have, Your
17 Honor.

18 THE COURT: Redirect.

19 SOLICITOR ROSS: I don't have anything from him, judge.

20 THE COURT: All right. Thank you, sir. You can step
21 down. Make sure all the exhibits stay up here. Thank you,
22 sir.

23 WITNESS: Thank you.

24 THE COURT: Next witness.

25 SOLICITOR ROSS: Your Honor, the State rests at this

1 point.

2 THE COURT: Okay. Ladies and gentlemen, the, the rules
3 that we operate under require me to take a brief recess at
4 this point. I know we just did. But, as I told you, on
5 some occasions I may have to send you out, then we send you
6 right back out and we come back in, and we're gonna do that
7 now. This will not be a long recess. Please go to your
8 jury room. Of course, you may not discuss this case in
9 anyway at all.

10 Thank you.

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

13 THE COURT: Any motions, Mr. Williams?

14 MR. WILLIAMS: Your Honor, in regards to the
15 manufacturing methamphetamine, we would, we would move for a
16 directed verdict of not guilty. The witness that has
17 testified to the making of the methamphetamine has testified
18 that you could not make the methamphetamine based on what he
19 had. He, he needed other items to make the methamphetamine.

20 whether he had possession of three or four items or
21 five or six items that could be used or would be used at
22 some point in time maybe in methamphetamine. It -- in this
23 particular case he didn't have the items that he needed, and
24 there was no solution, Your Honor, in this particular case,
25 that contained any one of the steps where it had been

1 dissolved or any type of chemical process had been going on.

2 If Your Honor takes the position -- if, if the position
3 is that you have these items, then you can be convicted of
4 methamphetamine, that means that---

5 THE COURT: Manufacturing?

6 MR. WILLIAMS: Manufacturing. I'm sorry. I'm sorry,
7 Your Honor. Manufacturing methamphetamine. That means that
8 you can go to my house, you can arrest me because I've got
9 sudafed in my closet. There may or may not be starter
10 fluid, you know, if I were working on a car. These items
11 have legitimate purposes, and unless you have either some
12 indicia of the process, meaning some sort of liquid or you
13 have all of the items, then I think you can be convicted of
14 the manufacturing, Your Honor. But how, how could you
15 possibly be convicted of manufacturing methamphetamine if
16 you don't possess the items to make the methamphetamine.

17 THE COURT: All right. Mr. Ross.

18 SOLICITOR ROSS: Your Honor, the problem with his
19 argument is that methamphetamine was found in the car. I
20 mean I think this situation is analogous again to a homicide
21 situation. You don't need to actually catch somebody in the
22 process of pulling a trigger on a weapon and shooting
23 somebody to convict them of homicide.

24 If you have shell casings, you have a dead body, I
25 think you got evidence to link somebody to a homicide, and

1 this is a---

2 THE COURT: Where did he make it?

3 In other words, the charge is manufacturing meth,
4 right?

5 SOLICITOR ROSS: Yes, Your Honor.

6 THE COURT: And I don't think the law requires you to,
7 to actually catch them while the solution is bubbling or
8 while he's shaking and venting and all of that.

9 But where, where did he make it?

10 He didn't make it in the truck or at least it doesn't
11 appear so.

12 So, what do you have to prove to this jury to get a
13 conviction for actually or a conviction that he manufactured
14 either what was found or manufactured something else?

15 SOLICITOR ROSS: The evidence is what was found itself,
16 and the lieutenant's testimony that methamphetamine
17 doesn't -- it's not naturally occurring in nature, and the
18 fact of his, of its existence is proof that it was made, and
19 the evidence that links him to making the manufacturing, to
20 making the drug is the trail he left behind, the, the---

21 THE COURT: The hole in the can is pretty much what you
22 got?

23 SOLICITOR ROSS: The hole in the can, the tubing, the
24 salt, the coffee filters, and the fact that he was in
25 possession of Pseudoephedrine itself.

1 THE COURT: Well, I do -- I've got two being starter
2 fluid, Sudafed, empty box, salt in my house. My starter
3 fluid doesn't have a hole in the bottom of the can. I was
4 kind of wait -- the testimony that I was waiting for was
5 that there was some residue or some odor or some indicia of
6 something that he had either been riding around doing it as
7 he was moving.

8 I know that's why these criminals, I'm not saying he's
9 in that category, but that's why these manufacturers do it
10 mobile so they can -- it's harder for them to get caught.
11 But he didn't have all the ingredients.

12 Do you have to -- when you stand up and say, ladies and
13 gentlemen of the jury, you must find him guilty of
14 manufacturing meth because, what's your because?

15 SOLICTOR ROSS: Because the end point of having meth in
16 the car. It wasn't an accident.

17 THE COURT: You're telling me if that meth had not been
18 in the car, no baggies with residue, no two bags with .02 or
19 .08 or whatever, you wouldn't have a manufacturing case?

20 SOLICTOR ROSS: I certainly wouldn't proceed with one,
21 no, Your Honor.

22 THE COURT: And you've not -- you're not seeking a
23 conviction for PWID meth cause of the separate baggies, are
24 you?

25 SOLICTOR ROSS: No, Your Honor. Just possession.

1 THE COURT: All right. Anything else, Mr. Williams?

2 MR. WILLIAMS: Not in regards to that particular
3 charge, Your Honor.

4 THE COURT: Okay. Next one.

5 MR. WILLIAMS: Your Honor, the control substance charge
6 and obviously I guess on the meth charge we'd argue, you
7 know---

8 THE COURT: Possession?

9 MR. WILLIAMS: On the possession of the meth we would
10 simply argue that, I guess, taken in a light most favorable
11 to the State would be insufficient as a matter of law. We
12 understand it's probably a jury verdict on that.

13 THE COURT: Okay. That's, that's to be denied.

14 MR. WILLIAMS: But under controlled substance, Your
15 Honor, I assume, and I use that word I assume, that they're
16 saying that he's guilty of controlled substance dealing with
17 a Xanax and with other, this other drug, which I think is
18 some sort of antihistamine.

19 THE COURT: It says Xanax in the indictment.

20 MR. WILLIAMS: Xanax.

21 Your Honor, from the testimony, there's been no
22 testimony that he did not have a prescription for the items
23 that were found in his constructive possession. We've heard
24 testimony, at least from one officer, that he had three
25 prescription pills. Three prescription---

1 THE COURT: Bottles.

2 MR. WILLIAMS: ---prescription bottles that were turned
3 in at the time that he was taken to the jail. So, Your
4 Honor, I would, I would think it would be incumbent upon the
5 State to prove that he didn't have a prescription for
6 whatever pills that he's accused of violating the law on.

7 THE COURT: Mr. Ross.

8 SOLICITOR ROSS: Your Honor, in fact---

9 THE COURT: Don't, don't even worry about the
10 possession of meth because that's gonna go to the jury.

11 So, Promethazine, are you looking for a conviction on
12 that?

13 SOLICITOR ROSS: No, Your Honor.

14 THE COURT: Okay. So, let's talk about the Xanax.

15 SOLICITOR ROSS: With regard to the Xanax, the pills
16 were found in a cigarette container. I think that's
17 evidence alone that he didn't have a prescription for it,
18 and I don't think we have the burden to disprove that he
19 didn't have a prescription for it as well. I think that
20 would be an affirmative defense for---

21 THE COURT: Well, you got to disprove just about every
22 affirmative defense there is. I think, circumstantially,
23 the fact that they supposedly found in the cigarette pack I
24 think the, according to the officer's testimony, would
25 likely be enough. Otherwise you would never be able to get

1 it to a jury on that because you have to search every
2 pharmaceutical database from here to kingdom come.

3 It did catch my ears when I heard there were three
4 empty prescription bottles. I was getting ready for
5 somebody to say, well, what were they, and Lieutenant
6 Hamilton just didn't know cause he was just going off the
7 booking report. I don't know what those may of been for.
8 Of course, if one of them was for Xanax, and you're aware of
9 it, you would probably, as an officer of the Court, say hey,
10 must of just stuck them in the bottom of the cigarette pack
11 for some unknown reason.

12 SOLICITOR ROSS: Yes, sir, they were not for Xanax I
13 mean.

14 THE COURT: I'm sure that that, at least out-of-course,
15 Mr. Williams would of probably said here's his prescription.

16 SOLICITOR ROSS: And we looked at this when we were
17 preparing the case. I believe -- obviously this is not in
18 the record, but just for the Court's edification, the labels
19 on those bottles were lifted off. That's, that's my
20 recollection there.

21 THE COURT: All right. Well, Mr. Williams, anything
22 else on the possession of Xanax or controlled substance?

23 MR. WILLIAMS: No, sir.

24 THE COURT: All right. I'm gonna -- we'll go -- I'm
25 gonna deny your motions at this time, and the manufacturing

1 meth is an intriguing one, and lots of times you see this in
2 the crack cocaine scenario where -- and those aren't mobile.
3 Those aren't in cars, and you have the frying pan and you
4 have the little, the cornbread, I call it cornbread looking
5 stuff and all that other material that is more residue for
6 crack, and there's no residue here, which, which, I guess,
7 even Lieutenant Hamilton would of agreed is somewhat unusual
8 if he's doing it in the car.

9 Okay. I'm gonna continue to consider your
10 manufacturing directed verdict motion, and if you could have
11 your client come on up and I'll talk to him.

12 (Defendant complies.)

13 THE COURT: Raise your right-hand please, sir.

14 Your name?

15 DEFENDANT: Jeffrey Dodd Thomas.

16 (WHEREUPON, the defendant was placed under oath at this
17 time.)

18 THE COURT: All right. Listen carefully to what I'm
19 talking to you about, Mr. Thomas, because we've reached the
20 stage of the trial now where you may present your defense,
21 and included within presenting your defense is your right to
22 testify yourself.

23 The Fifth Amendment to the United States Constitution
24 states, in pertinent part, that no person in any criminal
25 case may be a witness against himself. That simply means

1 the law. All of which you will get in this courtroom, and
2 it would be improper, very improper for you to obtain any
3 information from any independent source.

4 So, see you back tomorrow morning at 9:30, and have a
5 nice evening and look forward to seeing you then.

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

8 THE COURT: Okay. You gentlemen ready to discuss
9 the -- I'm gonna keep the defendant's motion for directed
10 verdict under, under advisement.

11 You want to go ahead and just restate for the record or
12 just incorporate what you said as well?

13 MR. WILLIAMS: Just, Your Honor, just incorporate the
14 argument that we made at the end of the State's case as
15 arguments that would be made at the conclusion of the case
16 in chief, and incorporate the, the manufacturing argument,
17 Your Honor.

18 THE COURT: All right. Okay. As I -- as Mr. Ross had
19 requested earlier, he wanted to make sure that I was gonna
20 charge constructive possession, and you have proposed
21 charges on that or anything else?

22 SOLICITOR ROSS: Your Honor, I do. I imagine this
23 probably is in your sample charge, your printed copy of it
24 just the same, and this is just on constructive possession
25 cases, and I imagine the last few words have to be would

1 have been reworded for your purpose of advising the jury,
2 but---

3 THE COURT: Okay. I'll be glad to give you gentlemen a
4 copy of what I will be telling the jury is that possession
5 may be actual or constructive, both. Constructive
6 possession means that the defendant had dominion and control
7 or the right to exercise dominion and control or control
8 over either itself or the property in which or on which it
9 was found.

10 Mere presence at a scene where drugs are found is not
11 enough to prove possession. Actual knowledge of the
12 presence of the drug is evidence -- actually our charge says
13 strong evidence. I don't use the word strong. Of the
14 defendant's intent to control its disposition or use. The
15 defendant's knowledge and possession may be inferred when a
16 substance is found on property on or in property under the,
17 the defendant's control. However, that inference is simply
18 an evidentiary fact to be taken into, into consideration by
19 you along with other evidence in the case and to be given
20 the weight you believe it deserves. That's the gist of the
21 constructive possession charge.

22 Is that suitable for the State?

23 SOLICITOR ROSS: Yes, Your Honor.

24 THE COURT: Mr. Williams.

25 MR. WILLIAMS: Yes, sir, that's, that's fine.

1 THE COURT: Okay. Any other specific written request,
2 first of all?

3 SOLICITOR ROSS: None written, Your Honor.

4 THE COURT: Mr. Williams.

5 MR. WILLIAMS: No, Your Honor.

6 THE COURT: Any specific verbal requests?

7 SOLICITOR ROSS: Judge, this morning Sergeant Hazewinkel
8 brought to my attention Provision D of Section 44-53-375,
9 which is a statute, the meth and crack statute. This reads
10 possession of equipment or paraphernalia used in the
11 manufacture of cocaine, cocaine base, or methamphetamine is
12 prima facie evidence of intent to manufacture.

13 I'd ask that this provision of law be instructed to the
14 jury. Obviously the term prima facie can't be used under
15 the case law dealing with inference weights for PWID. I
16 would propose something to the effect that possession of
17 equipment or paraphernalia used in the manufacture of
18 methamphetamine is evidence from, from which a jury can
19 conclude an intent to manufacture.

20 THE COURT: Yes, sir.

21 MR. WILLIAMS: That's obviously gonna contend -- if
22 Your Honor rules under the DV verdict in the way I would
23 hope you would, then that would have no application.

24 THE COURT: Well, that would be correct. If the
25 manufacturing charge is dismissed, then what you read would

1 be moot. The indictment has 44-53-370(b)(1) in the title
2 and in the body.

3 What section is what you're talking about?

4 SOLICITOR ROSS: Section D of the -- I can pass this up.

5 THE COURT: Yes, sir.

6 SOLICITOR ROSS: This is just a print off from the,
7 the---

8 THE COURT: D you say?

9 SOLICITOR ROSS: Section D, Your Honor.

10 THE COURT: D as in Delta?

11 SOLICITOR ROSS: D as in Delta. This was printed off
12 just from the State website.

13 THE COURT: All right. Mr. Williams, any comment on
14 that?

15 I think I can, I can -- the charge itself would be easy
16 to frame for a jury. It would be similar to the language of
17 constructive possession and they can consider it and give it
18 the weight they believe it is entitled to.

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Something along those lines, is that
21 correct?

22 SOLICITOR ROSS: That's reasonable to the State, Your
23 Honor.

24 THE COURT: All right. Mr. Williams, any objection to
25 that, if, if I---

1 MR. WILLIAMS: If you go that way I have no objection
2 to it, Your Honor.

3 THE COURT: All right. Could I get a copy of this
4 because, for some reason, Lexington County doesn't have any
5 code sections that are up-to-date, and I'm---

6 SOLICITOR ROSS: Judge, I'm kind of, I'm kind of---

7 THE COURT: I can---

8 SOLICITOR ROSS: I can get this--

9 THE COURT: I'm having trouble getting things printed.
10 Not because no one's willing to do it. Just because I don't
11 have access to a printer from my computer.

12 Okay. Anything else from the State?

13 SOLICITOR ROSS: No, Your Honor.

14 THE COURT: My -- anything from the defendant?

15 MR. WILLIAMS: No, Your Honor. The D is troublesome to
16 a certain extent and it depends on how you phrase it in your
17 charge if, if you decide to charge that.

18 THE COURT: Here's what the, off the top of my head,
19 this is basically what I would say. After I say ladies and
20 gentlemen of the jury, the State must prove, beyond a
21 reasonable doubt, with regard to that charge, this, this,
22 and this. I would, I would say something that I further
23 charge you that possession of equipment or paraphernalia
24 used in the manufacture of methamphetamine can be considered
25 by you as evidence, if at all, in your determinations of

1 guilt or non-guilt of the defendant, and that evidence is to
2 be given the weight that you believe it deserves.

3 MR. WILLIAMS: The only thing that, that concerns me is
4 that, in this particular case, there's really not been
5 testimony with regards to equipment. There's been testimony
6 with regards to items that are sometimes combined. The
7 only---

8 MR. WILLIAMS: Paraphernalia. I mean the hose is
9 equipment. I'm drawing a blank on what the other equipment
10 might be.

11 There's no grinder here, is there?

12 MR. WILLIAMS: There's no grinder, Your Honor.

13 THE COURT: There's reference to a cylinder. I don't
14 know what the cylinder was. There was -- a hose is enough
15 to get him acquitted. Paraphernalia would, to me, include
16 ingredients. Certainly you can be heard on that.

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: Salt, you know, the other things that the
19 witness has referenced. Sudogest and all that.

20 NOW, Mr. Ross, help me out on the indictment. Of
21 course, the indictment says the defendant did manufacture,
22 distribute, dispense, deliver, purchase, or otherwise aid,
23 abet, attempt, or conspire to manufacturer, distribute,
24 dispense, deliver, or purchase, or possess with intent to
25 distribute, dispense, or deliver methamphetamine.

1 What do you -- what are you asking me to charge the
2 jury that you believed you proved if you get past the
3 directed verdict motion?

4 SOLICITOR ROSS: The manufacture and the conspiracy to
5 manufacture.

6 THE COURT: who did he conspire with?

7 SOLICITOR ROSS: That's a good point, Your Honor. The
8 manufacture is what we're gonna be able to argue to the
9 jury.

10 THE COURT: In other words, ladies and gentlemen, the
11 State claims or charges the defendant with manufacture of
12 methamphetamine.

13 SOLICITOR ROSS: Yes, Your Honor. That's fine.

14 THE COURT: All right. And the State must prove,
15 beyond a reasonable doubt, that the defendant did engage in
16 the manufacture of that drug on or about May 29, 2011, is
17 that correct?

