THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable Alexander S. Macaulay, Circuit Court Judge

Case No. 2014-001407

Christopher W. Ashe, ... Petitioner,

vs.

The State ..... Respondent.

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

ORIGINAL

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

Christopher W. Ashe,

DEFENDANT.

TRANSCRIPT OF TRIAL
06-GS-32-2155
06-GS-32-2156
06-GS-32-2157

PART ONE
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BEFORE THE HONORABLE G. THOMAS COOPER, JR., JUDGE
AND THE HONORABLE R. FERRELL COTHRAN, JUDGE
OCTOBER 23, 24, 25, 2006
LEXINGTON, SOUTH CAROLINA

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CIRCUIT COURT REPORTER

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(The defendant, together with counsel, was personally present in the courtroom;)

Monday, October 23, 2006

THE COURT: Thank you, ladies and gentlemen. You can be seated.

All right, Mr. Solicitor, you may call your first case.

MR. MOSES: Thank you, Your Honor. The State would call Indictment #2006-GS-32-2157, the State versus Christopher Ashe, indictment for manufacturing methamphetamine; Indictment #2006-GS-32-2155, the State versus Christopher Ashe, indicted for unlawful possession of pseudoephedrine, 200 grams or more but less than 400 grams; and Indictment #2006-GS-32-2156, the State versus Christopher Ashe, indicted for possession of crank.

THE COURT: If you'll give me your attention, please, ladies and gentlemen, we're about to commence the trial in the case of the State of South Carolina versus Christopher Ashe. Mr. Ashe has been indicted by the Grand Jury here in Lexington County for manufacturing methamphetamine; for possession of pseudoephedrine, 200 grams or more but less than 400 grams; and possession of crank.

To this indictment, he has pled not

guilty. He is represented by Mr. Theo Williams. He's seated in the courtroom.

Is someone going to help you with this trial, Mr. Williams?

MR. WILLIAMS: No, Your Honor. He can't quite help me yet. He's waiting on his bar results.

THE COURT: All right.

The State is represented by Marion Moses and Kent Collins. They will be presenting this case on behalf of the State. If you will stand up and introduce your client to the jury, both sides, where the jury can see you all, please, sir.

MR. WILLIAMS: Me first, Your Honor?

THE COURT: Yes, sir, if you will go first.

MR. WILLIAMS: Your Honor, this is Chris Ashe. And I'm an attorney here in Lexington. I work at the firm of Williams, Hendrix, Steigner, and Brink, right across the street on the corner.

THE COURT: Okay, Mr. Moses, if you'll introduce the people who will be participating in this trial.

MR. MOSES: Thank you, Your Honor. I'm Marion Moses with the Solicitor's Office in the Eleventh Circuit. This is Kent Collins. He's an

Assistant Solicitor here with the Eleventh Circuit.

This is Agent Gleaton with Lexington County Sheriff's Department; Agent Chris Bailey, with West Columbia Police Department. This is Agent Thomas Hamilton; he's with Lexington County Sheriff's Department; Jim Crawford, he's with Lexington County Sheriff's Department; and Candy Kyzer, she's with Lexington County Sheriff's Department; Beth Harmon, Lexington County Sheriff's Department; and Emily Homer, Lexington County Sheriff's Department.

We will also potentially call Barbara McMullen and Chris Stout with Lexington County Sheriff's Department, who are not in the courtroom at this time, Your Honor.

(The jury was selected and seated.)

THE COURT: Ladies and gentlemen, I need you all to step in the jury room for a few minutes where we can select another jury for the trial of the next case. I remind you, you don't know anything about this case, so don't discuss anything at this point. Thank you.

(The jury was excused to the jury room.)

THE COURT: We were talking about making opening arguments and starting this trial. Do I need to send the jury to lunch?

MR. WILLIAMS: Yes, sir.

THE COURT: We've got some matters we need to deal with?

MR. WILLIAMS: Yes, sir.

THE COURT: So you want me to bring them back in, send them to lunch. We'll deal with those matters, and then start back what time? How long is it going to take to get through the legal arguments and get us something to eat?

MR. WILLIAMS: I wouldn't anticipate the legal arguments to last more than 30 minutes, 45 minutes.

THE COURT: Okay. So it's 12:15 now. So we'll be working till 1:00, is what you're telling me. So I'm going to bring the jury back at 2:00, 2:30, 2:15 -- 2:30?

MR. WILLIAMS: 2:15, Judge -- 2:15.

MR. MOSES: Ms. Frick says 2:30.

THE COURT: Well, we'll bring them --

MR. WILLIAMS: Judge, the issues are relatively narrow. It won't take more than 30 minutes to go through them.

MS. FRICK: Your Honor, you're looking at more like 45. If they say 30, it's 45. If they say 30, it's sometimes an hour.

THE COURT: I don't want the jury sitting back there waiting on us, now. I'm not having the jury sitting there waiting while we're --

MR. MOSES: Let's say 2:30.

THE COURT: All right. We'll bring them out. I'll dismiss them till 2:30. We'll deal with whatever matters, and at 2:30 we'll start with opening statements.

You'll have all your witnesses, and we'll be able to roll at 2:30, right?

MR. MOSES: We're going to be ready to roll, yes, sir.

THE COURT: Okay. Anything before I bring the jury out?

MR. WILLIAMS: No, sir.

THE COURT: Okay. If you would, please, sir, bring the jury in.

(The jury returned to the courtroom at 12:16 p.m., after which the following proceedings were had:)

THE COURT: You all can be seated. Ladies and gentlemen, I've just been informed that we would

have certain matters that we need to take up outside of your presence involving this case.

And instead of leaving you all back there in the jury room while we deal with those matters, I decided to let you all go to an early lunch, or a long lunch. So what I'm going to do at this point is let you all go have lunch. I need you all back in the jury room at 2:30.

So instead of you all sitting back there waiting on us, we'll let you all at least go do something more productive, and we'll bring you all back at 2:30. So you all can be excused now. Be back in the jury room -- if you would, go straight to the jury room and be there at 2:30. Thank you.