18 SOLICITOR ROSS: Yes, Your Honor.

19 THE COURT: All right. And then I'll give some
20 understandable version of Subparagraph D. Before we begin
21 in the morning I'll tell you exactly what I'll tell the jury
22 in the form of D is that charge is still in the case.

23 All right. Any other points that you'd like to raise?

24 SOLICITOR ROSS: No, Your Honor.

25 THE COURT: Mr. Williams.

1 MR. WILLIAMS: No, Your Honor.

2 THE COURT: Not to hold you to it, do you -- are you
3 gonna -- do you want to open on the law or you want to waive
4 that?

5 SOLICITOR ROSS: I would waive the opening on the law,
6 Your Honor.

7 THE COURT: You're allowing him to waive it?

8 MR. WILLIAMS: I would allow him to waive it. As I
9 understand it, Your Honor, he would still go first and I
10 would still go last.

11 THE COURT: You'll go last.

12 MR. WILLIAMS: Regardless.

13 THE COURT: Well, that's right. And I always get that
14 confused in my mind. That means I'm not very smart. But if
15 you'll go first and you'll go last. That -- then my
16 question was irrelevant.

17 How long do you think you'll take?

18 SOLICITOR ROSS: Right at 20 minutes I would think.

19 MR. WILLIAMS: Twenty minutes is good, Your Honor.
20 Actually twenty-five minutes.

21 THE COURT: Not to be outdone.

22 The charge that I will give will probably take thirty
23 minutes. So, I would -- I doubt that we'll take a break
24 after the argument. It depends on how much the jury
25 squirms. If they give me a signal, they may need to take a

1 rest room break. If a lot of them are coffee drinkers, we
2 may or may not take a recess.

3 (Pause.)

4 THE COURT: All right. All right. We'll see you -- if
5 you need to talk to me between now and 5:00 I guess when the
6 bailiffs leave, let them know and come on back. Otherwise
7 if you can be here at 9:15, and let me know if there's
8 anything else that you have. At that time I'll have my
9 final decision on the directed verdict motion.

10 Thank you.

11 SOLICITOR ROSS: Thank you, Your Honor.

12 MR. WILLIAMS: Thank you, Your Honor.

13

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

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1 Wednesday, May 23rd, 2012

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3 THE COURT: All right. Before we get in any details
4 about the pending motion, anything else from the State or
5 the defendant?

6 SOLICTOR ROSS: No.

7 MR. WILLIAMS: No, Your Honor.

8 SOLICTOR ROSS: None from the State, sir.

9 THE COURT: All right. I've considered all the
10 evidence very carefully. I'm gonna deny the defendant's
11 motion for directed verdict on the manufacturing charge. I
12 think it's extremely close. I have based my decision on not
13 the weight of the evidence, but the existence of it.
14 Frankly I don't know what Subsection D of the statute adds
15 to the equation. Of course, I'm gonna charge that in a
16 manner that I explained to you yesterday if, if that charge
17 was gonna go forward.

18 Someone can have the intent to commit a crime, but the
19 crime is not committed until the crime is actually
20 committed. In other words, you could have all of these
21 materials, you know all ten or eleven of them, in your
22 possession and have the intent to commit that crime at some
23 point. But you can't be charged with it, convicted of it
24 until you actually do it.

25 I would assume that the, the jury will be asked to, on

1 both sides, to examine the evidence in a different way, but
2 I think there's enough here to send that case, send that
3 charge to the jury.

4 I've got my charge on that particular portion of the
5 statute, which I told you both that I would give you ahead
6 of time, and it is as follows, I'll be glad to give you a
7 copy of it, possession of equipment or paraphernalia used in
8 the manufacture of methamphetamine can be considered
9 evidence of intent to manufacture it. You may give any such
10 evidence the weight you decide it should have. That is the
11 substance of it.

12 Any -- I know, Mr. Williams, you disagree with me even
13 getting that far, but as I stated, is there any objection to
14 that particular charge or portion of the charge?

15 would you like to take a look at it?

16 MR. WILLIAMS: Could I, Your Honor?

17 THE COURT: All right. You want to take a look at it,
18 Mr. Ross?

19 SOLICITOR ROSS: Yes, sir.

20 MR. WILLIAMS: I actually do object to that charge,
21 Your Honor.

22 THE COURT: All right.

23 MR. WILLIAMS: And the basis being that if you follow
24 that charge, that the mere fact that someone possesses
25 Sudafed is evidence, that one item is evidence of an intent

1 to manufacture methamphetamine, and that, that just -- it
2 doesn't make sense that that would be the intent to
3 manufacture because, if that's true, then persons in the
4 pharmacy could be or individuals -- anybody whose got
5 sudafed, it could be used against them for some sort of
6 manufacturing of methamphetamine, and some sort of charge
7 for manufacturing methamphetamine.

8 THE COURT: All right. Mr. Ross.

9 SOLICITOR ROSS: Your Honor, the law is the law, and
10 this law is pretty similar to the law on inference weight
11 for PWID. Weight alone can be used to infer an intent to
12 distribute even without, you know, any other evidence. I
13 think the law of that particular section should track the
14 law as it is, as the Appellate Courts have interpreted the
15 inference weight for PWID.

16 THE COURT: well---

17 SOLICITOR ROSS: That it's prima facia evidence cause
18 that would violate the Constitution, but it is evidence from
19 which you can infer an intent to distribute. It doesn't
20 relieve us of our burden. It doesn't mean they have to, but
21 it's just evidence that the jury can use to infer an intent
22 to manufacture.

23 THE COURT: well, I think that your analogy is not
24 correct because an inference because of the weight of a drug
25 is a different story because you -- the jury would of had to

1 have found possession, which is an illegal act itself. The
2 analogy you draw just carries one step further to a more
3 serious crime. Even though I'm gonna give the charge as
4 I've stated, because that's what the statute says in so many
5 words, I tend to agree with Mr. Williams philosophical
6 level.

7 But as you state, Mr. Ross, the law is the law. The
8 law, as written, says possession of equipment or
9 paraphernalia used in the manufacture of the drug is
10 evidence of the intent to manufacture. Conceivably you
11 could have a rubber tube, and I saw where you got it in your
12 car, and if you read the letter of this statute, possession
13 of a rubber tube or an empty Coke bottle or one box of salt
14 can be considered as evidence of the intent to manufacture
15 meth. Obviously we know that that wouldn't pass the smell
16 test for many other reasons, but this intent language,
17 coupled with the other evidence in the case, is enough to,
18 to get me past sponsoring an absurd result.

19 MR. WILLIAMS: Well, Your Honor, in that you say that
20 the statute has the particular wording in it, then we
21 wouldn't object to, if you're gonna charge that even though
22 we don't agree that there should be a basis for it going
23 forward on that, we would request that you charge only
24 what's in the statute because if you, if you read the words
25 that are in the statute, as written in the statute, it says

1 that the equipment used to manufacture methamphetamine.
2 That would allow me to argue that there's been no
3 manufacturing of methamphetamine from the, from---

4 THE COURT: So, you want me to charge it as written?

5 MR. WILLIAMS: As written.

6 THE COURT: You object to that, Mr. Ross?

7 SOLICITOR ROSS: Your Honor, the only objection I would
8 have is using the phrase prima facia evidence. I think the
9 Appellate Courts have held at least with the PWID situation
10 that that's unconstitutional and that---

11 THE COURT: well, it's kind of burden shifting, in
12 other words?

13 SOLICITOR ROSS: Yes, Your Honor, that's---

14 THE COURT: He's right about that, but if you want the,
15 the more, the more damaging language, if you consent to it,
16 I'll give it.

17 MR. WILLIAMS: No, Your Honor, I think that, that
18 enforces the problem with giving that instruction. If, if
19 the solicitor is saying that the statutory language, if the
20 statutory language is, is incorrect or shouldn't be used
21 because of the prima facia burden shifting, if you will,
22 then now to charge it or not charge it, I mean we have to
23 decide which way we're going.

24 THE COURT: And I was going the way that tells the jury
25 it's evidence they can give it the, if they choose to

1 consider it, they can give it the weight they think it
2 deserves.

3 Now, do you want me to give -- I'm not gonna allow you
4 to ask me to give this language from the statute and then
5 say well, if you're gonna give that language from the
6 statute, it's not fair. I've, I've -- what I've offered to
7 do is give a variation of it. That wouldn't fit more within
8 the scenario where you have no burden. I'm not allowing the
9 burden to be shifted.

10 So, do you want me to say possession of equipment or
11 paraphernalia used in the manufacture of methamphetamine is
12 evidence of intent to manufacture and you can give that
13 evidence the weight you believe it deserves or do you want
14 me to give you the one that I earlier read?

15 MR. WILLIAMS: Your Honor, I guess, faced with those
16 two options, the one you earlier read or the one which you
17 drafted would be better.

18 THE COURT: Because, in other words, you would, you
19 would, academically, want me to give the charge from the
20 statute to demonstrate how absurd it is.

21 MR. WILLIAMS: Obviously. I mean from an academic
22 standpoint it makes no sense.

23 THE COURT: All right. And this is a good classroom
24 discussion, but I'm trying to figure out how we're gonna
25 charge the jury. It's an interesting discussion, but you

1 would prefer, between the two, if I'm going to give the
2 charge, that I give the one that I mentioned and that you
3 came up here and read?

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: Is that right?

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: That suit you?

8 SOLICITOR ROSS: That's fine with the State, Your Honor.

9 THE COURT: Okay. All right. Now, any other parts of
10 the charge that either side wants to address?

11 SOLICITOR ROSS: None from the State, Your Honor.

12 THE COURT: And we have done separate verdict forms for
13 each charge. Of course, I will tell the jury that their
14 verdict on one will not control their verdict on any other.
15 They could find him guilty of all three, not guilty of all
16 three, or some combination of guilty and not guilty on all
17 three.

18 Any objection to that?

19 SOLICITOR ROSS: No, Your Honor.

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: Is everybody here?

22 BAILIFF: I think so, Your Honor.

23 THE COURT: All right.

24 BAILIFF: You want me to bring them in?

25 THE COURT: If they're all here.

1 State ready?

2 SOLICITOR ROSS: State is ready.

3 THE COURT: Mr. Williams.

4 MR. WILLIAMS: Defense is ready, Your Honor.

5 BAILIFF: They're all here.

6 THE COURT: Sir?

7 BAILIFF: They're all here.

8 THE COURT: They can come on in.

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

11 THE COURT: All right. Ladies and gentlemen, we're
12 ready to move forward.

13 As I mentioned to yesterday, all the evidence that
14 would be introduced in the case has been introduced, and now
15 we've arrived at the portion of the trial where the
16 attorneys are permitted to give their closing arguments to
17 you. The order will be the State going first, and then the
18 defendant will present the last argument.

19 Now, I will remind you that what the attorneys tell you
20 is not itself evidence. The lawyers certainly can be
21 expected to refer to evidence, and they'll also be referring
22 to the law that they anticipate and that they know that I'll
23 be charging, and they're permitted to argue the conclusions
24 that they believe the evidence or lack of evidence would
25 compel you to reach in these particular charges.

1 THE COURT: All right. Come on up.

2 (WHEREUPON, a bench conference was held out of the
3 hearing of the jury at this time.)

4 THE COURT: All right. Ladies and gentlemen, please go
5 to your jury room. Please do not discuss the case.

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

8 THE COURT: Mr. Williams.

9 MR. WILLIAMS: Your Honor, my objection is to argument
10 by a solicitor in that he is arguing about facts, as is, has
11 begun, about some sort of murder case, and he's asking the
12 jury to imagine what would happen if there was a dead body
13 found inside a---

14 THE COURT: Tell your client to please quit shaking his
15 head and making -- he's been -- it's kind of wearing a
16 little thin. So, I know he agrees with what you say, and
17 disagrees with what the State says. But it's not very
18 productive.

19 Okay. All right. Mr. Williams.

20 MR. WILLIAMS: Your Honor, the solicitor is, by using
21 the analogy of a murder case, by placing a dead body in a
22 truck, by referencing any of these items obviously it would
23 be inflammatory to a jury. It's not based on any testimony
24 that I'm aware of in this trial.

25 We're, we're dealing with a drug case, and to bring

1 If a lawyer recites or refers to evidence that does not
2 correspond with your collective memory of what the evidence
3 actually was, you go with your memory. The lawyers won't
4 purposefully mischaracterize anything, but they do have the
5 right and certainly the obligation to be an advocate for
6 their particular position. After, and, likewise, if the
7 lawyers refer to a point of law that does not correspond
8 with the law as I give it to you, you will certainly, under
9 your oath, follow the law as I give it to you.

10 All right. Is the State ready to proceed?

11 SOLICITOR ROSS: State's ready, Your Honor.

12 THE COURT: Defendant.

13 MR. WILLIAMS: The defendant's ready, Your Honor.

14 THE COURT: All right. Mr. Ross.

15 SOLICITOR ROSS: May it please the Court, Your Honor?

16 THE COURT: Yes, sir.

17 SOLICITOR ROSS: I'd like for you to pretend for a
18 minute that you weren't picked to sit on a jury for a drug
19 case. Instead, you were picked to sit on a jury for a
20 murder case, and pretend the facts that were presented to
21 you during that murder case was that there was a dead body
22 found in a Ford Ranger with a large bullet wound right in
23 the chest.

24 MR. WILLIAMS: Your Honor, I have an objection I'd like
25 to raise with the Court.

1 murder, dead bodies in a truck into a closing argument is
2 highly prejudicial. It can only, it can only be an attempt
3 to inflame the jury in reference to that, that my client is
4 some, somehow worse or should be convicted because of some
5 sort of strange analogy that he's bringing.

6 It's like, I guess, Your Honor, like bringing baby
7 carriages into death penalty cases where a person, where an
8 infant has died and that type of thing. It's not restricted
9 to the facts of the case, Your Honor.

10 THE COURT: All right.

11 MR. WILLIAMS: It's highly inflammatory.

12 THE COURT: Mr. Ross.

13 SOLICITOR ROSS: Your Honor, what I'm trying to do is
14 I'm not trying to paint him as a murderer. I'm trying to
15 use an analogy that, just like a murder case, circumstantial
16 evidence can be used to prove someone's guilt. You don't
17 have to catch somebody in the act of committing a crime, and
18 the best analogy I can think of is a murder analogy.

19 He's not charged with murder. I don't think the jury
20 is going to think he's charged with murder or associate it
21 with murder. That is just an analogy that I'm using and I
22 believe that both sides can reference analogies in their
23 closing argument. It's tied to the evidence in this case,
24 the circumstantial evidence that was found, and argument by
25 analogy, Your Honor.

1 THE COURT: All right. Anything else, Mr. Williams?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: All right. The objection's overruled. Of
4 course, with regard to photographs in cases that the Supreme
5 Court has cautioned all of us that sometimes you can go too
6 far. I don't think you've gotten to that point, but if you
7 choose to give that analogy, you'll have to be prepared to
8 support it perhaps at a later time.

9 I have -- if he, if he starts talking about that meth,
10 manufacturing meth is equivalent to the murder of society
11 and things of that nature, I don't think he's gonna go that
12 far, and I won't let him go that far. This is -- I think
13 the analogy is, as far as the direct and circumstantial
14 evidence, is suitable. Perhaps it might not be the best
15 course, but it -- he hasn't crossed the line.

16 All right. Bring in the jury.

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

19 THE COURT: All right. Mr. Ross.

20 SOLICITOR ROSS: Yes, Your Honor.

21 We were talking about that murder analogy. If you were
22 on a jury for a murder case, and the evidence presented was
23 that there was a dead body in a truck, a bullet wound on
24 that dead body, and there was a suspect just a couple feet
25 from the truck, and the suspect said that, in fact, is my

1 truck, the truck was registered to the suspect, and under
2 the driver's seat of that truck you have a box of
3 ammunition, and you had a book bag with a gun, and in that
4 book bag you had a tax form with that suspect's name on it,
5 would you have trouble figuring out who committed that
6 crime?

7 And this illustrates the difference between
8 circumstantial evidence and direct evidence. Judge James is
9 gonna explain this difference to you in a few minutes. The
10 law recognizes circumstantial evidence, direct evidence.

11 Direct evidence is when somebody actually sees another
12 commit a crime. Sees somebody manufacturing
13 methamphetamine. Sees somebody commit a murder.

14 Circumstantial evidence is everything else.
15 Circumstantial evidence is the trail that is left behind,
16 and under the law in this state, and, to my knowledge, every
17 state in the country, there is no difference between direct
18 and circumstantial evidence.

19 They're both equal under the law. Each piece of
20 evidence stands on its own, and you give each piece of
21 evidence the weight it deserves regardless of whether it's
22 direct or circumstantial and that makes sense because
23 otherwise how could you ever convict somebody for murder
24 unless you have an eye witness at the scene seeing somebody
25 pull the trigger.

1 well, the same is true for a drug case. You can
2 convict somebody based on circumstantial evidence even if
3 you don't have somebody see Jeffrey Dodd Thomas
4 manufacturing methamphetamine. Even if the police don't
5 roll up at the precise time that Jeffrey Dodd Thomas is
6 manufacturing methamphetamine. You can convict him of that
7 if there's enough trail left behind, and, in this case, he
8 left too much of a trail behind not to convict him for this
9 charge.

10 Now, I told you when we started the trial that you were
11 gonna learn a lot about manufacturing methamphetamine, more
12 than I'm sure any of y'all wanted to ever know, and you
13 learn that you don't need to be a rocket scientist to figure
14 this out. You don't need an advanced degree. All you need
15 is the Coke bottle and five ingredients.

16 You got to have Sudafed. That's the base ingredient.
17 You got to have Ether. You got to have Lithium, Lithium
18 batteries. Then you need drain cleaner. Put them in a
19 bottle, shake it up, you got liquid meth. You take a second
20 bottle, put a tube on it, put sulfuric acid, the air, to
21 make that liquid, turn that liquid meth and it's solid, and
22 the trail left behind in this case can only lead to Jeffrey
23 Dodd Thomas committing this crime.

24 This is the trail he left behind in this case. This is
25 the base ingredient that is used. This is the tube that is

1 used in the second step. These are the coffee filters used
2 to filter the liquid drug. These are the digital scales to
3 weigh it out to sell. But the most damning piece of
4 evidence is this.

5 Remember Lieutenant Hamilton discussing about how this
6 is made, and when people make methamphetamine, they punch a
7 hole in the bottom to make sure they get everything out of
8 it. They want to get every little drop of Ether from this
9 bottle. They don't want to lose any of the air. They punch
10 a hole in the bottom. No mechanic punches a hole in the
11 bottom of starter fluid. I'm sure none of y'all punch holes
12 in the bottom when you got to work on your car.

13 This is the smoking gun. This is the fingerprints.
14 This was found in his truck. This is what convinced
15 Lieutenant Hamilton, the man on the streets, the man doing
16 this as his life work, investigating drug crimes, the man
17 who is been on 200 meth lab raids, he looked at all of these
18 items and he said sure, each one of these items, standing
19 alone, perfectly legal. But when you put all these little
20 pieces together, you got the puzzle. You got the complete
21 puzzle of what's going on. And before you came to sit on a
22 jury, if you were to see all these standing alone, you
23 probably wouldn't be able to put that puzzle together.

24 But now you know how easy it is. Now you've listened
25 to all the officers that were involved in this case. These

1 officers that do this everyday. These officers know what's
2 going on.

3 what's going on is that he had just made the meth that
4 was found in the car. That meth is evidence that it was
5 produced. Meth doesn't fall from the sky. It's not natural
6 to our environment. Somebody has to make it.

7 who do you think made that meth if not for Jeffrey Dodd
8 Thomas?

9 was it the mystery man?

10 The mystery man that Mr. Williams was referring to.

11 You think he made that meth or do you think the guy
12 with all the tools to make it in his truck, the guy with
13 sudafed right underneath that seat?

14 who do you think made it, Mystery Man or Jeffrey Dodd
15 Thomas?

16 Now, the possession charge goes hand-and-hand with the
17 manufacturing charge. The defense wants to argue that you
18 don't have enough information to figure out what was going
19 on.

20 I beg to differ about that.

21 what do you know on the meth charge, the possession of
22 meth charge?

23 It was found in a car registered to him. He admitted
24 that it was his car. It was found a couple of inches right
25 by his wallet, right by his cell phone.

1 You think Mystery Man left that methamphetamine behind
2 right in that spot?

3 Well, it -- for a moment let's just, let's assume there
4 is a mystery man. Let's assume Mystery Man placed those
5 drugs in Jeffrey Dodd Thomas' car. Let's assume Jeffrey
6 Dodd Thomas has been set up and is the unluckiest man in the
7 world.

8 What about all these other items, these other items
9 that connect him to the drug?

10 What about this Sudafed?

11 If he's the unluckiest man in the world, why is there
12 Sudafed right underneath the driver's seat?

13 If he's the unluckiest man in the world, why do you
14 have this tubing?

15 What's the tubing for?

16 I mean at least with the salt, at least with the salt
17 you can say you're gonna put in on your fries.

18 What are you gonna use this tubing for?

19 How about these coffee filters?

20 Do you think Jeffrey Dodd Thomas works at Starbucks
21 selling \$5 coffees?

22 Shoot, if you want to believe that, find him not
23 guilty. If you want to think Jeffrey Dodd Thomas sells \$5
24 coffee at Starbucks, we'll be done with it. Turn him loose.
25 Find him not guilty.

1 But that's not reasonable. That is not the reasonable
2 result in this case, and that illustrates what the defense
3 is gonna argue, what they've already argued on
4 cross-examination.

5 Their job is to create doubt where no doubt exists.
6 That's what a defense attorney does, and it's like if you're
7 walking down the street after it rained, and there's a
8 puddle of water on the sidewalk, and you see a quarter at
9 the bottom of that puddle, you can see the quarter clear as
10 day. It's right there.

11 What the defense is gonna do is gonna get a stick.
12 They're gonna rummage around in that water in that puddle,
13 kick up all the dirt trying to create an illusion, create
14 doubt where none exists, and that's what they did on
15 cross-examination.

16 You heard ad nauseam, every officer that got up to take
17 the stand, heck, even the chemist, even the evidence
18 custodian, they asked them about fingerprints, fingerprints
19 on the Altoids can.

20 There was a reason why fingerprints were not obtained.
21 Detective Laintz told you that reason. This ain't a case of
22 who done it. It's found in his car, registered to him. He
23 said it was his car, and the funny thing is you remember
24 Detective Laintz's testimony. He told you about what
25 happened after he placed the defendant in the back of that

1 patrol vehicle.

2 what did the defendant say?

3 He's fixing to go to jail for trespassing.

4 what is he concerned about?

5 what's gonna happen to my car?

6 what you doing with my car?

7 He's not focused on jail. He's focused on his car, and
8 that's because he knows what's in his car. He knows he's
9 got meth in the car. He knows he's left too much of a trail
10 behind to not figure out what's going on with that car.

11 what else did the defense try and do on
12 cross-examination?

13 They tried to confuse everybody on the location of the
14 items seized, and you're gonna remember they tried to
15 confuse Sergeant Hazewinkel and Lieutenant Hamilton where
16 the location of these items were in that car. But neither
17 of those two gentlemen were on the scene when the search
18 occurred. The person who was on the scene was Detective
19 Laintz, and this is key when we talk about the book bag.

20 Detective Laintz got up on that stand. He was crystal
21 clear about that book bag. He opened that book bag up. He
22 saw digital scales in the book bag. He saw papers.

23 what papers did he find there?

24 He found these folded up H&R Block cards with Jeffrey
25 Dodd Thomas' name right there. Jeffrey Dodd Thomas, his tax

1 forms, were right by digital scales in that book bag.
2 Detective Laintz said he didn't put these papers in that
3 book bag. Sergeant Hazewinkel didn't put these papers in
4 that bag. Mystery Man didn't put these papers in this bag.
5 He did.

6 why were they in the same bag as the digital scale,
7 this digital scale that you know what the purpose of this
8 scale was for?

9 what do you think this is used for?

10 Do you think he was using this to weigh his postage for
11 his tax return?

12 Do you think he wanted to put that on there to make
13 sure he got the postage right?

14 well, if that's what you think, well, find him not
15 guilty. If that's what you think he was using the digital
16 scales for, shoot, turn him loose, we'll all go home.

17 So, what the defense is gonna try and do is make doubt
18 where none exists, but the problem is facts are stubborn
19 things. The facts are stubborn things.

20 Those are the words of John Adams. He's one of our
21 founding fathers. He said those words during the trial that
22 followed the Boston Massacre during the Revolutionary War
23 times. what he was getting at was that no matter how much
24 spin you place on the facts, no matter how articulate an
25 attorney can be in saying up is down, down is up, white is

1 black, no matter how, no matter how much spin you try and
2 place on the facts, the facts, unlike this jury box, they
3 don't budge. The facts in this case don't budge. The
4 evidence that was seized doesn't budge.

5 The fact that you have this tax form, the digital
6 scales, and the book bag that doesn't budge. That links him
7 to the drugs. That's the nail in his coffin.

8 They asked for fingerprints. They're your fingerprints
9 right there. That trail is better than fingerprints.

10 Defense also talked about the Xanax charge. They're
11 gonna try and say well, he might of had a prescription for
12 that Xanax. If that's so, he's got five pills.

13 why doesn't he have them in the bottle?

14 why is he got it in that cigarette pack, those five
15 pills?

16 why not just carry it around in his bottle?

17 Not talking about one. Not talking about just let me
18 take a pill so I can have it later on in the afternoon if I
19 get a headache. Not one pill for the one use. Got five
20 pills. We have a prescription for those five pills. That
21 ain't reasonable. If you're gonna take a pit pill from your
22 pill bottle, hold on to it for later, you take one. If
23 you're gonna take more, you keep it in the bottle.

24 Now, in a few minutes Judge James is gonna charge you
25 on the law, and he's already gone over some of what he's

1 gonna charge in a few minutes. He's already talked to you
2 about the presumption of innocence. He said that to you
3 before any evidence was taken, the presumption of innocence.

4 It's part of the law in this country. It's been that
5 way since we've had a country. At the start of the trial
6 everybody that walks through the doors of this courthouse,
7 everybody that walks through those doors is presumed
8 innocent at the start of the trial.

9 Well, folks, the evidence is in in this case. The
10 trial is almost over. You've heard everything you're gonna
11 here. That presumption is shattered.

12 What shatters that presumption, all this evidence, all
13 their testimony, that demonstration that you saw explaining
14 how you make this drug. Everybody's innocent at the start
15 of the trial, but that is over. That ship is sailed.

16 Judge James is also gonna talk to you about reasonable
17 doubt. He's gonna explain to you nobody can be convicted of
18 a crime unless you're convinced, beyond a reasonable doubt,
19 that they did it. That also is basic fundamental law. It's
20 been that way since we've been a country. The State
21 wouldn't have it any other way. That's the way it should
22 be.

23 But the term reasonable doubt, those aren't magic
24 words. The judge is gonna tell you reasonable doubt simply
25 means are you firmly convinced in the defendant's guilt, are

1 you firmly convinced in the defendant's guilt. It doesn't
2 require guilt beyond all doubt, and the judge is gonna tell
3 you that.

4 Nothing in this world is beyond all doubt. Nothing.
5 That's just the world we live in. Nothing in this world is
6 beyond all doubt. If that were the case, if that were the
7 standard that you would have to apply, nobody could ever be
8 found guilty of any crime because nothing is beyond all
9 doubt. We're talking about reasonable doubt, are you firmly
10 convinced, and the evidence in this case that I've talked
11 about, these witnesses testified to, that you got over here
12 on this table, that should leave you firmly convinced that
13 Jeffrey Dodd Thomas is guilty on all three charges, firmly
14 convinced of his guilt, and that's what I'm gonna ask that
15 you do, find him guilty on all three.

16 And before I concede the floor to Mr. Williams here, I
17 do want to thank you for your jury service. This was a
18 short trial, but it's an important one. This is a serious
19 charge that I know that each and every one of you probably
20 had other things you could of been doing. Could of been at
21 work providing for your family. Could of been with your
22 family. Could of been on a beach reading a book, and y'all
23 all saw some people were able to get excuses. I'm sure
24 y'all could of gotten an excuse, but you didn't, and you
25 should be commended for that.

1 The reason being nothing the police do, nothing they do
2 could ever come to fruition without 12 honest citizens
3 standing in judgment of somebody else, and I know that's a
4 difficult thing, but it's a necessary thing. It's a
5 necessary thing because this is a serious charge.

6 Justice requires that you find him guilty as charged.
7 That's what I'm gonna ask that you do when you go back to
8 your jury room.

9 Thank you very much.

10 THE COURT: Thank you, Mr. Ross.

11 Mr. Williams.

12 MR. WILLIAMS: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. WILLIAMS: Mr. Foreman, ladies and gentlemen of the
15 jury -- let me get my old prop things up.

16 I didn't really know what I was gonna say to you to
17 today, and I think some of that may have been helped out by
18 listening to the, the argument I guess of the solicitor
19 because he brought some things that maybe I forgot, you
20 know, in my many years. I been, I been practicing law 36
21 years. That's -- probably a few of you who might be younger
22 than that, but I go back to why I started practicing law,
23 and, and that that had to do with, believe it or not, making
24 sure the right thing was done, and that's what you 12 jurors
25 are here to do, and that is to make sure the right thing is

1 done based on the law.

2 We all have our jobs that we have to do. You're the
3 fact finders. The solicitor's job is, I guess, trying to
4 convict my client. Mine is to represent my client, and the
5 judge's job is to tell you what the law is.

6 But you don't do it by tricks, and you don't do it by
7 movies, and you don't do it by orchestration. I'm not here
8 to, I'm not here to stir up a puddle. I know he said that
9 the ship is already sailed. You know, that ship hasn't
10 sailed yet. You know, that presumption of innocence, it's
11 with my client right now. It's gonna be with him hopefully
12 30 minutes from now when you're back there talking about
13 this case because y'all make the call.

14 I've heard a lot of analogies here, and I'm sure that,
15 that the reason they were brought here is because everybody
16 likes mom and apple pie and country. I mean if we all want
17 to feel good about something, we raise the flag. If we all
18 want to feel good about something, we talk about our
19 country.

20 Let's talk about the case.

21 Does anybody on this jury know who John Adams
22 represented at the Boston Massacre trial?

23 I'd be willing to bet you don't know.

24 Does anybody know the outcome of the trial?

25 Nope.

1 That little quote is thrown in there to, to make you
2 think about well, you know, he was -- you know, he was
3 president. We all know he was president.

4 You know, the main contentions with the Boston Massacre
5 had to do with who fired the first shot.

6 So, why bring it up?

7 Y'all don't know about that I mean unless you're a
8 history major. I don't know, cause he was a president.
9 It's Revolutionary War. That's when we fought for our
10 independence from Britain.

11 Well, let's talk about a murder case.

12 That will get your attention, won't it?

13 Why not talk about a speeding case?

14 If the guy was passing three, I guess, marked on the
15 highway and a helicopter or a plane was above it, and he
16 passed it with a certain amount of time, then that would
17 indicate that the speed of the person may or may not have
18 been in excess of the speed limit. But no, we're not gonna
19 talk about a speeding case. We're gonna talk about the
20 murder case because there's two parts of the brain.

21 There's the brain which does the logical work. Then
22 there's the brain which does the emotional work. I know we
23 all think about our heart -- there's been some studies, I
24 guess. I don't know whether or not you've watched it on TV
25 about whether or not the heart actually does some type of

1 influence.

2 Let's go to that murder case that we just talked about,
3 and that murder case where there was a body in the truck,
4 and there was, and there was a gunshot wound in the body
5 which was in the truck, and that the truck was owned by, by
6 a defendant.

7 well, see, you follow that, obviously this person is
8 guilty of murder, isn't he?

9 well, I don't look about it that way. I look at it
10 what if the wound on the body in the truck was caused by a
11 rifle. Then the fact that there was a gun in the book bag
12 doesn't mean that the gun was used to kill the person in the
13 back of the truck.

14 was there gunshot residue on the person who's standing
15 with the truck or not?

16 Because if there wasn't gunshot residue on the person,
17 then maybe he wasn't the one that fired the gun.

18 what if the guy didn't know that the body was in the
19 back of the truck?

20 what if they're two people who drove up in the truck?

21 You see, that's the problem with jumping to
22 conclusions, and you know our forefather, back in the
23 Revolutionary war, back with John Adams, back when they set
24 up the Declaration of Independence, back when they did the
25 Constitution, when they set forth the rights of an

1 individual to include a jury trial, they set up a system
2 where the burden of proof is not on the person charged to
3 prove his innocence because you take that same scenario that
4 has been presented by this individual with a dead person in
5 the truck, and you could convict somebody who wasn't guilty.
6 Because if you're standing next to that truck you may not be
7 able to prove you're not guilty.

8 The burden of proof is always on the State. I don't
9 think it's stirring up water. I think, if you represent
10 the, if you represent the State, then it's up to you to
11 bring those items, that evidence, that testimony, before a
12 jury.

13 What have you not heard in all of this trial that we've
14 had today?

15 Well, you have a story which is been laid out to you
16 that there was some sort of trespass and that a police
17 officer went to a location because of a order of trespass
18 that was reflected on a CAD.

19 You know how, how easy it is to present a CAD report to
20 indicate whether or not there was a trespass order or
21 someone had, was under, under a trespass order?

22 Piece of paper.

23 Have you seen it?

24 What about the officer who supposedly placed my client
25 on trespass notice?

1 Have you heard from him?

2 what about the lady who complained about him being
3 there on trespass notice?

4 Have you heard from her?

5 Has anyone said well, we can't find him?

6 well, no, the story is, is that supposedly the police
7 officer talks to my client and he said that he was invited
8 over there. I mean that's what the police officer said, and
9 he, and he -- my client supposedly tells him to go to the
10 truck, check, check the phone in the truck and see what the
11 text messages are. Police officer supposedly goes, gets the
12 text messages.

13 where are the text messages?

14 The police officer says well, the only thing I can
15 remember it said something uncle and cuz.

16 who had possession of the phone?

17 You think they let my client go to the jail with the
18 phone?

19 Go ahead and take it inside.

20 who had possession of the phone?

21 who seized the phone?

22 This is just simple stuff.

23 okay. Somebody's called out to a location for an
24 alleged violation of the law.

25 Do you go inside the house to see who's there?

1 Do you go inside the house to see if the house is in
2 disarray?

3 Does the person who called, allegedly, or who calls?
4 who calls?

5 Is there not some kind of report from the individual
6 who called?

7 Is there not some sort of phone number to indicate?

8 How do you go out to something like that and not, I
9 don't know, nobody comes out of the house?

10 But conveniently my client, who obviously is a slob
11 when it comes to keeping his truck clean, and notice I said
12 truck. It's a truck. You heard the solicitor argue to you
13 that my client supposedly said that what's gonna happen to
14 my car.