Everyone remain seated while the jury leaves.

(Jury out at 12:19 for lunch.)

THE COURT: All right, sir.

MR. WILLIAMS: Your Honor, the short answer for this is we would move to suppress certain statements that the Solicitor has said that he intends to introduce. We had a pre-trial meeting with both Your Honors in which we asked whether or

not a Jackson v. Denno hearing was necessary.

At that point in time, the Solicitor advised the Court that there was only one statement. And that was a question from a police officer to my client after Mirandizing in which supposedly the police officer asked my client whether or not there was anybody up in the building.

And based on that, Your Honor, I did not require a Jackson v. Denno hearing. Now, Your Honor -- or didn't seek a Jackson v. Denno hearing. Now I understand from the prosecutor that he now intends to introduce a statement in which supposedly a police officer asked my client, "What were you doing up in the building?" and my client supposedly says, "Just making ammonia."

Your Honor, we would move to suppress now both statements based on the failure of the State to comply with Rule 5 in which -- and specifically Rule 5, Section 3, where it reveals -- where it talks about disclosure of evidence, information subject to disclosure. Under A, it says, "The substance of any oral statement which the prosecution intends to offer into evidence at trial made by the defendant."

And then, when it talks about the

time for disclosure, it says under Section 3 within 30 days. Discovery motions were served months ago, Judge. And the jury has already been chosen. So we would move to suppress those statements -- those alleged statements.

THE COURT: All right. What does the State have to say?

MR. MOSES: Judge, there were no written documents or written statements taken. Therefore, there was no discovery to be given to the defense. Judge, testimony and statements that come from witnesses are only required to be given to the defense right before the witness takes the stand to begin with.

These statements were from the defendant. And statements from the defendant are certainly admissible in Court, as long as we show that it was given on a voluntary basis and free of any duress and after he was Mirandized. And we are certainly prepared to do that right now.

MR. WILLIAMS: Your Honor, that's not what the rule says. The rule doesn't carve out that exception. It says, "The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the defendant" --

which is what he's saying -- "whether before or after the arrest, in response to interrogation by any person then known to the defendant to be a prosecution agent."

So there's no carving out for whether or not the statement has been cured with some sort of Miranda warning. It's a failure on the State to do what they're supposed to do pursuant to the rule. The date, for the record, Your Honor, is that the discovery was filed in April of this year -- April of 2006 -- served and filed.

THE COURT: Okay. Is there any argument from the State that, in fact, this Rule 5 discovery was filed with the Solicitor's Office in April of 2006?

MR. MOSES: No, sir. Discovery was filed -- the discovery request was filed, and the discovery was given -- discovery was given shortly thereafter.

THE COURT: And in that discovery package given by the State, was there any mention in there of any oral statements of the defendant?

MR. MOSES: No, sir. There's no mention of an oral statement by the defendant. The statement came to my attention in between the time

that we were in chambers and now, the statement that we're talking about.

Due to the fact that Mr. Collins and I have been working on this case together, he has learned some things, and I've learned some things. I just learned of this, and Mr. Collins didn't know about it either. And so we would like to introduce it.

He has already said that he had no problem with us introducing the other statement. We feel like we have complied with the rules of discovery, and we don't see the problem here.

THE COURT: In the time he allegedly made this second statement that we're talking about, was he, in fact, in custody at that time? Is this a situation -- was he in custody at that time?

MR. MOSES: Yes, Your Honor, he was in custody. And he was already Mirandized.

THE COURT: So the defense's situation is you want to exclude it as a violation of Rule 5 and not necessarily a Jackson v. Denno issue?

MR. WILLIAMS: Yes, sir. That's right, Your Honor.

THE COURT: Okay.

MR. WILLIAMS: It's a violation of Rule 5.

THE COURT: Okay. Anything else from the State or defense before I rule?

MR. MOSES: No, sir.

MR. WILLIAMS: No, sir.

THE COURT: And I find based on Rule 5, Section A, that the prosecution is required to give substance of any oral statements made by the defendant, and that this is a potential confession. And the State, even though I understand the Solicitor's Office may have just found out about it, they have a duty to find out -- and obviously somebody in law enforcement knew about it. And I don't think it comes in under Rule 5, and it's going to be excluded.

MR. MOSES: Thank you, Your Honor.

MR. WILLIAMS: Your Honor, by making -- Your Honor will note that when I made my motion, I said at this time we would move to suppress both statements based on their bringing up the second. If you are ruling on -- I hate to renege, Your Honor. I think that's what it called.

THE COURT: Well, I was dealing at that point with the second statement that you asked me about when the police asked him, "What were you doing?" And I think his response was, "I was making

ammonia." Now, if you want --

MR. WILLIAMS: No, sir.

THE COURT: If you are making the same -- okay.

MR. WILLIAMS: I won't do that.

THE COURT: So we're dealing with the statement that "I was making ammonia," and I assume that was the response, that statement to law enforcement.

Let me ask you, were those two statements made to different police officers, or was it the same officer for both of them?

MR. MOSES: It was different officers, Your Honor.

THE COURT: Okay. So the officers -- are we going to have a problem during the trial with one officer -- you know. You're going to instruct them getting on the stand that that's not going to be admissible, right?

MR. MOSES: Yes, sir.

THE COURT: Okay.

MR. MOSES: Your Honor, the only thing I would clarify is that obviously, if the defendant decides to take the stand, then that will then come out -- potentially.

THE COURT: Well, we'll face that issue if he in fact takes the stand and what you can impeach him on based on what he's testified to. Anything further? You all have got another 30 minutes to talk, now.

MR. WILLIAMS: Yes, sir. Your Honor, we would move to suppress the evidence seized out of the truck, which contains pseudoephedrine boxes, one gun -- one rifle, I should say, Your Honor -- and a set of scales.

The basis for that, Your Honor, being that the search warrant -- and I can hand Your Honor a copy of the search warrant as well as the return address. It's only the search of a residence.