15 Do you think he's so stupid that he's not gonna know
16 the difference between his car and a truck?

17 What's gonna happen to my car?

18 It's a truck.

19 Well, supposedly he says well, you can go out there
20 and, and receive the, the phone. When he goes out there
21 there's an Altoids box sitting pristinely on the top of
22 clothes, and in that Altoids box supposedly is some sort of
23 methamphetamine.

24 Well, I don't know. I guess I'm just silly because I
25 know if there's an issue about whose drugs there are that

1 somebody ought to at least do a fingerprint, shouldn't they?

2 Particularly if there's some question about the person
3 not even coming to testify who called the person out there.

4 And you know what else backs up all this?

5 Remember that the police officer testified that my
6 client did not appear intoxicated, did not appear to be on
7 drugs. Yet, if you believe the, the trail, which is been
8 set forth by the solicitor's office, then you have some sort
9 of manufacturer of drugs, drug user, who is at this scene.

10 well, it's -- let's talk about the stuff that shows
11 that he's not one. well, he doesn't appear intoxicated. He
12 doesn't appear to be on drugs. His fingerprints are not on
13 any items that have drugs. But he must be guilty because
14 there was some methamphetamine found, and he must be guilty
15 of not only of that, but of manufacturing methamphetamine.
16 That's probably the charge which bothers me the most. I
17 think I may be arrested when I get home.

18 Sudafed. If you got Sudafed, then you may be charged
19 with manufacturing meth. That's what I'm taking home today
20 from this trial. I'm going home. I'm destroying. If
21 there's any Sudafed at my house, it's gone because that's
22 what they would have you believe.

23 Do you remember the most important thing that the
24 police officer said in his testimony?

25 Officer Hamilton, when he goes through all this story,

1 when he presents this videotape and there's all this
2 important stuff that he talks about, about how you make
3 meth, the question was asked can you make meth by what is in
4 there.

5 No, you can't. You don't have everything you need to
6 make meth.

7 When does it become manufacturing methamphetamine?

8 Does it become manufacturing methamphetamine when I go
9 to the grocery store and I buy myself a box of Sudafed?

10 Am I manufacturing methamphetamine if I happen to go to
11 the hardware store and pick up or go to the grocery store
12 and I pick up coffee filters?

13 But I have a Keurig. So, it's not an issue.

14 I mean is that manufacturing methamphetamine?

15 It's a dangerous precedent we set in this country when
16 we start convicting people of manufacturing methamphetamine
17 when they don't have the items that are necessary to make
18 methamphetamine.

19 You see, we want to talk about history. You know, I
20 like to talk about Harry Truman. You know, if you ever have
21 a quiz and you don't know the answer to it, normally the
22 answer is Harry Truman. Use that in the future.

23 The most important thing he said was the buck stops
24 here. The buck stops with y'all. So, if you're not
25 concerned about convicting people on manufacturing

1 methamphetamine when you don't have the items, then find him
2 guilty of manufacturing methamphetamine. But I think you
3 need to be concerned about that.

4 We're basing our whole trial, our whole charge of
5 manufacturing methamphetamine on the fact that supposedly
6 there was a can which had a hole in the bottom of it.

7 Well, they're three cans. You'll have all of these
8 items back with you. You'll have all these photographs back
9 with you. They're three cans allegedly found in that truck.
10 They all appear to be quite old.

11 Why didn't -- why weren't they holes in all three of
12 the bottoms?

13 Are the other two full and just look old?

14 I mean, let's be consistent with whatever our theory
15 is, but we would have -- remember that little bit of
16 testimony and there was testimony about well, if you had a
17 box of Sudafed, then with that you could make meth.
18 Normally you do it with as, with as little as one or two
19 boxes.

20 Well, that's kind of tricky, isn't it?

21 Did you pick up on what the problem was in that?

22 There was one box found, had ten capsules in it, in a
23 blister pack. They like to use blister pack cause it sounds
24 like it's something that hurts. Blister. Ten pills in
25 there.

1 When we looked at the video, and they showed what you
2 needed to make the methamphetamine, did anybody see what
3 kind of box they had that they were using?

4 It's one box, Sudafed. Had a 20 count. And remember
5 there's testimony about how many milligrams were in each
6 pill because that's what you're talking about. You're
7 talking about the ingredient which is in the Sudafed, and
8 how much you, it would take to use that ingredient. The box
9 which they showed you was the 20 count on the, on the video.
10 The box here is a ten count. See, it's all subliminal stuff
11 that really I hope you're picking up on.

12 The other thing has to do with who found what.

13 Does anybody know which officer found what where?

14 I thought I knew up until we had one officer testify
15 that there was this book bag which was conveniently
16 inclusive of all these items that was in this book bag, and
17 then you remember I had Officer Hamilton up on the stand,
18 and I questioned him using the incident report, which
19 included information about where items supposedly were
20 found, and I think, at that time, you realized what I was
21 doing.

22 You realize that what I was saying well, how could all
23 this junk have been in the book bag, and then he said well,
24 I don't see anything about this book bag.

25 You have the white, the right, I shouldn't have to say

1 white, right, you have the right, sound like Bugs Bunny, to
2 examine the evidence, determine what you believe, what you
3 don't believe, who remembers accurately about what went on,
4 and what was, and what didn't go on, and I hope you're
5 wondering about the three prescription pill bottles that
6 were turned into the Lexington Jail when my client was
7 arrested, and you're saying wonder what they were for.

8 well, who had possession of those items?

9 The Lexington Jail, law enforcement. But no witness
10 testified about what those prescriptions were for.

11 You know, when you climb on that airplane and you fly
12 from Columbia to Charlotte to New York, we don't have direct
13 flights I guess anymore to New York, and you use that little
14 plastic container which says Sunday, Monday, Tuesday,
15 Wednesday, and Thursday. Y'all are probably too young to
16 have a bunch of pills that you put in little containers.
17 But when you do that, I want you to remember that because if
18 you have a prescription pill which you're putting in a
19 plastic container, and it's not in your pill bottle, they're
20 any number of ways to run a foul of the law.

21 The most important item or the absence of the most
22 important item in this manufacturing methamphetamine, on him
23 being a drug user, on him doing anything was the fact there
24 was no smell.

25 Do you remember one of the questions I asked one of the

1 police officers, what is the most prevalent thing that you
2 know when you're dealing with either a meth lab or meth
3 itself?

4 It's smell.

5 No smell.

6 I guess I could go on and on, but then I would be
7 accused of stirring the water. The boat hasn't left the
8 dock or maybe the chains haven't been loosened, but it's
9 your job. The buck stops here. You make the call.

10 My client has nothing to prove, and I, I do request,
11 request that you not convict my client of these charges.
12 Particularly the manufacturing methamphetamine because I'm
13 gonna have to find something else to use for decongestant.

14 Thank you.

15 THE COURT: Mr. Williams.

16 All right. Ladies and gentlemen of the jury, is there
17 anyone who needs to take a, a break?

18 If you do, just give me a signal because the charge I'm
19 going to give you is gonna take about 30 minutes. I'll be
20 glad to take a break if you'd like to.

21 All right. Ladies and gentlemen, let me have your
22 attention for the next few minutes and talk to you now about
23 your responsibilities again, and I'm gonna give you a, what
24 is called a charge on the law, and I remind you that, during
25 the course of the trial, you and I have had certain duties

1 to perform.

2 It's my responsibility to preside over the trial of the
3 case, and it's your responsibility to be the judge of the
4 facts.

5 Now, during the course of this charge I'm going to go
6 over several different legal principles that would include,
7 but not, certainly not limited to, the presumption of
8 innocence, reasonable doubt, credibility of witnesses,
9 criminal intent, the elements of the crimes charged
10 themselves, and several other things, and I can certainly
11 guarantee you one primary thing, and that is that I will
12 repeat myself during the course of the charge.

13 That is not because I will have lost my place or
14 forgotten what I'm suppose to say. It's simply that the
15 legal principles that I will discuss do intertwine with one
16 another. For example, if I talk about Point A, I will have
17 to continue to reference that, along with the other legal
18 principles as I talk about the other ones, because they all
19 do intertwine, and I don't want you to take this opportunity
20 to sit here and try to memorize the law as I'm giving it to
21 you. I just want you to sit back and receive the charge and
22 get a clear understanding of what the law is.

23 Now, in that regard you are required to accept the law
24 exactly as I give it to you. You may come into this case
25 with a preconceived notion of what you think the law is or

1 what you think it ought to be. But I tell you that, for the
2 purpose of this charge and your service in this case, you
3 have to accept the law exactly as I give it to you even if
4 you might disagree with it. So, let's be clear on that.

5 Now, ladies and gentlemen, if I have ordered you,
6 during the course of the trial, to disregard any testimony
7 or to disregard a statement or a question that may have been
8 asked or made, then, under your oath, according to the law,
9 you must disregard that, and you can take into account, as
10 far as evidence is concerned, testimony and exhibits and any
11 stipulations that have been entered into.

12 There may be some exhibits that have been referred to
13 as for identification only. Those exhibits have not been
14 formally introduced. Then they're not gonna go back there
15 with you, and sometimes they're reasons for that, legal and
16 factual. But in any event, you can take into account the,
17 the testimony, the exhibits, and any stipulations that have
18 been entered into, and I, again, have the additional duty
19 to, in addition to charging you the law, to make rulings on
20 objections or other issues that have come up during the
21 trial.

22 Do not take from any ruling that I have made, or for
23 that matter, anything that I've said or done that I favor
24 one particular result over another. My responsibility is to
25 preside and make rulings according to the law, and I don't

1 make those rulings with a preconceived notion of who I think
2 ought to prevail. So, don't take that into account in
3 anyway whatsoever.

4 Now, ladies and gentlemen, frankly the -- as you know
5 by now, the law does not allow me to have an opinion about
6 the facts, and you will notice that when exhibits were
7 introduced, in many instances I never saw those. For
8 example, I don't believe that I've seen the first
9 photograph. I may have looked at one or two during the
10 course of, of an argument or, or a ruling on an objection.

11 There's a reason for that. It doesn't matter what I
12 think about those exhibits. It doesn't matter what I think
13 about the weight or value to be given to testimony that you
14 heard. It doesn't matter what I think.

15 Now, we've had to send you out of the courtroom a few
16 times during the course of the trial to talk about points of
17 law. You can take some comfort in this, and that is that
18 when you retire to deliberate in a few minutes, nobody's
19 going to go with you. It's not gonna be a tape recorder.
20 It's not gonna be a camera. Nobody's gonna be listening at
21 the door. It will just be you cause it's your
22 responsibility to determine what the verdicts in this case
23 should be, and it's your determination -- it's your job, in
24 that regard, to determine the effect and the value and the
25 weight and the truth of the evidence presented during the

1 course of this trial.

2 Now, ladies and gentlemen, I've told you that there are
3 different ways evidence comes in, testimony, exhibits, and
4 stipulations. There are two types of evidence that
5 ordinarily come in during the course of a trial. These are
6 called direct evidence and circumstantial evidence.

7 Direct evidence is the testimony of a person who claims
8 to have actual knowledge of a fact such as an eye witness.
9 I saw smoke. I saw a dog cross the road. I saw a car in
10 the parking lot. That's, that's what you see.

11 Now, ladies and gentlemen, direct evidence, in that
12 regard, is evidence that immediately establishes the main
13 fact to be proved. Now, on the other hand, circumstantial
14 evidence is proof of a chain of facts and circumstances that
15 indicate the existence of a fact.

16 Circumstantial evidence is evidence that immediately,
17 immediately establishes collateral facts from which the main
18 fact may be inferred. So, circumstantial evidence is based
19 on inference. It's not based on personal direct knowledge
20 or observation.

21 Now, ladies and gentlemen, the law makes no distinction
22 at all between the weight or value that you are to give to
23 either direct or circumstantial evidence and nor is a
24 greater degree of certainty required of circumstantial
25 evidence than of direct evidence. You weigh all the

1 evidence in the case, and after weighing all this evidence,
2 if you are not firmly convinced of the defendant's guilt
3 beyond a reasonable doubt, you find him not guilty of the
4 charge you are considering at that time. If you are, after
5 weighing all that evidence, firmly convinced of his guilt,
6 you must find him guilty of the crime that you are
7 considering at that time, and I'll be talking about that
8 more as we go along.

9 Now, necessarily, as the fact finders, you have to
10 determine the credibility or believability of the witnesses.
11 what you do in that regard is what I've told you earlier.
12 You can believe everything that somebody says. You can
13 disbelieve everything or you can believe parts and reject
14 the rest.

15 Now, ladies and gentlemen, you can take into account
16 the demeanor of the witness. How did he appear on the
17 stand, how did he or she appear, hesitant or straightforward
18 when answering questions. You can take into account whether
19 the witness has exhibited any motive or bias in favor of one
20 side or the other. You can also take into account whether
21 or not that witness' testimony has been strengthened or
22 weakened by other evidence that is in the regard, and you
23 can also take into account what was the witness' ability to
24 know the facts that he or she claims to know, and anything
25 else that you think is appropriate you can also take into

1 account.

2 As I previously instructed you, the rules of evidence
3 that we follow ordinarily do not permit a witness to testify
4 to opinions or conclusions. There is an exception for
5 witnesses we call expert witnesses.

6 A witness, who by education, training, or experience,
7 who has become an expert in some art or science or
8 profession may state an opinion as to relevant and material
9 matters in which the witness claims to be an expert, and
10 that, that type of witness can also give the reasons for
11 those opinions. You consider any expert opinion received in
12 this case like any other evidence, and you give it the
13 weight that you think it deserves.

14 If you believe the expert's opinion is not based on
15 sufficient education and experience, or if you conclude that
16 the reasons given in support of the opinion are not
17 sufficient or if you conclude that the opinion is outweighed
18 by other evidence, you can disregard the opinion entirely.
19 Again, an expert's testimony is to be given no greater
20 weight than that of other witnesses simply because it comes
21 from an expert and you are not required to accept an
22 expert's opinion even though it might be uncontradicted.

23 Now, ladies and gentlemen, in these cases, and when I
24 say these cases, these three indictments, the defendant has
25 pled not guilty, and those pleas of not guilty put the

1 burden on the State to prove the defendant guilty beyond a
2 reasonable doubt. A person charged with committing a
3 criminal offense in South Carolina is never required to
4 prove himself not guilty. Never required to prove himself
5 innocent.

6 It is a very important rule of law that the defendant,
7 in any criminal trial, no matter what the charge, literally
8 from A to Z, is always presumed to be innocent of the crime
9 for which the indictment has been issued unless guilt is
10 proven by evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 Now, the presumption of innocence does not end when you
13 stand up in a few minutes and walk out of this courtroom and
14 begin your deliberations in your jury room. The presumption
15 of innocence accompanies the defendant throughout the trial
16 and throughout your deliberations until you reach a verdict
17 of guilt based on evidence satisfying you of guilt beyond a
18 reasonable doubt.

19 So, simply put, the presumption of innocence has been
20 described like a robe of righteousness or to be like a robe
21 of righteousness that's placed around a defendant's
22 shoulders, and that robe stays on the defendant's shoulders
23 unless and until it's stripped away by evidence satisfying
24 you of guilt beyond a reasonable doubt, and the presumption
25 of innocence is not a mere legal theory or a phrase that we

1 casually toss around. The presumption of innocence is a
2 substantial right to which every defendant is entitled
3 unless a jury is convinced of guilt beyond a reasonable
4 doubt.

5 All right. So now I'm gonna talk to you about
6 reasonable doubt cause I've used that term many times so far
7 in this charge. A reasonable doubt is the kind of doubt
8 that would cause an honest and a sincere and a reasonable
9 person to hesitate to act. The State does have the burden
10 of proving the defendant guilty beyond a reasonable doubt.

11 As I mentioned to you earlier, some of you may have
12 served on a jury where, in a civil case and in that type of
13 case the burden is typically by the greater weight of the
14 evidence. If you imagine, in your minds eye, a set of
15 scales that are perfectly even, if a defendant has or a
16 party, excuse me, has the burden of proving something by the
17 greater weight, that person has to tip those scales ever so
18 slightly, and, in that regard, the party in that case would
19 meet its burden of proof.

20 In criminal cases, the State's burden is beyond a
21 reasonable doubt, and it's much more powerful than the
22 greater weight of the evidence standard. Proof beyond a
23 reasonable doubt is proof that leaves you firmly convinced
24 of the defendant's guilt.

25 Now, obviously, there are very few things on this earth

1 that we know with absolute certainty, and the law says that
2 the State does not have to present proof that overcomes
3 every possible doubt. But it does have to present proof
4 that overcomes every reasonable doubt.

5 If, based on your consideration of the evidence, you
6 are firmly convinced of the defendant's guilt as to the
7 crimes or the charge you were considering at that time, you
8 find him guilty. If, on the other hand, when you're
9 considering the evidence as to a particular charge, if you
10 think there's a real possibility that the defendant is not
11 guilty, you must give the defendant the benefit of the doubt
12 and find him not guilty.

13 Now, ladies and gentlemen, I instruct you and I
14 emphasize to you that the fact that the defendant did not
15 testify in this case is not a factor to be considered by you
16 in anyway during the course of your deliberations, and in
17 your consideration on the question of the guilt or non guilt
18 of the defendant. Simply, the fact that the defendant did
19 not testify is something you can not talk about. You can
20 not think about it and it can not enter into your decisions
21 at all with regard to whether or not you believe the State
22 is met its burden of proof.

23 Now, a defendant has the Constitutional right to remain
24 silent, and the assertion of that right must not be
25 considered by you in anyway, and I repeat, under your oath,

1 that you are to draw no conclusions whatsoever from the fact
2 that the defendant did not testify because, at all times,
3 the burden remains on the State to prove guilt beyond a
4 reasonable doubt.