We don't have standing to contest the search of the residence, Your Honor, because my defendant did not reside there. The vehicle which was searched was a truck which was owned by my client. And if I could have two seconds, Judge. I just had it.

MR. MOSES: We consent that the search warrant doesn't mention the truck, Your Honor.

MR. WILLIAMS: Your Honor, the reason I would like Your Honor to look at the search warrant is that on the return of the search warrant, it

talks about the items that were seized pursuant to the search warrant. And it references the items in the truck.

Which obviously at this point, if they're trying to say that it was seized pursuant to a lawful arrest, which is what I anticipate they're doing, the search warrant references that it was seized pursuant to the search warrant. And here is the search warrant, Your Honor, and the return.

THE COURT: Okay.

MR. WILLIAMS: It references how those items were seized, that they were seized pursuant to the search warrant. Obviously, Your Honor, if the search warrant is the basis for the search, then they could not have been seized because it wasn't an item which was referenced in the items to be seized or the location to be seized.

Your Honor, if, indeed, this search was based on a lawful arrest -- search incident to a lawful arrest -- we would move to suppress it on two bases. Number one, the search warrant references a different basis for seizure; and, number two, that they would have to establish the time at which my client was arrested, as well as the time at which the search of the vehicle was conducted, because we

believe that the items were actually seized out of the truck before my client was arrested.

MR. MOSES: Judge, the items in the truck were seized after the arrest. We can put the officers up to testify as to the same. I agree with Mr. Williams that the items seized in the truck are listed in the return of the search warrant.

However, that doesn't box it in to being just found due to a search warrant. It was found in a search incident to an arrest. Probable cause was determined.

The standard for probable cause as stated in 318-SC-323, is that "Probable cause to conduct a warrantless search is the same as that for a search with a warrant, which is a justifiable determination based on the totality of the circumstances and in view of all the evidence available to the police at the time of the search, that there exists a practical, non-technical probability that a crime is being or has been committed and incriminating evidence is involved."

The officers will testify that, when they first arrived on the scene, they saw the defendant wave at them from the window of the building. He came outside, and they were

undercover. He didn't know that they were law enforcement at this time.

He came outside to talk to whoever was coming up to the building. And then they identified themselves as law enforcement. They asked for his driver's license. He got real nervous. They could smell ether. They knew that there was a -- they were in the area investigating drug trafficking.

They knew that because of their -- through their training that there was a possible lab going on. When the defendant -- they asked for his driver's license, and he lunges for the truck. He got to go in the truck and fumble around in the truck for a brief period of time, and pulls his driver's license, and then hands it to the officers. Then he freaks.

So all of that tied together, once they found drugs in the house, 30 minutes later when they've arrested the defendant, they get back, the defendant has drugs on him. He's been in the truck. He's in the house. These are all possible areas where he could have placed illegal drugs, he could have placed a weapon, he could have done anything. And it was searched incident to arrest at that time.

THE COURT: So --

MR. WILLIAMS: Your Honor, we would say that this flies in the face of State versus Brown, which is 347-SE2-885 and 886, which references that a search can be conducted incident to arrest only if it is substantially contemporaneously with the arrest and is confined to the immediate vicinity of the arrest.

The arrest was actually made down several -- probably maybe a half a mile outside of the woods from where the vehicle was located, this truck was located. And, Your Honor, there was absolutely no reason why they couldn't have gotten a search warrant to search the truck.

THE COURT: Is there any issue on fact that, in fact, the arrest took place somewhere else besides there, at the truck?

MR. MOSES: No, sir.

THE COURT: So the arrest did not occur at the truck?

MR. MOSES: Your Honor, it began at the truck. There was a hot pursuit arrest that began at the truck. It's all tied together. Because of his flight, they were not able to catch him until he was a mile or so down the road. But it all stemmed from

the truck. And they searched it incident to his arrest after they arrested him as an inventory search. They actually towed the vehicle later.

THE COURT: Well --

MR. WILLIAMS: I still don't hear why he couldn't have gotten the search warrant, Your Honor.

MR. MOSES: An inventory search does not have to be contemporaneous.

THE COURT: All right, I'll deal with one issue at a time. First, we've got a search warrant issue. We've got an incident to an arrest issue. And now you're claiming it's an inventory search. I think State v. Brown, that as well as United States versus Robinson, is the ruling law in this. And based on my understanding of State v. Brown, the search incident to arrest has to be contemporaneous with the arrest and in the immediate vicinity.

So if the arrest didn't occur right there at the truck and it wasn't, you know, then I don't think it's going to come in under incident to an arrest situation. Now, as far as probable cause or some other issue as far as their search warrant or inventory search, I haven't heard evidence or testimony to that fact.

But I don't think, under State v.

Brown, if he was arrested sometime later away from the truck, I don't know how you're going to get it past State v. Brown.

MR. MOSES: Your Honor, but for his conduct, they tried to arrest him at the truck.

THE COURT: Did they have an arrest warrant for him at the truck at that point?

MR. MOSES: No, Your Honor.

THE COURT: What were they going to arrest him for, then?

MR. MOSES: He was under investigative detainment.

THE COURT: So it was investigation detention?

MR. MOSES: That's right.

THE COURT: But at that point -- at the time he ran, there was no outstanding warrants against him is what you're telling me?

MR. MOSES: That's correct, Your Honor.

THE COURT: And at that point, no illegal substance had been found on him?

MR. MOSES: Not at that time.

THE COURT: Okay.

MR. MOSES: Now, the inevitable discovery doctrine, they would found it as an inventory search

of the vehicle. That's our next problem, that we feel that the drugs were legally seized. And also in the automobile section, the probable cause gives them the right to -- when there is probable cause to believe the vehicle contains evidence of a crime, then we feel that they can certainly search that vehicle.

And all of this is all based around a meth lab. The car is smelling of ether. The house is smelling of ether. The officer who went and searched the vehicle had already cleared the house of a meth lab and was trying to clear -- they have to wear these suits because the chemicals are so hazardous, and gas masks.

And he was trying to clear the scene of any inherent dangers, and probable had already arisen to search the vehicle as well as the building. The defendant had come out a building where there was a meth lab that had already been dismantled. And he had come out of a truck that was parked right outside, a few feet from the building, where the meth lab was just taken out of.

MR. WILLIAMS: He's right about one thing, Judge. There was probable cause. The probable cause there was, was for him to go to the Magistrate

to secure a search warrant, which he obviously did later on to search the house. So he could have gotten one for the truck, if that was an issue, which is why we have search warrants and Magistrates to rule on those.

THE COURT: Well, let me ask you. The search warrant that I have before me, dated December 22nd, was this warrant issued before the officers even responded to this house?

MR. MOSES: No, sir.

THE COURT: This was issued after the response?

MR. MOSES: Yes, sir.

THE COURT: Okay. So after -- was this issued before or after his arrest?

MR. MOSES: It was probably about the same time.

THE COURT: Okay. So the officers respond to this location, and they didn't have a search warrant, is that right?

MR. MOSES: They were in the area investigating, following up on some drug activity, and were only in the area. They were not there to search this house.

THE COURT: Okay.

MR. MOSES: They were there in the area because of drug activity being reported to them. When they smelled the ether come out of the house and the defendant was obviously inside the residence, they came out to question him. That's when the defendant wouldn't talk to them, gave them his driver's license, and then fled.

THE COURT: Okay.

MR. MOSES: That raised a suspicion. They smelled the ether. They did a sweep of the -- a protective sweep of the house. They saw the meth lab, they exited the house, and they got a search warrant.

THE COURT: And somebody's gone to get a search warrant, and the other officers are pursuing the defendant by foot?

MR. MOSES: Yes, sir.

MR. WILLIAMS: Judge, there is a lot of --

THE COURT: And the automobile that we're talking about is the truck that's sitting there in this yard?

MR. MOSES: Yes, sir.

THE COURT: And you come back with a search warrant, and you search the house?

MR. MOSES: Yes, sir.

THE COURT: And at what point was this truck searched?

MR. MOSES: The truck was searched after the meth lab was dismantled in the house and the defendant had been arrested and was back beside the truck. They brought him back to the scene.

THE COURT: And at that point, what was he under arrest for?

MR. MOSES: He was under arrest for possession of meth, manufacturing meth, and I think that's it -- possession of meth and manufacturing meth.

THE COURT: And he was the only person at this location?

MR. MOSES: The only person at the location.

MR. WILLIAMS: No, absolutely not, Your Honor. In the incident report from the police, it indicates that there were two persons at the place, one who leaves the back door. They didn't arrest but one person.

MR. MOSES: And as the officers will testify, they did put that in the incident report. However, they never saw anybody, and they thought there could have been somebody. That's why they put

it in the report. But nobody was ever found except -- when the bloodhounds got there, nobody was ever found, and they only found this one person.

It could have been anything that they heard in the house. It could have been the defendant dropping something that they heard and thought was another person. They will testify to that.

MR. WILLIAMS: Yes, but, Your Honor we didn't write the incident report. The police put in there that there was somebody else who left by way of the back door. Now, if they want to change their story to help the trial, that's different. But that's what they put in their report.

MR. MOSES: Your Honor, he's welcome to cross-examine them on that fact, but that's what we'll testify to.

THE COURT: Okay. So the vehicle was searched there on the scene, after the subject, Mr. Ashe, was apprehended and after the search warrant was issued for the house or before the search warrant was issued for the house?

MR. MOSES: Your Honor, I believe it was after the search warrant was issued. The search warrant was already issued, because they were in the

house dismantling the lab. And the defendant was arrested and brought back to the car, and then they searched the truck.

THE COURT: Was the tags ever run on the vehicle to determine who the vehicle belonged to?

MR. MOSES: Yes, sir.

THE COURT: And who did it belong to?

MR. MOSES: It came back to the defendant, Your Honor.

THE COURT: Okay.

MR. MOSES: We had the driver's license of the defendant. We had the tag of the truck belonging to the defendant, the truck parked within feet of the door where there was a meth lab in full cooking.

THE COURT: Anything else from either side on this issue?

MR. WILLIAMS: One last parting shot, Your Honor. I still haven't heard a reason why when they got the search warrant for the house, why they didn't get the search warrant for the car. And that's the key here. They could have easily done it.

MR. MOSES: Your Honor, under the rules, we could have done it, but it wasn't necessary to be

done. There are plenty of sections to warrantless searches, and we feel that this falls within that.

THE COURT: Okay. But at the time the subject was under arrest, there was no arrest warrant for the subject. He was arrested after he was apprehended from fleeing?

MR. MOSES: Yes, sir.

THE COURT: Okay. What kind of time frame have we got?

MR. MOSES: Thirty minutes, 45 minutes.

THE COURT: Okay. You said the dogs were brought. Were the dogs brought to pursue him?

MR. MOSES: They were brought because of the initial assumption that somebody else may have been there, may not have been there. The dogs were brought, and there was no hit found

THE COURT: Okay. But the dogs didn't pursue the defendant --

MR. MOSES: No, sir.

THE COURT: -- Mr. Ashe?

MR. MOSES: Not to my knowledge, Your Honor. The dogs were cancelled when the defendant was found, Your Honor.

THE COURT: Was he apprehended in another dwelling or another house, another vehicle, or was

he out --

MR. MOSES: In the woods.

THE COURT: In the woods, okay. There's a wooded area behind this house?

MR. MOSES: It's all a wooded area.

THE COURT: Okay. Anything else from either side?

MR. MOSES: No, Your Honor.

THE COURT: What about any other issues we need to deal with?

MR. WILLIAMS: Your Honor, if, for some strange reason, which I'm hoping is not true, but Your Honor rules and allows this introduction of items that were seized in the truck, we would move to exclude any testimony about the gun, because the gun has absolutely no relevance to any of the charges that my client is charged with. The only thing it could possibly do would be to inflame the jury and make them think that he's a bad guy because he had a hunting rifle in his truck.

THE COURT: It's a rifle, not a handgun, is that correct? Was it a handgun or a long rifle?