5 All right. I'm gonna get more specific now, ladies and
6 gentlemen, and talk to you about these three charges, and
7 they're three separate verdict forms for these charges. In
8 that regard, those are manufacture of methamphetamine,
9 possession of methamphetamine, and possession of a Schedule
10 IV controlled substance.

11 Each of those charges is separate. Your verdict on one
12 does not control your verdict on any other. For example,
13 you may find the defendant not guilty of all three based on
14 your view of the evidence or based on your view of the
15 evidence you may find him guilty on all three or not guilty
16 and guilty in some type of combination. So, again, you'll
17 be asked to write a separate verdict for each charge, and
18 your verdict on one charge may not control your verdict or
19 need not control your verdict on the other.

20 Now, specifically, and I'll take these charges in no
21 particular order, I had to pick one order, so I'll go in
22 this one. The defendant has been charged with manufacture,
23 manufacturing methamphetamine. I'm gonna talk to you about
24 specifically what the State has to prove, prove, but, first
25 of all, the word manufacture means to produce or prepare or

1 convert or to process a controlled substance naturally or
2 chemically, and it is alleged by the State that the
3 defendant did, in this county, on or about May 29, 2011,
4 knowingly, intentionally, and willfully manufacture
5 methamphetamine.

6 So, in order to prove the defendant guilty of
7 manufacturing methamphetamine, the State must prove certain
8 things beyond a reasonable doubt. First, that the substance
9 in question was methamphetamine, and, second, that the
10 defendant knowingly and intentionally manufactured that
11 drug. The State must prove, beyond a reasonable doubt, that
12 the defendant knew that he was manufacturing the drug and
13 intended to do so.

14 I further charge you, ladies and gentlemen, that
15 possession of equipment or paraphernalia used in the
16 manufacture of methamphetamine can be considered evidence of
17 intent to manufacture that drug. You may give any such
18 evidence the weight you believe it should have.

19 The defendant is also charged with the offense of
20 possession of methamphetamine. Now, with that regard, the
21 State must prove, beyond a reasonable doubt, that the
22 defendant knowingly and intentionally possessed that drug.

23 The word knowingly means with knowledge, consciously,
24 and not accidentally.

25 The word intentionally means willfully, which means

1 intending the result which actually occurs and not
2 accidentally or involuntarily, and as I'll charge you
3 specifically in just a few minutes, intent, in that regard,
4 may be shown by acts and conduct of the defendant and from
5 other circumstances from which you may naturally and
6 reasonably infer intent.

7 Now, I'm gonna talk to you specifically about
8 possession because the charge is possession of
9 methamphetamine. The State must prove, beyond a reasonable
10 doubt, that the defendant had both the power and the intent
11 to control the disposition or use of the methamphetamine,
12 and possession may be either actual or constructive.

13 Actual possession means that the methamphetamine was in
14 the actual physical custody of the defendant. Constructive
15 possession means that the defendant had dominion and control
16 or the right to exercise dominion or control or, over either
17 the drug itself or the property in or upon which the drug
18 was found.

19 I charge you, ladies and gentlemen, that mere presence
20 at a scene where drugs are found is not enough, in and of
21 itself, to prove possession. Actual knowledge of the
22 presence of the drug may be considered by you as evidence of
23 the defendant's intent to control its disposition or use.

24 The defendant's knowledge and possession may be
25 inferred when a substance is found in or upon property under

1 the defendant's control. However, that particular inference
2 is simply an evidentiary fact to be taken into consideration
3 by you along with other evidence in a case and you're to
4 give it the weight you believe it deserves.

5 Now, also, ladies and gentlemen, the defendant is
6 charged with possession of a Scheduled IV controlled
7 substance, Xanax. The State must prove, beyond a reasonable
8 doubt, that the defendant knowingly and intentionally
9 possessed that drug. The words knowingly and intentionally
10 mean the same thing as I described or explained to you just
11 a few moments ago, and with regard to the element of
12 possession, my earlier instruction to you at, on possession
13 applied to this possession charge as well, and, likewise, my
14 instruction to you about mere presence applies to this
15 particular charge as well.

16 All right. Now, ladies and gentlemen, in order to
17 establish criminal liability or to establish guilt, the
18 State must, in every case, prove the element of criminal
19 intent, and I've used the word intent sporadically during
20 the course of the charge. But with regard to all of these
21 charges, the State has to prove criminal intent beyond a
22 reasonable doubt.

23 Now, ladies and gentlemen, criminal intent is always a
24 matter that must be determined by a jury from circumstances
25 surrounding the situation. There's no way that medical

1 science can, at least yet, dissect a person's brain and look
2 in that brain and determine what, if anything, that person
3 intended to do at any given time. So, the law says that
4 criminal intent may be inferred from circumstances shown to
5 have existed, and that's how you make a determination of
6 whether or not the State has met its burden of proving the,
7 the element of criminal intent.

8 It is not necessary for the state to establish criminal
9 intent by direct evidence. But criminal intent may be
10 established by circumstantial evidence in the same way as
11 any other fact, by taking into consideration the actions of
12 the parties and all the facts and circumstances of the case.

13 Now, criminal intent is a mental state. It's a
14 conscious wrongdoing. So, in that regard, it's up to you to
15 determine what, if anything, the defendant intended to do
16 based on the evidence in the case.

17 All right. Now, ladies and gentlemen, your
18 deliberations will end with the foreperson's completion of
19 these verdict forms. There are three. There's one for each
20 case. You don't have to take these in any particular order.
21 You can close your eyes and pick one out and start talking
22 about that. But I'm gonna go over these in the order that
23 I've charged them.

24 There's a verdict form for the manufacturing
25 methamphetamine charge, and it says, quite simply, as to the

1 charge of manufacturing methamphetamine, we, the jury,
2 unanimously find the defendant, and they're two choices.
3 First of all, your verdict on these have to be unanimous,
4 verdicts have to be unanimous. That means all of you have
5 to agree. This is not a majority vote. It's not even a
6 eleven to one or ten to two. Every single one of you must
7 agree as to what the verdict is.

8 But going back to it specifically, it says, as to the
9 charge of manufacturing of methamphetamine, we, the jury,
10 unanimously find the defendant, the two choices are not
11 guilty or guilty.

12 And when you have determined what the verdict is,
13 again, unanimously, Mr. Foreman, you're to place a check or
14 an X in the appropriate space beside your verdict, then you
15 sign that form and you date it. Then you move on to the
16 next form, and for the purposes of me going over these,
17 that's possession of methamphetamine. Again, the choices
18 are the same, not guilty or guilty, and you're certifying
19 that your verdict is unanimous, and, lastly, as to the
20 charge of possession of a Schedule IV controlled substance,
21 we, the jury, unanimously find the defendant, and, again,
22 the choices are not guilty or guilty.

23 Now, I'm not concerned about what your verdicts are
24 going to be, but I do, I do want to make sure you understand
25 that the State of South Carolina and the defendant expect

1 and they are certainly entitled to a fair and impartial
2 trial and a fair and impartial verdict at your hand. The
3 only way that you can give them what you have sworn to do is
4 to give the issues in this case the complete discussion that
5 they deserve.

6 And, Mr. Foreman, in that regard, you don't have any
7 greater authority in the jury room as to what the verdicts
8 are. But it is your responsibility to make sure that the
9 deliberations are conducted in an orderly fashion and that
10 everyone who wants to speak and air their opinions or
11 conclusions, that they have the opportunity to do that.

12 Some of you may of presided over meetings on where
13 Robert's Rules of Order are in place, and the head has the
14 authority to cut off debate. You don't have the authority
15 to do that just because you think there's enough, that
16 enough time has been spent.

17 But in any event, if someone simply wants to make their
18 conclusion known, nobody can force that person to explain
19 the reasons, and, in addition, while I'm thinking about it,
20 if someone needs to leave the jury room for any reason,
21 first of all, you've got to get my permission. And if
22 somebody does leave the room you have to stop until that
23 person comes back.

24 Also, if someone excuses himself or herself even to use
25 the rest room adjacent to the jury room, wait until that

1 person comes back before you continue with your
2 deliberations. Again, your verdicts have to be unanimous
3 and you're to use, take your common sense view of the
4 evidence and the law as I've given to you, and you can
5 combine those things to reach verdicts which speak the
6 truth. Because the word verdict, you may know, comes from
7 the Latin word which literally means to speak the truth.

8 All right. Now, the next order of business will be,
9 ladies and gentlemen, for you to go to your jury room, and
10 don't begin discussing the case yet because the lawyers do
11 have the right to alert me to anything that I may have left
12 out or anything that I said incorrectly, and, in addition,
13 I'm gonna require the lawyers to get with the court reporter
14 to make sure that all exhibits are in order.

15 One final thing, and it -- by the way, when the bailiff
16 comes to your jury room with the verdict forms and the
17 evidence and tells you that you can begin your
18 deliberations, then you can begin. One final thing, if you
19 have any questions, they'll be a notepad and a pen in the
20 jury room. You write the question down, tap on the door,
21 and let the bailiff know that you have a question. The law
22 dictates on whether or not I can respond and frankly how I
23 can respond. But the questions that you ask will certainly
24 be addressed perhaps not to your satisfaction, but I will
25 address those in accordance with, with the law.

1 Also, when you have reached your verdicts, tap on the
2 door and let the bailiff know that you have reached those
3 verdicts. Then you'll come back out here with these
4 completed verdict forms, you will hand those to the bailiff,
5 and they will be published by the clerk of court or by me.

6 All right. Now, ladies and gentlemen, please go to
7 your jury room, and we'll have you, the exhibits and verdict
8 forms in due course. If there's any other instructions I
9 have to give you we'll bring you back out.

10 Thank you.

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

13 THE COURT: All right. Any exceptions or additions
14 from the State?

15 SOLICITOR ROSS: Nothing from the State, Your Honor.

16 THE COURT: Other than the previous objections, Mr.
17 Williams, any others?

18 MR. WILLIAMS: No, sir, other than obviously the
19 manufacturing argument we made before.

20 THE COURT: All right. Okay. If you could quickly get
21 with the court reporter and make sure that nobody has an
22 exhibit on their counsel table and make sure that all the
23 ones that are in are actually in and no ID exhibits go back.

24 (Pause.)

25 THE COURT: I do -- has the envelope with the, one of

1 the substances in it, has it been resealed?

2 SOLICITOR ROSS: It's been placed back in -- the only
3 seal is from the manila envelope, Your Honor. The actual
4 plastic portion of the B.E.S.T. Kit bag has not been
5 resealed. So, presumably they can access---

6 THE COURT: I probably need to give them instruction
7 to, to not go into any of those plastic, is that the right
8 word, plastic containers and get anything out.

9 Would either side have an objection to that?

10 MR. WILLIAMS: No, Your Honor.

11 SOLICITOR ROSS: No, Your Honor. We may be able to
12 solve the problem by just stapling the B.E.S.T. Kits.

13 THE COURT: That suit you?

14 MR. WILLIAMS: Yes, sir, that will be fine. We have no
15 objection if you don't even send back the methamphetamine
16 with it.

17 THE COURT: Well, it's in. So, it has to be sent out.

18 MR. WILLIAMS: All right, sir.

19 THE COURT: And, of course, there's no, there's been no
20 video evidence that's introduced as an exhibit so that
21 there's been 9-1-1 recording and Power Point was not in.

22 All right. I think I'll have to bring the jury out and
23 tell them, in a civil case, I just go to the jury room door,
24 but I have to do everything here in front of the, the
25 defendant's presence.

1 So, we'll bring the jury back out and some of them may
2 be using the rest room, and let's bring them on back out.

3 And if you would, Mr. Ross, you folks probably know
4 that if the jury has a question or even a verdict, we'll
5 wait a reasonable time frame to get here, but if, if they
6 may go get something to eat or go back to their work, then
7 we're not gonna wait a long time.

8 SOLICITOR ROSS: Yes, Your Honor.

9 THE COURT: Of course, I would like the defendant to
10 stay on this floor.

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: And if the lawyers do depart, I want to
13 make sure that you leave quick contact numbers.

14 Mr. Williams, you're across the street?

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: And you're in this office building?

17 SOLICITOR ROSS: I'll be downstairs, Your Honor.

18 THE COURT: Okay. And I'll release the alternate.
19 Any objection?

20 SOLICITOR ROSS: None from the State, Your Honor.

21 MR. WILLIAMS: None from the defense, Your Honor.

22 THE COURT: Okay.

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

25 THE COURT: All right. Thank you, ladies and

1 gentlemen. This won't take long.

2 I wanted to bring up something that I frankly meant to
3 bring up. There are certain items that are exhibits, and
4 some of those are in envelopes. You can take the plastic
5 bags out of the envelopes, but do not open the plastic bags.
6 There was one that was opened during the course of the
7 trial, but that has been stapled. So -- but -- and don't
8 take the staples off or, in short, don't access any of the
9 objects within any of those plastic bags.

10 You think that's clear, Mr. Ross?

11 SOLICITOR ROSS: Yes, Your Honor.

12 THE COURT: Mr. Williams.

13 MR. WILLIAMS: Yes, Your Honor.

14 THE COURT: Okay. Thank you, ladies and gentlemen.

15 Mrs. Carter, you can, you can have a seat right there
16 in that chair, and the rest of you, ladies and gentlemen,
17 can go back to your jury room. I will ask the lawyers, when
18 you walk out, if there's anything else. I doubt -- I don't
19 think there will be, but don't start talking about the case
20 quite yet. Wait until the bailiff comes to your door with
21 everything and then you can begin your deliberations.

22 Okay. Thank you.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury with the alternate being dismissed at
25 this time.)

1 THE COURT: All right. Any exceptions or additions
2 from the State?

3 SOLICITOR ROSS: No, Your Honor.

4 THE COURT: From the defendant?

5 MR. WILLIAMS: None by the defendant, Your Honor.

6 THE COURT: All right. We'll note that it's shortly
7 before 11:00 and we'll wait on the jury's questions or
8 verdict.

9 Thank you.

10 (WHEREUPON, the jury began deliberations at 10:57AM and
11 returned with a question at 11:25AM.)

12 THE COURT: The jury does have a question.

13 All right. Question says is the State charging that
14 Mr. Thomas was manufacturing in his vehicle or just that he
15 manufactured meth.

16 State's response or how should I handle that question.
17 Mr. Ross?

18 SOLICITOR ROSS: That he manufactured meth in his, in
19 your vehicle.

20 THE COURT: Mr. Williams.

21 MR. WILLIAMS: Your Honor, I think that's a comment on
22 the facts. That's something they have to draw from whatever
23 evidence was presented.

24 THE COURT: Well, something came to my mind was that
25 the indictment says, and I said it during the charge, State

1 claims that he manufactured, excuse me, manufactured meth on
2 or about May 29, 2011.

3 SOLICITOR ROSS: Well then he manufactured it that day.

4 THE COURT: That's a when, on or about. We all know
5 what that means or not.

6 MR. WILLIAMS: Yes, sir.

7 THE COURT: That's a when answer. That's not a where.
8 I'm not gonna tell them that they have to determine what the
9 State claims based on the evidence cause that's not
10 appropriate. But if I were to say what I think, that would
11 be inappropriate.

12 So, how should I answer the question if at all?

13 SOLICITOR ROSS: That the State must prove that on or
14 about this day he manufactured methamphetamine.

15 THE COURT: Beyond a reasonable doubt.

16 SOLICITOR ROSS: Beyond a reasonable doubt, yes, Your
17 Honor.

18 THE COURT: Okay.

19 MR. WILLIAMS: I think that's the only thing that can
20 be said.

21 THE COURT: Okay. All right. That's, that's -- I
22 think that's -- I think that's correct.

23 Bring out the jury.

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

1 THE COURT: All right. Ladies and gentlemen, I do have
2 your question, and it says is the State charging that Mr.
3 Thomas manufactured meth in his vehicle or just that he
4 manufactured meth.

5 I'll respond to the question in this particular way,
6 ladies and gentlemen, and that is the State must prove,
7 beyond a reasonable doubt, that the defendant, on or about
8 May 29, 2011, manufactured meth. That's what the State has
9 to prove beyond a reasonable doubt and in accordance with
10 the other instructions I have given you.

11 Okay. All right. Thank you.

12 You can go back and continue and we'll be ordering some
13 lunch for you within the next 20 minutes or so just in case
14 any of you were concerned about that.

15 Thank you.

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

18 THE COURT: Any objections from the State?

19 SOLICITOR ROSS: No, Your Honor.

20 THE COURT: Mr. Williams, anything other than your
21 earlier objections---

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: ---about me charging that at all---

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: ---any objection to that answer?

1 MR. WILLIAMS: No, Your Honor.

2 THE COURT: Okay. Thank you and we will just continue
3 to wait and thank you for being close at hand.

4 That's Court's Exhibit 2 if anybody's keeping notes.

5 (WHEREUPON, the note from the jury was marked as
6 Court's Exhibit No. 2 for identification purposes only at
7 this time.)

8 (WHEREUPON, the jury began deliberations again at
9 11:28AM and returned with a verdict at 12:33PM.)

10 THE COURT: All right.

11 Okay. Coincidentally, Mr. Williams, Mr. Ross, when we
12 finished picking the next jury the jury deliberating
13 indicated they had a verdict.

14 So, is the State ready to receive it?

15 SOLICITOR ROSS: The State is ready.

16 THE COURT: Defendant?

17 MR. WILLIAMS: Defendant is ready, Your Honor.

18 THE COURT: Okay. You can bring in the jury.

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

21 THE COURT: All right. Thank you, ladies and
22 gentlemen.

23 I apologize for keeping you waiting for a minute, but
24 we had to finish up picking the next jury. So, that, that
25 took a couple of extra minutes.

1 Mr. Foreman, have you reached verdicts?

2 FOREMAN: Yes, sir.

3 THE COURT: Are all three unanimous verdicts?

4 FOREMAN: Yes, sir.

5 THE COURT: All right. Thank you.

6 You can hand the forms to the bailiff.

7 (Foreman complies.)

8 THE COURT: All right. Okay. Mr. Thomas, will you
9 please stand.

10 (Defendant complies.)

11 CLERK: Indictment 2011-GS-42-2537, the State versus
12 Jeffrey Dodd Thomas, as to the charge of manufacturing,
13 manufacture of methamphetamine, we, the jury, unanimously
14 find the defendant guilty.

15 Indictment 2011-GS-32-2535, the State versus Jeffrey
16 Dodd Thomas, as to the charge of possession of
17 methamphetamine, we, the jury, unanimously find the
18 defendant guilty.

19 Indictment 2011-GS-32-2536, the State versus Jeffrey
20 Dodd Thomas, as to the charge of possession of a Scheduled
21 IV controlled substance, Xanax, we, the jury, unanimously
22 find the defendant guilty.

23 They're also signed and dated May the 23rd, 2012, by
24 the foreman, David Perdue.

25 Mr. Foreman, ladies and gentlemen of the jury, if these

1 are your verdicts please indicate each of you by raising
2 your right-hand?

3 (WHEREUPON, all jurors raise their hands at this time.)

4 THE COURT: All right.

5 CLERK: All hands are raised, Your Honor.

6 THE COURT: All right. Thank you. Have a seat.

7 Anything from the State before the jury is released?

8 SOLICITOR ROSS: Nothing before sentencing, Your Honor.

9 THE COURT: Mr. Williams, anything from the defendant?

10 MR. WILLIAMS: Yes, Your Honor. We would request
11 individual polling.

12 THE COURT: All right.

13 (WHEREUPON, the jury panel was polled and all jurors
14 answered in the affirmative that this was and is still their
15 verdicts at this time.)

16 THE COURT: All right. Anything else, Mr. Williams?

17 MR. WILLIAMS: Nothing else for the jury, Your Honor.

18 THE COURT: All right.

19 (WHEREUPON, the jury was dismissed at this time.)

20 THE COURT: All right. Anything from the State as far
21 as sentence goes?

22 Well, let me back up.

23 Mr. Williams, do you have any motions?

24 MR. WILLIAMS: I do, Your Honor.

25 THE COURT: Yes, sir.

1 MR. WILLIAMS: We would move for an arrest of judgment,
2 grant the defendant a new trial on the basis as to the two
3 indictments for possession of controlled substance,
4 scheduled IV, and as to the methamphetamine, the possession
5 charge, that the evidence, as a whole, is insufficient as a
6 matter of law for the jury to return a verdict of guilty as
7 to those.

8 As to the charge of manufacturing methamphetamine, we
9 would, we would also argue that the evidence, as a whole, is
10 insufficient, as a matter of law, for the jury to return a
11 verdict of guilty, and to, as to that charge, and we would
12 reiterate in each and every argument that we've had so far
13 about my client being able to be convicted of the
14 manufacturing methamphetamine when he did not possess those
15 items necessary to, to manufacture methamphetamine.

16 THE COURT: All right.

17 MR. WILLIAMS: Either constructively or actually.

18 THE COURT: All right. Mr. Ross.

19 SOLICITOR ROSS: Your Honor, I believe the State's
20 position was made during the motion for a directed verdict
21 prior to giving it to the jury. We stand by that same
22 argument, Your Honor.

23 THE COURT: All right. Mr. Williams, your motions are
24 respectfully denied. Of course, you know the procedure for
25 any reconsideration or appeal. Of course, your client knows

1 and you know you have ten days to appeal.

2 State ready to proceed to sentencing?

3 SOLICITOR ROSS: Yes, Your Honor. State is.

4 THE COURT: All right.

5 SOLICITOR ROSS: Your Honor, I'm presenting the three
6 sentencing sheets in this case.

7 Your Honor, the first order of business concerns an
8 issue that was raised to me by Lieutenant Hamilton this
9 morning. I told him that you may consider it, you may not
10 consider it, but I wanted to offer it to you for your
11 consideration, Your Honor.

12 There is a database that the Sheriff's Department has
13 that records all the purchases an individual makes of
14 Sudafed, which, as you know, is the basic ingredient for the
15 drug. In hindsight, we -- it would of helped our case a
16 whole lot more if we had this record and introduced it to
17 the jury, but we simply neglected to do that.

18 I would ask for you to consider the records of the
19 defendant's purchase of Sudafed. If you care to do so,
20 Lieutenant Hamilton can explain this system and I can give
21 the defense a copy as well.

22 THE COURT: All right. Give them a copy.

23 SOLICITOR ROSS: And if you care to hear from Lieutenant
24 Hamilton at this time.

25 THE COURT: All right.

1 LIEUTENANT HAMILTON: Your Honor, there's a -- with the
2 change in the State Laws, everybody was required to report
3 their purchase of Pseudoephedrine, any cold medicine that
4 has Pseudoephedrine has to be reported, and it's on a
5 database maintained through SLED. It was called Meth Check
6 prior to SLED taking it over.

7 It shows whenever any person goes and purchases cold
8 medicine. It shows up, that's when you have your driver's
9 license there, you have to sign for it, and it logs it in
10 the system and can be pulled up by person or by the
11 location. Obviously, if you pull the location, you're gonna
12 have everything that day from that pharmacy. But when you
13 do a search by a person, it pulls up their record from the
14 whole system.

15 with the defendant, Mr. Thomas, it actually pulls up
16 back to the first one would be 3/4 of '08, sir.

17 THE COURT: How many?

18 LIEUTENANT HAMILTON: Nine pages, Your Honor.

19 THE COURT: Well, how many transactions?

20 LIEUTENANT HAMILTON: Approximately 92, Your Honor.

21 THE COURT: And how many within the three month period
22 before June of '11?

23 In other words, let's say the---

24 LIEUTENANT HAMILTON: The, the, the, the date of this
25 incident was 5/29.

1 THE COURT: I'm sorry. I thought it was June.

2 LIEUTENANT HAMILTON: Yes, Your Honor. 5/29 of 2011.

3 He purchased 5/26, two packs, Sudogest.

4 5/14 he was denied. One -- he purchased one and was
5 denied one.

6 This -- all -- the report also gives when people are
7 denied. They've gone over the limit.

8 THE COURT: You can go over the limit?

9 LIEUTENANT HAMILTON: You can attempt to. Your Honor,
10 if I go to Walgreens and I purchase more than my 9-grams in
11 30 days, the system will reject you and will show you on
12 here.. He purchased on 5/6, 4/25, 4/16, 3/31, 3/17, 3/02,
13 2/24, 2/15, 1/28, 1/16, 1/07, and the other ones were in
14 December.

15 THE COURT: All right. Thank you.

16 LIEUTENANT HAMILTON: Yes, Your Honor.

17 THE COURT: Is, is your access to that database
18 unfettered?

19 In other words, can you go check and see when I bought
20 it?

21 LIEUTENANT HAMILTON: Yes, sir.

22 THE COURT: Without a warrant?

23 LIEUTENANT HAMILTON: Yes, sir, it is a, it is a, it is
24 a warrantless search of the database. Yes, sir, Your Honor.

25 THE COURT: All right. Thank you.

1 Mr. Ross, anything else?

2 SOLICITOR ROSS: Yes, sir, Your Honor.

3 would you like a copy for a Court's Exhibit of this?

4 THE COURT: That, that will be fine, yes, sir. Make it
5 Court's Exhibit No. 3.

6 (WHEREUPON, the report was marked as Court's Exhibit
7 No. 3 for identification purposes only at this time.)

8 SOLICITOR ROSS: Judge, let me tell you the defendant's
9 rap sheet.

10 He's got an '84 simple possession of marijuana, public
11 intoxication.

12 THE COURT: 1984?

13 SOLICITOR ROSS: 1984.

14 1994, open container.

15 '96, simple assault.

16 '97 is a most significant felony on his record. He's
17 got a strong armed robbery for which he received a sentence
18 of three years suspended to three years probation.

19 '96 he's got a misdemeanor harassment charge, a false
20 information to police charge.

21 2000, public disorderly conduct.

22 '04, DUS.

23 '05, possession of drug marijuana.

24 '06, trespassing.

25 '09, trespassing.

1 That's, that's all of his rap sheet.

2 As far as the State's positioning on sentencing, I do
3 believe prison time is appropriate for him simply as a
4 matter of deterrence, Your Honor. This is -- I don't need
5 to belabor the point that methamphetamine is a plague
6 particularly in Lexington County. It's a very serious
7 charge. It is a, a very dangerous drug. It is very
8 dangerous to make this drug. I personally have prosecuted
9 cases where people blowup, blow themselves up making this
10 drug, Your Honor.

11 I think, as a matter of deterrence, it is a sound
12 judgment to send somebody to prison when they've elected to
13 take the case to trial and have been found guilty. I think
14 if probation is given in a situation like this, this would
15 send a message that you have nothing to lose, and, Your
16 Honor, this carries 15 years.

17 I'm not gonna stand up here and tell you that it would
18 be a good thing to bury this guy underneath the prison. I
19 don't think that would be appropriate either. But I do
20 think prison time is appropriate, and I would defer to Your
21 Honor's judgment in the amount of prison time you think, you
22 think is correct in this case, sir.

23 THE COURT: All right. Anything from law enforcement?

24 OFFICER: No, Your Honor.

25 OFFICER: No, sir, Your Honor.

1 THE COURT: All right. Thank you.

2 Okay. Mr. Williams.

3 MR. WILLIAMS: Obviously, Your Honor, I don't agree
4 with the solicitor that someone should go to jail simply
5 because they exercised their Constitutional rights to having
6 a trial.

7 THE COURT: I agree with that. I mean that's not the
8 sole inquiry.

9 MR. WILLIAMS: The second objection I have in the
10 presentation is, Your Honor, on these items that, that are
11 being, that you're being asked to consider. You're being
12 asked to consider items which are clearly legal, and I think
13 you hit upon it when you said is there a list of times which
14 I have purchased Sudafed, and it's a warrantless search, and
15 I think the implication is, is that these items should be
16 used to somehow enhance the sentence that my client would
17 receive.

18 Now, having said that, Your Honor, he's 47 years of
19 age. His one drug conviction is 1984. This is the Year
20 2012. His one major offense that he has committed is the
21 armed robbery charge, strong armed robbery I should say,
22 which, I don't know, could be a pocketbook, could be
23 anything which you force somebody to take something from
24 them.

25 I believe he said it was 1997. He was sentenced, he

1 was sentenced to three years in probation and my client
2 completed the probation. There's, there's no indication
3 that he didn't do his probation like he was suppose to.
4 Everything else is Magistrate's Court.

5 Now, I would suggest, Your Honor, that we're trying to
6 send some sort of deterrence to somebody, we take somebody
7 who has a greater record than that if we're trying to send
8 them to jail. But this young man has only had run-in's I
9 guess in Magistrate's Court.

10 THE COURT: Where's he employed?

11 MR. WILLIAMS: Your Honor, he is a construction worker.
12 He, he does -- he is also an equipment, a heavy equipment
13 driver. He is, he is a man of -- Your Honor picked upon
14 the, upon the fact that maybe he's, he's a little fidgety
15 and maybe he -- well, he's, he's not good sitting in a
16 courtroom setting because obviously he doesn't spend his
17 life doing that, and I imagine a lot of people don't do
18 that. But he is a man who will show up at your office when
19 you want him there. He will appear in Court when Your Honor
20 orders him here.

21 So, I would ask the Court that they're all types of
22 people out there doing all kind of work, does construction
23 work, heavy equipment work, and he's not a -- he essentially
24 is not a bad guy, Your Honor.

25 I would ask the Court to consider placing him on

1 probation. He obviously can do it. If what we're trying to
2 do is make sure that he doesn't use any type of drugs,
3 obviously probation can take care of that. I don't know
4 where -- I don't see a probation person here, but there is
5 one, I promise you, that does a very good job of making sure
6 they do their probation.

7 THE COURT: All right. Anything that your client would
8 like to tell me?

9 DEFENDANT: I just like to tell you I'm a good person,
10 and like -- the things that I been charged for in the past I
11 did not do, but I had, you know, no choice but to admit to
12 guilt to it, and them people that was in them cases would be
13 glad to come and tell you that.

14 THE COURT: Anything else?

15 DEFENDANT: And please help me. Please don't send me
16 to jail.

17 THE COURT: All right. Anything else, Mr. Williams?

18 MR. WILLIAMS: No, Your Honor.

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

20 Anything else from the State?

21 SOLICITOR ROSS: No, Your Honor.

22 THE COURT: The range of sentence for the Xanax related
23 offense is zero to six months, is that correct?

24 SOLICITOR ROSS: Correct, Your Honor.

25 THE COURT: Three years on the possession of meth, and

1 zero to 15 years on the manufacture?

2 SOLICITOR ROSS: It is, Your Honor.

3 THE COURT: All right.

4 (Pause.)

5 THE COURT: All right. You can stand, sir.

6 (Defendant complies.)

7 THE COURT: All right. I agree with Mr. Williams that
8 nobody's gonna be penalized, at least in my courtroom, for
9 exercising their right to a jury trial. So, I don't want
10 there to be any, anything that that is something I hold
11 against Mr. Thomas because it's a precious right and
12 nobody's to be penalized if they exercise it.

13 I certainly don't enjoy sending anybody to prison, but,
14 in certain circumstances, prison time is warranted. Meth,
15 crack cocaine, powder cocaine, especially the first two,
16 they're a scourge. Absolutely scourge on society. Destroys
17 peoples' lives.

18 The people who make it should be dealt with relatively
19 harshly because it's made and distributed to people who are
20 young and old and they -- they're just shattered, they're
21 shrunk, they're basically walking mummies when they get
22 hooked on this drug.

23 Thankfully, and I'll knock on wood, figuratively, meth
24 hasn't seemed to have made its way down below the Lexington
25 and Columbia areas to the lower part of the State. But I

1 suppose it's coming or the PeeDee close to where I'm from.

2 So, I wish I could accommodate you about not sending
3 you to prison, but I, I'm going to cause I'm compelled to.
4 That's what my duty is in this particular case.

5 DEFENDANT: Can I say one more thing, Your Honor?

6 THE COURT: Yes, sir.

7 DEFENDANT: I just want to know, when they come to that
8 house that there night, it was a guy that, that I talked to
9 and he's the one that sent me there to that house and told
10 me that he was at home, and that he was going back to bed,
11 and she was, she was home. And I went there to talk to her.
12 And when I got there he was there.

13 And I was sitting there talking to her through the
14 window, and I turned back around and he was over there
15 walking away from my truck. And he is the one that called
16 the police. She didn't.

17 THE COURT: Okay. Anything else?

18 DEFENDANT: No, sir.

19 THE COURT: All right. On the possession of a
20 scheduled IV controlled substance, you're committed to the
21 Department of Corrections for a period of six months, and
22 all of these will be concurrent sentences. If I don't state
23 that specifically on the record I will now.

24 Possession of methamphetamine, first offense, you're
25 committed to the State Department of Corrections for a

1 period of three years.

2 Manufacture of methamphetamine, you are committed to
3 the State Department of Corrections for a period of seven
4 years, provided upon the service of three years, the balance
5 will be suspended. You'll be probation for three years.
6 So, you'll complete Lexington County Drug Court program, and
7 undergo any random drug testing that they may administer,
8 and comply with any other requirements that they may impose
9 on you.

10 Like I said, I don't take pleasure in sentencing
11 anybody to prison time.

12 DEFENDANT: But this ain't right, Your Honor. It's not
13 right.

14 THE COURT: All right, sir.

15 DEFENDANT: It's --.

16 THE COURT: Thank you.

17 He'll get credit for anytime he served.

18 All right. Anything else?

19 SOLICITOR ROSS: Not from the State, Your Honor.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

22

23

24

25

WITNESSES

Lexington County Sheriffs Department

Jesse Laintz

Law Enforcement Case #: 11022083

AHE

ARREST WARRANT NUMBER

M302744

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 9/6/11

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 5-23-12

DOCKET NO. 2011GS3202535

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2011

THE STATE
vs.

Jeffrey Dodd Thomas

CDR #: 3009

Indictment for

POSSESSION OF METHAMPHETAMINE
- 1ST OFFENSE

§ 44-53-0375(A)

DONALD V. MYERS, SOLICITOR

MAY 29 2011

SEP 07 2011

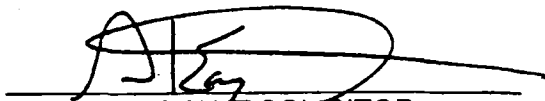
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON) INDICTMENT FOR
) POSSESSION OF METHAMPHETAMINE - 1ST
) OFFENSE
)

§ 44-53-0375(A)

At a Court of General Sessions, convened on SEPTEMBER 2011, the Grand Jurors of Lexington County present upon their oath:

That **Jeffrey Dodd Thomas** did in Lexington County, South Carolina on or about May 29, 2011, knowingly and intentionally possess less than one gram of methamphetamine or cocaine based controlled substance to wit: Methamphetamine under provisions of § 44-53-110, et. Seq. and in violation of § 44-53-375(A) Code of Laws of South Carolina, 1976, as amended. Such being the first offense.