MR. WILLIAMS: It's a deer rifle.

THE COURT: Okay. What about the relevancy of the rifle, Mr. Moses?

MR. MOSES: Your Honor, it was in the truck, and it was sitting there with articles that are commonly used, precursors to a meth lab. We feel like it all goes together.

THE COURT: Okay.

MR. MOSES: Meth is related to violence, and guns can be related to violence as well. And it was all found in the truck.

THE COURT: Do you actually have the weapon that you intend to introduce in this trial?

MR. MOSES: Your Honor, they have it in evidence.

THE COURT: Do you intend to introduce it, or do you just want to mention it?

MR. MOSES: Your Honor, we haven't decided yet.

THE COURT: Okay. Anything else?

MR. WILLIAMS: No, Your Honor.

THE COURT: All right. I will think about this over lunch and give you all my answer. Have we got any other issues?

MR. MOSES: The only issue we want to put on the record is that the defendant was in fact served the indictments that he's being tried under today, and his attorney.

MR. WILLIAMS: I'll state for the record he was served.

THE COURT: Okay. So there's no notice issue as far as the indictments are concerned?

MR. WILLIAMS: No, sir.

THE COURT: Okay. We'll be back at 2:15, that way before the jury gets here, where they won't be waiting on us. And then I'll rule on the record at that point what my decision is concerning the admissibility of the items in the truck, okay?

MR. MOSES: Thank you, Your Honor.

MR. COLLINS: Thank you, Your Honor.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Court is in recess until 2:15.

(Court in recess.)

THE COURT: Thank you, ladies and gentlemen. You may be seated.

Mr. Moses, let me ask you one question on this search issue. I think I've got a pretty clear understanding as far as the search warrant of the house and the time frames. Was the vehicle impounded?

MR. MOSES: It was.

THE COURT: What was the intention of what law enforcement was going to do with that pickup

truck that belonged to the defendant?

MR. MOSES: They were going to tow it, and they eventually did tow it.

THE COURT: And do they have a policy or procedure in place in the department for inventorying impounded vehicles?

MR. MOSES: Yes, sir.

THE COURT: And what is that procedure?

MR. MOSES: Will you allow me to confer with the officers?

THE COURT: Yes, sir.

MR. MOSES: Your Honor, their procedure is on the scene they do a complete inventory of the vehicle, inside and out. And then they do a sheet and fill it out on who the owner of the vehicle was, the driver of the vehicle was, and anything found in it, and they do an inventory of that. Then they call a wrecker service, and they tow it, and they impound it.

THE COURT: Was that done in this case? Was a sheet filled out with the --

MR. MOSES: Yes, sir.

THE COURT: -- name of the owner and the inventory and everything else?

MR. MOSES: Yes, sir.

THE COURT: Was everything inventoried in this vehicle, not just the three items you were talking about?

MR. MOSES: Miscellaneous papers, gloves, green duffel bags with miscellaneous items.

THE COURT: Okay. So the answer to that question is everything that was in the vehicle was on the inventory sheet, and this vehicle was --

MR. MOSES: Except for --

THE COURT: -- impounded and inventoried?

MR. MOSES: -- except for the items that were placed in the best kit, which the items placed in the best kit were the Sudafed and the drugs found on his person. But what was found in the truck was either inventoried --

THE COURT: All I care about at this point is the truck. I don't care what was found on his person.

MR. MOSES: What was found in the truck was inventoried on this list or either put on the return.

THE COURT: Okay.

MR. WILLIAMS: Judge, would you like a copy of the two inventory sheet that you were asking about?

THE COURT: Yes, that would great.

MR. WILLIAMS: Here's a copy of it. It doesn't reflect the items that we've been discussing, by the way.

THE COURT:

(The jury returned to the courtroom at 2:21 p.m.)

THE COURT: You said it was -- okay. The other items were shown on the return. I see it. Four boxes of Sudafed, electronic scales, a rifle, Ruger, caliber .243, were found in the truck, okay.

MR. MOSES: Your Honor, may we make one more comment?

THE COURT: Yes, sir.

MR. MOSES: We just want to reiterate that under the Carroll doctrine in the automobiles section that it wasn't necessary to get a search warrant for that truck due to the fact of the mobility of the vehicle, and the diminished expectation of privacy in the vehicle and the way the Courts have ruled towards that, and the probable cause that was already there. A search warrant certainly would have been appropriate, but not necessary.

THE COURT: And the vehicle --

MR. MOSES: Yes, sir.

THE COURT: -- in the yard of this residence, or was it out on a public street?

MR. MOSES: Your Honor, would you care if I pass up a picture? It was in the yard, Your Honor.

THE COURT: It was in the yard?

MR. MOSES: Would you like to see a picture of where it was?

THE COURT: That would be fine. I just needed to know whether it was in the yard or on a public street.

MR. MOSES: It was almost in the building.

THE COURT: Okay. All right, anything further from the State or defense?

MR. WILLIAMS: Your Honor, I feel inclined to say something since he's been talking for a few minutes.

THE COURT: Okay.

MR. WILLIAMS: Your Honor, they didn't even have the thought of towing the vehicle until after perhaps he was arrested, because it was on private property. So the bottom line is -- and you'll note that on the items that were seized that the inventory does reflect the guns and all the

other stuff.

But the whole -- well, the Solicitor is dancing around everything here. The truth in this case is they thought they could seize it because they had a search warrant, and that's why the Solicitor--

THE COURT: Okay. Okay.

MR. MOSES: Your Honor, if we may reply to that, it's absolutely of what they thought. The guy was arrested -- the defendant was arrested and already back at the scene when they actually started searching the truck. Under the automobiles section of Carroll, we contend that that was certainly a warranted warrantless search.

THE COURT: Okay. Anything else? All right, I find that clearly you could not have not searched the vehicle incident to an arrest, and I rule that on State v. Brown. I also feel that this doesn't fall under the Carroll doctrine in that the exigent circumstances surrounding automobiles don't exist.