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


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Rick Hazewinkel

Law Enforcement Case #: 11022083

AHE

ARREST WARRANT NUMBER

M302746

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 9/6/11

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS3202536

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2011

THE STATE

VS.

Jeffrey Dodd Thomas

CDR #: 0179

Indictment for

POSSESSION OF SCHEDULE IV
CONTROLLED SUBSTANCE - XANAX

§ 44-53-0370(d)(2)

DONALD V. MYERS, SOLICITOR

MAY 29 2011

SEP 07 2011

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)INDICTMENT FOR
POSSESSION OF SCHEDULE IV
CONTROLLED SUBSTANCE - XANAX

§ 44-53-0370(d)(2)

At a Court of General Sessions, convened on SEPTEMBER 2011, the Grand Jurors of Lexington County present upon their oath:

That Jeffrey Dodd Thomas did in Lexington County, South Carolina, on or about May 29, 2011, did unlawfully and knowingly or intentionally possess a quantity of Xanax, a Schedule IV controlled substance, all in violation of § 44-53-370(d)(2) of the Code of Laws of South Carolina (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Rick Hazewinkel

Law Enforcement Case #: 11022083

AHE

ARREST WARRANT NUMBER

M302745

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 9/6/11

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 5-23-12

DOCKET NO. 2011GS3202537

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2011

THE STATE

vs.

Jeffrey Dodd Thomas

CDR #: 3198

Indictment for

MANUFACTURE METHAMPHETAMINE
1ST OFFENSE

§ 44-53-0375 (B) (1)

DONALD V. MYERS, SOLICITOR

MAY 29 2011
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

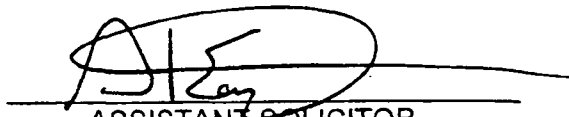
INDICTMENT FOR
MANUFACTURE METHAMPHETAMINE 1ST
OFFENSE

§ 44-53-0375 (B) (1)

At a Court of General Sessions, convened on SEPTEMBER 2011, the Grand Jurors of Lexington County present upon their oath:

That Jeffrey Dodd Thomas did in Lexington County, South Carolina, on or about May 29, 2011, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine, all in violation of Section 44-53-375 (B)(1), Code of Laws of South Carolina, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

 COUNTY OF Lexington
 STATE VS.
Jeffrey Dodd Thomas

AKA:

Race: White Sex: M Age: 48DOB: SS#:

Address:

City, State, Zip: Newberry, SC 29108-2555DL#: SID#: SC00444889*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of Methamphetamine - First OffenseINDICTMENT/CASE#: 2011GS3202535A/W#: M302744Date of Offense: 5/29/2011S.C. Code §: 44-53-0375(A)CDR Code #: 3009

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375(A) of the S.C. Code of Laws, bearing CDR Code # 3009☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Muchall Ross
Solicitor73986
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL		\$ <u>280.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

 days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2147Sentence Date: 5/23/12A TRUE COPY
Lex. Co. C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
 STATE VS.
Jeffrey Dodd Thomas

AKA: _____

Race: White Sex: M Age: 48

DOB: _____ SS# _____

Address: _____

City, State, Zip: Newberry, SC 29108-2555

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of a Schedule IV Controlled Substance - First OffenseINDICTMENT/CASE#: 2011GS3202536A/W#: M302746Date of Offense: 5/29/2011S.C. Code § : 44-53-0370(d)(2)CDR Code #: 0179

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Michael Ross 73986
 Solicitor SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 6 ~~days~~ months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: All convictions☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

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

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

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

TOTAL \$ 280.00Clerk of Court/ Deputy Clerk ButtCourt Reporter: Butt

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500. be paid to Clerk
 during probation.
Presiding Judge ButtJudge Code: 218701Sentence Date: 5/29/12

A TRUE COPY

Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Jeffrey Dodd Thomas

AKA:

Race: White Sex: M Age: 48DOB: SS#

Address:

City, State, Zip: Newberry, SC 29108-2555DL#: SID#*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Manufacturing Methamphetamine - First Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3202537A/W#: M302745Date of Offense: 5/29/2011S.C. Code §: 44-53-0375 (B) (1)CDR Code #: 3198

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nicholas Ross
Solicitor73986
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ 3; provided that upon the service of 3 days/months/years and/or payment
 of \$ 3; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All convictions today

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ 3 plus 20% fee: \$ 3

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>125.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL		\$ <u>280.00</u>

Clerk of Court/ Deputy Clerk Ruth CurranCourt Reporter: R. H. Curran

SCCA/217 (03/2011)

3 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. 3May serve W/E beginning 3Substance Abuse Counseling ☐Random Drug/Alcohol testing 3

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 3 beginning 3

\$ 3 paid to Public Defender FundOther: 3

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge 3Judge Code: 3Sentence Date: 5/29/12

A TRUE COPY
 Lex. Co. C.C.P., G.S. & F.O.

IS THE STATE CHARGING
THAT MR THOMAS MANUFACTURED METH
IN HIS VEHICLE OR JUST
THAT HE MANUFACTURED METH

David Perla

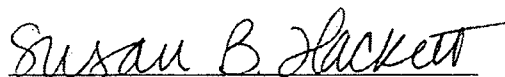
COURT'S	
EXHIBIT NO.	<u>2</u>
IDENTIFICATION/EVIDENCE	
DKT. #	_____
DATE:	_____

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 11th, 2013



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY DODD THOMAS,

APPELLANT

Appellate Case No. 2012-212428

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT

Appellate Defender

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Division of Appellate Defense

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in failing to direct a verdict of acquittal in Appellant's favor on the charge of manufacture of methamphetamine where the prosecution failed to present any direct or substantial circumstantial evidence that Appellant engaged in production, preparation, propagation, compounding, conversion or processing of any substance containing amphetamine or methamphetamine.

STATEMENT OF THE CASE

On September 6, 2011, a Lexington County Grand Jury indicted Appellant for possession of methamphetamine, first offense, (2011-GS-32-2535), possession of a schedule IV controlled substance – Xanax (2011-GS-32-2536), and manufacture methamphetamine, first offense (2011-GS-32-2537). R. 244(Indictments). The prosecutor, Michael Ross, called the case for trial before the Honorable George C. James, Jr. and a jury on May 22, 2012. Robert T. Williams represented Appellant. R. 1. The jury found Appellant guilty of all charges. R. 230, lines 11-24. Judge James sentenced Appellant to three years' imprisonment for possession of methamphetamine, six months' imprisonment for possession of a scheduled IV controlled substance, and seven years' imprisonment suspended upon the service of three years' imprisonment and three years' probation for manufacturing methamphetamine. R, 242, line 19 – R. 243, line 9; R. 250 (Sentence sheets).

Petitioner filed a timely notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in failing to direct a verdict of acquittal in Appellant's favor on the charge of manufacture of methamphetamine where the prosecution failed to present any direct evidence or substantial circumstantial evidence that Appellant engaged in production, preparation, propagation, compounding, conversion or processing of any substance containing amphetamine or methamphetamine.

Relevant facts

Officer Jessie Laintz testified that he responded to a trailer in Lexington County in reference to a purported trespassing on May 29, 2011. R. 3, line 24 – R. 4, line 5. Upon arrival, Laintz observed Appellant standing to the left of the residence. Appellant appeared to be talking to someone inside the trailer through a window. R. 4, lines 19-25. Appellant admitted to Laintz that he was aware of the trespass notice, but claimed he had been invited to the residence via text message. R. 5, lines 7-11. Appellant consented to Laintz retrieving his cell phone and identification from a nearby truck. Appellant purportedly told Laintz that the truck belonged to him, and Laintz discovered the tag on the vehicle was registered to Appellant. R. 5, lines 14-21; R. 6, lines 2-7. Laintz could find no text message in the phone inviting Appellant to the residence. R. 5, line 23 – R. 6, line 1. Thereafter, Laintz placed Appellant under arrest for trespassing. R. 6, lines 15-17.

Prior to towing Appellant's vehicle from the property, Laintz conducted an inventory search of the vehicle. R. 7, lines 3-5. Laintz found an Altoids container approximately five inches away from Appellant's wallet. Inside the container, Laintz found four clear baggies, two of which had a white crystal-like substance in them, and two of which had a residue of white crystal-like substance. R. 7, lines 7 – 19. On the floor on the

passenger side, Laintz found a large container of salt and a three-foot piece of clear tubing. In the center console of the truck, Laintz found lithium batteries. Under the driver's seat, Laintz found a box of Sudogest containing ten pills. In the truck bed, Laintz found a starter fluid spray can with a hole in the bottom. In the back seating area of the truck, Laintz found a blue backpack. In the backpack, Laintz found coffee filters, a digital scale, and some papers. R. 7, line 25 – R. 8, line 11.

On cross-examination, Laintz admitted that he did not request fingerprint analysis on the Altoids container or the box of Sudogest. R. 31, lines 2 – 5; R. 33, lines 16-18. Additionally, Laintz testified that no pills were missing from the box of Sudogest.¹ R. 32, lines 18-25. Laintz admitted that all of the items recovered, except for the white crystal like substance, were the legal and available for purchase. R. 33, lines 13-15; R. 34, line 15 – R. 35, line 2. Regarding the plastic tubing, Laintz testified that no tests were performed on the tubing to determine whether it had been used for any foreign substance. Laintz testified that based upon his observation the tubing had not been used for any foreign substance. R. 36, lines 4-13. Laintz testified that he did not smell any strong odors in the vehicle during his inventory search. He admitted that in his experience, the most distinguishing thing about a working methamphetamine lab is this smell of ether. R. 36, line 24 – R. 37, line 9. On redirect examination, Laintz testified that Sudogest, ether, tubing, coffee filters, and lithium batteries were not illegal to possess, but were used to make methamphetamine. R. 37, line 16 – R. 38, line 10. Laintz testified that the vehicle was “[a]n absolute mess” in terms of cleanliness. He described the truck as containing “[c]lothes everywhere, trash everywhere.”

¹ During the trial, the terms Sudogest and Sudafed are used interchangeably to refer to the box of pills found in the truck. For the sake of clarity, Appellant will use the term Sudogest throughout his brief to refer to the box of pills recovered.

Clothes were piled high in the driver's seat and trash almost completely filled the passenger seat. R. 13, lines 12-22; R. 14, lines 4-6.

Officer. Richard Hazewinkel responded to the incident location as well. R. 56, lines 10 – 24.² Hazewinkel recovered the following items within the large backpack: H&R Block tax paperwork with appellant's name listed on it, a twenty-six ounce container of iodized salt, one clear plastic tube, one small green cylinder, one bottle of alcohol, one box of aluminum foil, white coffee filters, one AA lithium battery, one AAA lithium battery, one box of Sudogest containing a pack of ten tablets, and a digital scale. R. 57, line 16 – R. 58, line 9. Hazewinkel also observed one starter fluid can that had been punched and two others fluid cans in the bed of the vehicle. R. 58, lines 10 – 14. Hazewinkel testified that none of the pills had been removed from the Sudogest pack. R. 63, lines 19 – 21. On cross-examination, Hazewinkel admitted that he was not on the scene when the items were initially seized by Laintz; therefore, he was unable to testify to the location of the items prior to his arrival. R. 67, line 2 – R. 68, line 19.

Emily Homer, a chemist at the sheriff's department, tested the two items found in the plastic bags inside of the Altoids container. She found 0.02 grams of methamphetamine in one bag and 0.08 grams of methamphetamine in the other bag. R. 98, lines 6 – 10. Homer testified she did not test the bags containing possible residue. R. 98, lines 11 – 14.

² Appellant objected to Hazewinkel's testimony and his use of a PowerPoint presentation to support his testimony. Appellant objected on the bases that in "normal mobile meth cases," the prosecution presents evidence of "some substance or some liquid," but no such evidence existed in this case. R. 86, lines 14-20. The judge noted he was looking for "evidence about a judge or a bottle." R. 87, lines 2-8. The court characterized Appellant's objection as including the facts that the police did not find residue or smell anything. Appellant further explained there was no liquid of any kind – only finished product. R. 88, lines 9-17.

Thomas Hamilton, the chief of the narcotics unit in Lexington County, testified as an expert in the production and distribution of methamphetamine, and disposal of the meth products. R. 119, lines 12-14; R. 120, line 24 – R. 121, line 11. Hamilton testified that the starting drug in the production of methamphetamine is pseudoephedrine hydrochloride, which can be purchased without a prescription. R. 123, lines 15-19.³ The base ingredient must be crushed, usually with a coffee grinder or blender. R. 124, lines 13-15. Next, a person must acquire ether. According to Hamilton, starter fluid cans contain a large amount of ether, which is removed from the cans by punching a hole in the bottom of the can to pour it out R. 125, lines 1-18. Coleman camping fuel also contains ether and may be used instead of starter fluid. R. 125, line 24 – R. 126, line 6. The next ingredient is ammonium nitrate, which is found in cold packs and fertilizer. R. 126, lines 7-20. According to Hamilton, sodium hydroxide, which is commonly called lye and found in drain openers, is a necessary ingredient in the manufacturing of methamphetamine. R. 126, line 22 – R. 127, line 2. Drain openers may be purchased at Wal-Mart or any hardware store. R. 127, lines 3-6. The final ingredient in the first step of the process is lithium metal, which is commonly found in camera batteries. In order to obtain the lithium, a person would have to open the batteries using wire cutters or pipe cutters, then remove the wadding to recover a gray thin sheet of metal. R. 127, lines 7-23.

After acquiring all five of the necessary ingredients for the first step, one must combine the sodium hydroxide and ammonium nitrate in a bottle to create anhydrous ammonia. A second chemical reaction occurs in the bottle at the same time – the ammonia

³ Hamilton testified that “[t]he normal recipe that we see uses one to two boxes” of pseudoephedrine. R. 129, lines 7-11.

reacts with the lithium. Per Hamilton, "the ammonia with the lithium converts pseudoephedrine methamphetamine." R. 124, lines 1-3; R. 128, lines 4-16. After these reactions, "the actual meth is inside that liquid." R. 128, lines 17-21. The normal "cook time" for the first step is forty-five minutes to an hour. R. 129, lines 1-6. During this process, pressure builds and someone must continue to shake it to keep it reacting and vent it to release the pressure. R. 129, lines 12-20. Next, the mixture is strained using common household items, such as clothing or paper towels, to produce only a cloudy liquid. R. 130, lines 6-21.

The second step requires combining sulfuric acid, such as the type found in drain openers, with salt in a small bottle to produce hydrochloric acid. The second bottle must have a tube connected to it to allow the gas to exit. R. 131, lines 1-8. The acid gas then "bubble[s]" across the container containing the ether and methamphetamine solution. The hydrochloric acid bonds with the methamphetamine making methamphetamine hydrochloride, which is salt. This salt is not soluble in ether, and as a result, falls to the bottom. R. 131, lines 13-19. A coffee filter is then used to strain the fine salt from the liquid. The salt in the coffee filter is left to dry and the finished product is methamphetamine. R. 131, line 23 – R. 132, line 7.

Concerning the items recovered from Appellant's truck, Hamilton testified that each item had a "legitimate legal lawful use." R. 136, lines 1-2. Nevertheless, Hamilton testified that if the items were found in the same automobile, then the items would be "for the product of methamphetamine." He based this opinion primarily on the "punched out ether can." R. 136, line 22 – R. 137, line 5; R. 144, line 16 – R. 145, line 3. He admitted, however, that all of the items necessary to create methamphetamine were not present.

Importantly, ammonium nitrate, sodium hydroxide, and sulfuric acid were not present. R. 145, lines 4-11; R. 151, lines 12-15.⁴

At the conclusion of the state's case, Appellant moved for a directed verdict on the charge of manufacturing methamphetamine.⁵ Appellant noted that the state's expert testified that making methamphetamine would require materials not recovered from Appellant's vehicle. Additionally, Appellant noted that "there was no solution ... that contained any one of the steps where it had been dissolved or any type of chemical process had been going on." R. 152, line 14 – R. 153, line 1. Appellant explained that it was not enough to have some of the ingredients; there must be some "indicia of the process." R. 153, lines 2-16.

The prosecutor argued "the problem with his argument is that methamphetamine was found in the car." He attempted to analogize the crime of manufacturing methamphetamine to murder. R. 153, lines 18-25. The judge inquired if the prosecutor had to prove that Appellant "manufactured either what was found or manufactured something else." The prosecutor responded that the methamphetamine's "existence is proof that it was made, and the evidence that links him to making the manufacturing, to making the drug is the trail he left behind." R. 154, lines 15-20. Additionally, the prosecutor relied upon "[t]he hole in the can, the tubing, the salt, the coffee filters, and that fact that he was in possession of pseudoephedrine itself." R. 154, lines 23-25. Later, the prosecutor made clear that "if

⁴ No one testified regarding finding bottles in the truck. A bottle, or container of some sort, would have been necessary for the manufacture of methamphetamine.

⁵ Appellant renewed this motion after informing the Court he would present no evidence. R. 160, lines 13-17. Appellant moved for a new trial after the jury returned its verdict as well. R. 232, lines 1-15.

that meth had not been in the car,” then he would not have proceeded with the charge of manufacturing methamphetamine. R. 155, lines 15-21.

Judge James noted that he possessed starter fluid, pseudoephedrine, and salt in his house. He explained that he was waiting for testimony to indicate “some residue or some odor or some indicia of something that he had either been riding around doing it as he was moving.” R. 155, lines 1-7. Judge James determined the directed verdict motion on the manufacturing meth charge was “an intriguing one” and took the matter under advisement. R. 158, line 25 – R. 159, line 11; R. 160, lines 8-10.