And this automobile was on private property. It was not on a public street. And, therefore, those circumstances didn't apply in this particular case, even though in a situation where

you have a police officer who stops an automobile on the street, those circumstances do apply.

But, in fact, this vehicle was on private property, was not out in the street on public property, that you would have needed a search warrant, that even though you may have had probable cause at the time, a search warrant would have been needed for the vehicle.

However, I think the bar on inventory searches is not as high. And based on what you are telling me, that the vehicle was in fact impounded and an inventory search was conducted of the vehicle, that in the inevitable discovery rule on an inventory search, that the items would have been discovered.

And, therefore, I'm going to let in the scales and the Sudafed, but not the rifle. I do not feel that the gun is relevant in this case. It is a deer rifle. I see no relevance at all with that deer rifle, any connections with the drugs in this case. And, therefore, I'm not going to let the rifle in.

MR. WILLIAMS: Thank you, Your Honor.

MR. MOSES: Thank you, Your Honor.

THE COURT: Okay. Anything before we

bring the jury in?

MR. MOSES: Nothing from the State, Your Honor.

MR. WILLIAMS: Nothing from the defendant -- oh, there is one thing, Your Honor. The Solicitor and I have agreed to sequestration of the witnesses.

THE COURT: Okay. Is that all the witnesses? We obviouslv don't have a victim in this case. Are you going to have a lead officer that's going to stay throughout?

MR. MOSES: Yes, Your Honor. Agent Hamilton will be our lead officer. If you would allow us to maybe find some chairs or something for the officers so we can logistically give them somewhere to go so they can outside when we're ready to call them, because some of these witnesses won't take that long --

THE COURT: Okay.

MR. MOSES: -- just to speed the flow of things up. We need to have them step outside the courtroom rather than them going all the way to our offices.

THE COURT: That's fine. What about

defense witnesses? Is this both sides or just the State?

MR. WILLIAMS: It's both sides, Your Honor.

THE COURT: Okay.

MR. WILLIAMS: But we only have one potential witness, and that would be the defendant.

THE COURT: Well, he obviously doesn't have to leave the courtroom.

All right, how long do you need to get your chairs lined before I bring the jury in?

MR. MOSES: Three minutes.

THE COURT: Okay. Are we ready for the jury? Bring us the jury, please.

MR. WILLIAMS: The defense is ready, Your Honor.

MR. MOSES: The State is ready, Your Honor.

COURT REPORTER: Your Honor, for the record, I've marked State's Exhibits One through Twenty for ID.

THE COURT: Madam Court Reporter, I wasn't paying attention. Tell me that one more time.

COURT REPORTER: I have marked State's Exhibits One through Twenty for ID.

THE COURT: Okay.

(The jury returned to the courtroom at 2:21 p.m.)

THE COURT: Thank you, ladies and gentlemen. You can be seated.

Mr. Caison, I want you to be the foreperson of this jury, if you would, please, sir.

And where do your foremen normally sit?

If you all will swap places.

And, Ms. Davis, you say right there, because you're the alternate.

Those two need to sit in those two seats. the rest of you all can sit anywhere you want to, okay, throughout this trial.

If you would, Madam Clerk, swear this jury for me.

(Whereupon, the jury was sworn.)

THE COURT: Ladies and gentlemen, I'm going to give you all at this time a brief outline of what's going to happen throughout this trial. Mr. Christopher Ashe is the defendant in this case, and he has been indicted by the Solicitor's Office and by the Grand Jury of Lexington County on three

different charges.

To those charges, he has pled not guilty. And what that means is that the State has the burden of proof for proving him guilty of these charges beyond a reasonable doubt. Your job in this is going to be relatively simple, in that you're to listen to the facts that come from this witness stand and the evidence that is introduced in this trial.

And you are the sole judges of those facts. You are to listen to those facts, review this evidence, and make a determination in this case of the guilt or innocence of the defendant. As I remind you, the State has the burden of proving these facts to you beyond a reasonable doubt.

And to kind of give you a format of how this is going to go, we're going to have opening statements in just a few minutes. The Solicitor will get up and give you an opening statement. It is not evidence. It's simply a guide or an outline of where he thinks the evidence is going to carry you in this case.

After that, the defense counsel has a right to give up and give you an opening statement. He doesn't have to. The defense doesn't have to

prove anything. The burden is on the State. After the opening statements are made, we will start with the testimony.

The State will present witnesses and evidence to you. The defense has a right to put up evidence, or he doesn't have to put up any evidence. The burden is upon the State. After you hear all the evidence from this witness stand and see all the exhibits that are introduced, then we will have closing statements.

And at that point, both attorneys will get up and give you closing arguments, give you what they think the evidence shows in this case. And after they do that, I will charge you on the law. I will explain the law in detail to you. Just as you are the sole judges of the facts and I can't tell you what the facts are in this case, you can't tell me what the law is.

You have to take the law as I give it to you, even if you disagree with it, and apply that law to the facts and the evidence that you heard throughout this case, and render your verdict. And it should be a fair and impartial verdict, speaking the truth. That's what your role is, ladies and gentlemen.

I ask that you pay close attention to the evidence, because you have to weigh the credibility of the evidence and the credibility of the witnesses throughout this trial. And in weighing that credibility, you will look at a lot of different things -- the witnesses' bases of knowledge and how they know what they're talking about in this particular case; whether they are prejudiced or biased in any way.

So you weigh the truthfulness of what you hear from this witness stand to help you reach your verdict of what are the true facts in this case. You need to pay close attention, because if you make a mistake on the facts, it's hard to correct that mistake. If I make a mistake on the law, it will be reviewed at another time and another place, and, if necessary, corrected.

But it's very important that you pay close attention throughout this trial. I don't think it will be a very long trial. It will probably take us the rest of the day and maybe tomorrow a little bit longer. But it's important that you do pay close attention, and I appreciate your service.

Mr. Solicitor?

OPENING STATEMENT

BY MR. COLLINS

MR. COLLINS: May it please the Court, Your Honor.