While discussing jury charges, the prosecutor informed the court of a statute providing that “possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.” R. 162, lines 7-12 (citing S.C. Code Ann. § 44-53-375 (D)).

The following day, Judge James denied Appellant’s motion for directed verdict on the manufacturing charge. He stated “it’s extremely close.” He explained that “[s]omeone can have the intent to commit a crime, but the crime is not committed until the crime is actually committed.” He elaborated that a person “could have all of these materials” in his possession and “have the intent to commit that crime at some point” but the person could not be “charged with it, convicted of it” until the person actually committed the crime. R. 169, lines 9-24. Nevertheless, he held there was enough evidence to send the case to the jury. R. 170, lines 2-3.

During jury deliberations, the jury asked the following question: “[I]s the state charging that [Appellant] was manufacturing in his vehicle or just that he manufactured meth?” R. 226, lines 12-15; R. 253 (Court’s Exhibit #2). The prosecutor responded “[t]hat

he manufactured meth in his, in your vehicle.” R. 226, lines 18-19. The prosecutor then stated “[t]hat the State must prove that on or about this day he manufactured methamphetamine.” R. 227, lines 13-14. The judge informed the jury that “the state must prove, beyond a reasonable doubt, that the defendant, on or about May 29, 2011, manufactured meth.” R. 228, lines 1-10. Shortly thereafter, the jury returned with its verdicts of guilt. R. 230, lines 11-24.

Discussion

South Carolina’s statutory scheme provides as follows concerning manufacturing of methamphetamine:

A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony.

S.C. Code Ann. § 44-53-375(B). Manufacture is defined as

Production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

S.C. Code Ann. § 44-53-110 (defining “manufacture”). “‘Methamphetamine’ includes any salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine.” S.C. Code Ann. § 44-53-110 (defining “methamphetamine”).

Additionally, the statutory scheme provides “[p]ossession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.” S.C. Code Ann. § 44-53-375(D). “‘Paraphernalia’ means any instrument, device, article, or contrivance used, designed for

use, or intended for use in ingesting, smoking, administering, manufacturing, or preparing a controlled substance and does not include cigarette papers and tobacco pipes.” The non-exhaustive list of paraphernalia includes items such as carburetion tubes and devices, cocaine spoons and vials, bongs, and ice pipes or chillers. S.C. Code Ann. § 44-53-110 (defining “paraphernalia”).

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103S.C. 437, 88 S.E.2d 1916 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97 S.E.2d 30, 36 (2001). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused,” the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant’s favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as “a belief or opinion as to guilt based upon

facts or circumstances which do not amount to proof.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the burglary. Likewise, the Lollis Court directed a verdict of acquittal in the defendant’s favor where the state presented no direct evidence that Lollis was involved in setting fire to his home. The only circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. Our state supreme court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that the defendant was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two persons, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51. As explained by the Odems Court, although our courts have abandoned the traditional circumstantial evidence jury charge, the language of the charge is instructive in making a directed verdict determination. The traditional charge provided:

Every circumstance relied upon by the State be proven beyond a reasonable doubt; and ... all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Id. at 590, 720 S.E.2d at 52 (quoting State v. Hernandez, 382 S.C. 620, 626 n.2, 677 S.E.2d 603, 606 n.2 (2009)).

In one of the Supreme Court's most recent circumstantial evidence case, State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the victim in a burn pile behind the home of Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (citations omitted). Where the statute's language is plain and unambiguous, conveying a clear and definite meaning, the rules of statutory interpretation are not needed and the court should not impose another meaning. Id.

(citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Appellant is unaware of any case in South Carolina interpreting our manufacturing methamphetamine statute. Nevertheless, South Carolina courts have confronted the issue of manufacturing in other areas. Primarily, our appellate courts have considered what constitutes manufacturing in the context of “moonshining.”

In State v. Evans, 216 SC 328, 57 S.E.2d 756 (1950), the South Carolina Supreme Court overturned a conviction for manufacturing whiskey where the “evidence strongly tend[ed] to show an intention on the part of [Evans] to engage in the manufacture of liquor” but the prosecution failed to present any evidence of an overt act toward putting the intent into effect. “The law does not concern itself with the mere guilty intention, unconnected with any overt act.” Id. at 332, 57 S.E.2d at 758. The only evidence against Evans was the testimony of three officers who saw Evans sitting around a little fire near the still. When Evans saw the police, he ran. In the area, officers found a 100-gallon copper still, two barrels of mash, tin tub buckets, shovels, and several other items. Additionally, officers found some whiskey in a small container on the site. The still showed evidence of usage approximately one week prior. In fact, the officers testified that everything was ready for meal and sugar to be added to the beer from the first batch to make a second one; however, neither meal nor sugar was found at the site. The state of the fermentation of the mash found at the site was favorable to be used for making whiskey. Nevertheless, the Court held “there is not a scintilla of evidence of any overt act on the part of [Evans], or anyone else in

his presence, which would constitute the offense of manufacturing whiskey without a license.” Id. at 331-332, 57 S.E.2d at 757.

Similarly, in State v. Quick, 199 S.C. 256, 19 S.E.2d 101 (1942), the South Carolina Supreme Court held Quick was entitled to a directed verdict on the charge of unlawful manufacture of intoxicating liquor where officers found two stills on Quick’s property, and found Quick approaching the property by automobile, which contained five hundred pounds of sugar, a stack of mill feed, and three cases of yeast cakes. Id. at 256, 19 S.E.2d at 102. Neither of the stills was in operation at the time the officers found them. One contained mash, and the other appeared to have been recently operated. The officers testified they did not know to whom the stills belonged. Id. The Court found the evidence “overwhelmingly tend[ed] to show an intention on the part of [Quick] to manufacture of liquor.” However, the Court determined that the state had failed to prove that Quick engaged in any overt act. Id.

Although the Court provided no definite rule as to what constituted an overt act, the Court explained that each case would depend upon the particular facts and inferences drawn therefrom “with a view to working substantial justice.” Id. The Court explained “the act must always amount to more than mere preparation, and move directly toward the commission of the crime.” Id.

There is a wide difference between the preparation for the commission of an offense and the commission of the offense itself, or even the attempt to commit. The preparation consists in devising or arranging the means or measures necessary for the commission of the crime; the attempt or overt act is the direct movement toward the commission, after the preparations are made.

Id. at 256, 19 S.E.2d at 103. The Court held that the testimony showed nothing more than an act by Quick in preparation to the commission of the crime and not an act proximately

leading to its consummation. Id. The Court further found the jury instruction telling the jury that if it found Quick intended to manufacture intoxicating liquors illegally then Quick had violated the statute was an incorrect statement of the law. As provided by the Court, the statute made it unlawful for a person to manufacture liquor; however, the statute did not make it an offense to intend to manufacture liquor. Id. Therefore, Quick was entitled to a directed verdict.

On the other hand, our Supreme Court addressed the manufacture of liquor and found sufficient evidence to warrant denial of the directed verdict motion in State v. Jackson, 210 S.C. 214, 42 S.E.2d 230 (1947).

Ordinarily, the manufacture of alcoholic liquors would contemplate the finished product, but the rule has been established in this state that an overt act in the process of manufacturing, is sufficient to show unlawful manufacture, and that each case must be decided dependent upon its particular facts, especially as to the issue whether a verdict of acquittal should be directed.

Id. at 218, 42 S.E.2d at 232. The South Carolina Supreme Court found the testimony of police officers tending to show that the initial steps involved in the manufacture of alcoholic liquors had been taken in that the mash in the still had nearly reached the stage of fermentation and all that remained to be done was to build a fire thereunder was sufficient for the case to go to the jury on the charge of the unlawful manufacture of alcoholic liquors. Id. at 221, 42 S.E.2d at 234.

In State v. Cunningham, 239 S.C. 212, 122, S.E.2d 289 (1961), Cunningham was charged with manufacturing alcoholic liquors and with unlawfully having in his possession one case of fruit jars being an apparatus, appliance, or device to be used for the purpose of manufacturing alcoholic liquors. The jury acquitted Cunningham of manufacturing liquor, but found him guilty of possession of one case of fruit jars to be used for the purpose of

manufacturing alcoholic liquors. At the time, a statute declared that the unexplained possession of any apparatus, appliance, or any device commonly or generally used for the manufacture of prohibited alcoholic liquors was prima facie evidence of a violation of the possession statute. Id. at 213-214, 122 S.E.2d at 289.

One night, officers observed three unidentified men start working at a still. Shortly thereafter, two of the men, one of whom was later identified as Cunningham, walked away from the still. The two men saw the officers and ran. Cunningham was carrying two cases of new empty half-gallon fruit jars, which he dropped when he ran. Id. at 214-215, 122 S.E.2d at 290. The prosecution contended the fruit jars were to be used as receptacles for the liquor, and as such, would be an apparatus, appliance, or device used for the purpose of manufacturing liquor. However, no one testified as to what type of receptacle was being used to receive the liquor at this particular still. "In fact, there [was] no evidence that fruit jars [were] suitable for use in manufacturing liquor." The Court noted that the jars were "in common use in many if not most homes for other purposes." Id. at 215, 122 S.E.2d at 290. In light of the jury's acquittal of Cunningham of manufacturing, the most that could be said against him was that he was transporting the jars to the still for the purpose of transporting liquor already manufactured. However, such use would not be for the purpose of manufacturing liquor, which was what the statute required. Id.

Applying the plain meaning of the statute coupled with the case law concerning the manufacture of liquor to the facts presented in Appellant's case requires reversal of the lower court's decision and a directed verdict in Appellant's favor. The plain language of the manufacture statute required the state provide evidence that Appellant engaged in the "production, preparation, propagation, compounding, conversion, or processing" of "any

salt, isomer, or salt of an isomer, or any mixture or compound containing amphetamine or methamphetamine.” See S.C. Code Ann. § 44-53-110 (defining “manufacture”) (defining “methamphetamine”). The prosecutor provided no evidence that Appellant had engaged in any of these acts.

Located in various places within Appellant’s truck were items that could be used for manufacturing methamphetamine, but may be legally and innocently purchased and used. According to the officer’s testimony, the tubing did not appear to have been used for the manufacture of methamphetamine. The batteries were whole and intact, indicating they had not been opened to remove the lithium, which would have been necessary to manufacture methamphetamine. The coffee filters were unused – they showed no signs of having been used to strain or dry methamphetamine. The officer who searched Appellant’s vehicle testified he did not smell anything unusual, and that based upon his experience, working meth labs smell strongly of ether. The box of pseudoephedrine contained all of the pills with which it was sold – no pills were missing to indicate the product had been used in any way. Importantly, officers found no plastic or glass bottle in Appellant’s vehicle. Obviously, if officers found no bottle in the vehicle, then officers found no bottle containing residue or any appearance of being used in the manufacture of methamphetamine. Additionally, officers found no ammonium nitrate, sodium hydroxide, or sulfuric acid, all of which are required for the manufacture of methamphetamine.

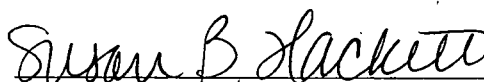
Although Appellant possessed items that may be used to manufacture methamphetamine, the items are not illegal to possess and serve legitimate purposes outside the manufacture of methamphetamine. As explained by Judge James, the prosecutor presented no evidence, such as residue or odor, to show indicia of manufacturing. Just as

the manufacturing intoxicating liquors statutes required an overt act toward putting the intent into effect, the manufacturing methamphetamine statute requires the prosecution to prove an overt act. It is not enough for the prosecution to prove a guilty intention on the part of Appellant; rather, the prosecution must prove Appellant engaged in an overt act connected to a guilty intention.

CONCLUSION

Appellant respectfully requests this Court reverse the decision of the trial court and direct a verdict in his favor on the charge of manufacturing methamphetamine.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan B. Hackett". The signature is written in dark ink and is positioned above the printed name and title.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 1, 2013

Susan B. Hackett

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY DODD THOMAS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of October, 2013.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of October, 2013.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable George C. James, Jr., Circuit Court Judge
Appellate Case No. 2012-212428

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY DODD THOMAS,

APPELLANT

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's directed verdict motion on the charge of manufacturing methamphetamine where Appellant's truck contained materials and equipment used to manufacture methamphetamine, an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and also contained the finished product, methamphetamine.

STATEMENT OF THE CASE

Appellant was indicted in Lexington County in September 2011 for possession of methamphetamine, possession of Xanax, and manufacturing methamphetamine. On May 22, 2012, Appellant proceeded to trial before the Honorable George C. James, Jr., and a jury. The jury found Appellant guilty as indicted, and Judge James sentenced Appellant to concurrent sentences of three years for possession of methamphetamine, six months for possession of Xanax, and seven years, suspended to three years of active time and three years of probation, for manufacturing methamphetamine. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly denied Appellant's directed verdict motion on the charge of manufacturing methamphetamine where Appellant's truck contained materials and equipment used to manufacture methamphetamine, an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and also contained the finished product, methamphetamine.

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). The South Carolina Supreme Court has stated that the appropriate test to be applied when reviewing a directed verdict motion in a case relying solely on circumstantial evidence is as follows:

When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004) (citations omitted) (emphasis in original). On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

At issue in this case is the charge of manufacturing methamphetamine. Under S.C. Code § 44-53-375(B), “[a] person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony” In Appellant’s case, the solicitor agreed at trial that he was proceeding only under a theory of actual “manufacturing” under S.C. Code § 44-53-375(B), rather than distributing, dispensing, delivering, purchasing, or attempting or conspiring to manufacture, and the jury was subsequently charged with only manufacturing. (See R. p. 166, lines 1-18; p. 214-15). S.C. Code § 44-53-110 defines “manufacturing,” in pertinent part, as “the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. . . .” “Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.” S.C. Code § 44-53-375(D).

In this case, Appellant’s truck contained many of the materials necessary to make methamphetamine using the more abbreviated “shake and bake” method. (R. p. 7-8; p. 57-58; p. 65-70; p. 122-45). Appellant’s truck also contained an empty starter fluid can with a hole punched in the bottom. (R. p. 58, lines 10-12). The methamphetamine expert testified there was no reason to punch out the bottom of a can of starter fluid other than to drain the liquid out for use in the production of methamphetamine. (R. p. 135, lines 3-5;

p. 137, lines 3-5; p. 145, lines 1-3). The expert further testified that in his opinion, “especially because of the punched out ether can,” the items found in Appellant’s truck were used for the production of methamphetamine. (R. p. 137, lines 1-5; p. 144, lines 16-25). Critically, Appellant’s truck also contained the most telling evidence of all that Appellant had manufactured methamphetamine – the finished product, methamphetamine itself. (R. p. 98, lines 1-14).

As the solicitor pointed out below, methamphetamine does not exist unless a person makes it, and the fact that Appellant possessed the finished product - combined with the fact that he possessed many of the materials and equipment needed to make it and possessed the drained-out starter fluid can - created a reasonable inference that Appellant manufactured methamphetamine. (See R. p. 154, lines 16-20; p. 184, lines 3-15). Cf. State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (a jury can infer that a person found in unexplained possession of recently stolen property was the thief) & McMillian v. State, 383 S.C. 480, 487-88, 680 S.E.2d 905, 908 (2009) (the unexplained breaking and entering of a dwelling at nighttime is itself evidence of intent to commit larceny). The fact that Appellant did not possess all of the materials needed to make methamphetamine *in the future* was irrelevant because the finished product - combined with the drained-out can of starter fluid and the other items found in the truck supporting that Appellant was a manufacturer of methamphetamine - indicated Appellant had *already* manufactured methamphetamine and had disposed of the leftover trash, such as the bottle used to shake the chemicals for the initial chemical conversions. (See R. p. 128-29). Accordingly, since there was sufficient evidence presented to surpass the directed verdict stage on the charge of manufacturing methamphetamine, this Court

should affirm the trial judge's denial of Appellant's directed verdict motion.¹ (See R. p. 169-70). See State v. Curtis, 356 S.C. 622, 633-34, 591 S.E.2d 600, 605 (2004) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.").

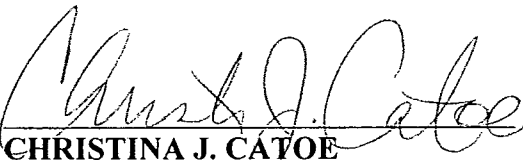
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
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CHRISTINA J. CATOE
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October 1, 2013

¹ The "manufacturing liquor" cases Appellant cites are factually distinguishable and, in any event, the "overt act" requirement from those cases was met in Appellant's case since Appellant had *already completed* the manufacturing of methamphetamine as evidenced by the finished product. (See Brief of Appellant, p. 14-19).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable George C. James, Jr., Circuit Court Judge
Appellate Case No. 2012-212428

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY DODD THOMAS,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.



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October 1, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable George C. James, Jr., Circuit Court Judge
Appellate Case No. 2012-212428

THE STATE OF SOUTH CAROLINA,

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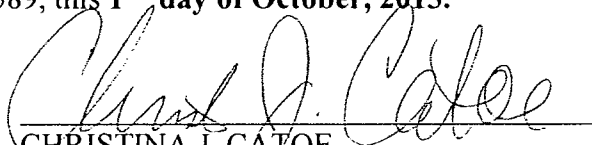
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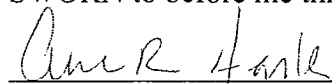
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **SUSAN B. HACKETT**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **1ST day of October, 2013**.


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SWORN to before me this 1st day of October, 2013.


Notary Public for South Carolina
My Commission Expires: 7/30/13