Ladies and gentlemen of the jury, what's this case about? It's about methamphetamine, ladies and gentlemen. You've heard a lot about it. But it's mainly about three things.

The defendant was charged for manufacturing methamphetamine, ladies and gentlemen. You've heard of this poison in today's society. He's charged with possession of an unlawful amount of pseudoephedrine. And he's also charged with possession of methamphetamine, ladies and gentlemen.

You sometimes hear it called crank, crystal ice, methamphetamine, crystal meth. It's got many different names. But that's what he was charged with.

Ladies and gentlemen, the facts in this case are as follows: that on December 22, 2005, agents with the Lexington County Narcotics Enforcement Team arrived pursuant to a follow-up of a methamphetamine investigation at 1208 Daralynn

Road here in Lexington County.

Upon arriving at that location, they pulled up in the yard, they noticed a truck, a truck which came out to be registered to the defendant, Mr. Christopher Ashe. Upon their approach to the house, it was like a mobile home, and in the back of it, there was another building, a two-story building.

They saw Mr. Ashe. He waved to them actually out of that two-story building, out of a window where he was. They went to the location. He came downstairs, ladies and gentlemen, to speak with the officers. Upon speaking to them, he gave them his driver's license, spoke to them for a minute, and then ran, fled the location.

Upon their approach to the location, ladies and gentlemen, they detected the overwhelming smell of ether. Ether is a precursor to the product of methamphetamine. It has to be -- to produce methamphetamine, you have to have ether. They could smell the overwhelming smell.

They called in other officers because Mr. Ashe had fled the location. He fled the scene

to take running off into the woods. Ladies and gentlemen, they then clear the location, make sure no one else is there. There wasn't.

Upon doing so, he was later apprehended down the road, in the woods. Upon bringing him back and searching his person, they found a quantity of finished product on his person of methamphetamine, ladies and gentlemen, which actually would have been cooked in manufacturing methamphetamine. They didn't find any finished at the location. They only found the finished product on his person.

They also -- then they had to go in, and they called the methamphetamine technicians, who actually have been qualified, they're experts in dismantling methamphetamine labs, ladies and gentlemen, because it's a highly toxic material used in the production. Regularly, they blow up and several other things. They dismantled the lab, did everything through that.

Then they searched the vehicle belonging to Mr. Ashe as he sits over there. In the search of that vehicle, they found a couple of

things. They found pseudoephedrine packages, four boxes, which, again, is an immediate precursor to methamphetamine. Without those, you can't produce it, ladies and gentlemen. They found that in his vehicle.

Then upstairs in that particular location, they found a complete methamphetamine lab. In that lab, they found an additional 200 -- over 290 grams, nearly 290 grams of ground-up pseudoephedrine, which you have to have to start the methamphetamine process.

After they did that, they cleared the location, dismantled the lab. They had to call out HAZMAT techs. Mr. Hamilton is certified in methamphetamine, certified to be dismantling the lab. He dismantled this many lab and did many other things such as disposing of the materials in a proper way pursuant to federal standards as well as DHEC standards, ladies and gentlemen.

The defendant was then arrested for the manufacturing of methamphetamine, which is the lab. He was in the lab, because it was found on the second story of that building. He was also arrested

-- they found some methamphetamine in his pocket.

Then they also found some methamphetamine ground up that he had access, and they found also metnamphetamine -- excuse me, they found the pseudoephedrine in his car, ladies and gentlemen.

The only thing I ask as you sit here is that you listen to all the testimony. There's going to be a lot. You're going to learn a lot. You're going to learn all about the manufacturing of methamphetamine, how the process is done, how you have to dismantle the lab.

You're going to learn a lot today from this case, and tomorrow. As you sit here, listen attentively. And at the close, the Judge, he's going to give you the charge in the case, which is the law. That's your instructions. You apply the facts to the law, and I'm sure at those close, you'll find and have verdicts come back for guilty on all counts. Thank you.

THE COURT: Mr. Williams?

MR. WILLIAMS: Thank you. May it please the Court?

OPENING STATEMENT

BY MR. WILLIAMS

Mr. Foreman, ladies and gentlemen of the jury, you haven't heard anything about the case, even now. What you hear about the case will be the witnesses' testimony. What the Solicitor and I tell you is absolutely of no consequence, because obviously we could tell you anything.

I would simply tell you that when you listen to this case today, be very attentive in regards to what they're actually proving versus what they're actually saying. What you'll find is that they are assuming that my client was at the residence in a methamphetamine lab. That's what I will tell you. That's what they're assuming, ladies and gentlemen.

When these witnesses take the stand, I want you to take account of each witness and ask for yourself, did they do any fingerprinting analysis, and is there something which would tie this bit of evidence which is being introduced into evidence directly to my client -- all those things that you would normally think about that would tie a drug to my client.

And I will suggest to you that they

won't be able to do that. And there's a reason they won't be able to do that. It's because my client wasn't cooking any methamphetamine. He wasn't involved in that. So just listen to the witnesses. But don't get hung up on what the story is. You're fact-finders, and you're here to determine what the truth is in the case, to look at the witnesses and decipher the testimony to determine exactly what happened, and not to be caught up in some story.

And if you do that, that's all I think I could possibly ask of you, and I believe that you will find him not guilty. Thank you very much.

THE COURT: Solicitor, you can call your first witness.

MR. COLLINS: Thank you, Your Honor. The State would call Agent Jimmy Gleaton with the Lexington County NET team.

(The witness was sworn.)

CLERK OF COURT: Thank you, sir. Have a seat and state your full name on the record, spelling your last, please.

MR. GLEATON: My full name is James Gleaton -- G-L-E-A-T-O-N.

JAMES GLEATON, having first

been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLLINS:

Q Agent Gleaton, where are you employed?

A At the Lexington County Sheriff's Office.

Q And how long have you been employed there?

A About six and a half years.

Q And what are your general duties at the Lexington County Sheriff's Department?

A I'm on the multi-agency Narcotics Enforcement Team.

Q How long have you been on that team?

A About a year and three months, something like that.

Q What are the general duties of somebody on that team?

A To investigate narcotics activity, vice crime, any organized crime.

Q And on the afternoon of December 22, 2005, were you on duty?

A Yes, sir.

Q Did you have an occasion to visit 1208 Daralynn Drive?

A Yes, sir, I did.

Q Is this in Lexington County?

A It's in Lexington County, South Carolina.
Q What part?
A The Red Bank area.
Q How do you get there?
A From here, it would be straight down Highway 6, probably about, I guess, about ten miles, eight miles.
Q Straight down Highway 6?
A Straight out Highway 6, and Daralynn would be off on the right before you get to 302.
Q Why were you in this area?
A I was following some investigation on some information that we had received about a possible meth lab down off Daralynn Drive.
Q All right. Explain to this jury what happened when you arrived at this residence.
A Well, we got there. We were getting information that the residence was quite a ways off the road, back in some trees, and it was a trailer with a partial built building behind it. After riding around, we found what we believed to be the location and drove down there to it. As soon as we drove up, we saw a pickup truck, got out, trying to see if anybody was back there to try and talk to them.

Q What was the layout of this area that you're describing?

A It was back off in the woods. You could barely see it from the roadway. It's a mobile home facing the roadway and like a two-story building structure back behind it. It didn't look it was finished, kind of half under construction.

Q And where was the truck?

A The truck was actually parked behind the mobile home, in front of the -- the front of the truck was actually facing the construction portion of the two-story.

Q Could you see it when you came in the driveway?

A Yes, sir. Shortly after you turn in the driveway, you could see it.

Q I'm talking about the truck.

A Yes, sir, the truck.

Q What kind of vehicle were you in?

A I was in a Jeep Cherokee.

Q Was it marked?

A No, sir.

Q What kind of clothing were you wearing?

A Plain clothes, jeans and a T-shirt, baseball cap.

Q Were you alone?
A No, sir.
Q Who was with you?
A Agent Bailey.
Q Why was he with you?
A He was partnered up with me that day to try and follow up on this lead.
Q What was he wearing?
A Jeans and a T-shirt, I do believe.
Q Did either of you have any clothing that would indicate that you were with the Sheriff's Department?
A No, sir.
Q All right. When you got there, what did you do?
A When we got there, we drove up, saw the vehicle, thought the vehicle was a little out of place, being it was a brand-new or newer type vehicle sitting back in the middle of what appeared to be a half-constructed house and in just a grown-up area.

And then we got out and started to walk around the corner of the trailer. And somebody was up in the top window of the second-story structure -- of the two-story structure -- and waved

at us, and we waved back at him. And then he came down to talk to us, and we went to talk to him.

Q I'm showing you what has been previously marked as State's Exhibits One and Two. Do you recognize that?

A Yes, sir. That would be the truck that we walked up and saw. And the window that's open here would be the one that we saw him wave from.

Q How about State's Exhibit Two?

A Yes, sir. That would be the stuff off to the right, kind of out behind him.

Q Does that picture fairly and accurately depict how that scene was the day that you got there?

A Yes, sir.

MR. COLLINS: Your Honor, at this time I'd like to introduce State's Exhibits One and Two into evidence.

THE COURT: Any objection, Mr. Williams?

MR. WILLIAMS: No objection, Your Honor, to the introduction of these exhibits.

THE COURT: State's Exhibits Number One and Two are entered into evidence without objection.

(State's Exhibit Number One, Photo; and State's Exhibit Number Two, Photo, were entered into evidence.)

Q On State's Exhibit One, can you point out to the jury the angle at which you drove down the driveway and got to this point of view?

A This is actually the point of view about where we parked our vehicle, or where I parked my vehicle, to first approach the truck right there.

Q What's the building on the left?

A The building on the left is actually the mobile home, single-story mobile home.

Q And that truck, that's parked in front of the other building you were talking about, the other two-story building?

A Uh-huh.

Q And where in that picture are you describing that you saw somebody wave?

A The second-story window that's open, right closest to the ladder.

Q Would you point to it?

A Right here.

Q All right. When y'all walked up, were you still in the vehicle or on foot?

A No, we had actually gotten out of the

vehicle. We were walking up to the truck on foot. We actually were coming around that corner.

Q And at what point did you see somebody up there?

A About the time we got about right here, he actually saw us, looked out the window at us. And he just threw his hand up, and I threw my hand up.

Q What happened next?

A We walked on around the side of the pickup truck towards the front door of the two-story structure to talk with him. He walked down, met us at the door. As soon as we got to the door and he came out, we smelled what we believed to be ether.

Q Who came out the door?

A The defendant.

Q The defendant, the person sitting right there at that table?

A Yes, sir.

Q Is that the same person that you saw waving and saw come out the door?

A Yes, sir. He had the same clothing and everything on.

Q Any doubt in your mind?

A No, sir.

Q Did you talk to him?

A Yes, sir.

Q And what happened at that point?

A He came out the front door. We started talking to him. I identified myself. Agent Bailey identified hisself. We asked him --

Q When you say you identified yourself, what did you tell him.

A I actually pulled my wallet with my credentials and badge out, explained to him I was with Lexington County Sheriff's Office, and Agent Bailey did the same thing. We advised him we were there concerning the possible complaint of a meth lab.

And then he started to walk off, and we asked him for his ID. And he said it was in the truck. So he walks over to the truck, gets his ID.

Q Okay. Did he give you the ID?

A Yes, sir, he did. He actually gave it to Agent Bailey.

Q What happened at that point?

A Then we kept on trying to ask him some questions, and he kind of just was real nervous like. He was acting like he didn't want to acknowledge that we were even there. We tried to get him to walk over towards our vehicle some. And

about the time we rounded the corner of the trailer right here, he took off on foot. He ran from us.

Q Which direction?

A It would be back towards the end of the driveway, towards Daralynn Drive.

Q Did you chase him?

A We did -- for a short second, we did, and then we decided to turn around.

Q Why did you do that?

A Because as we were coming around the back side of the truck, both of us had heard some noise that we thought maybe somebody else might have been inside. And so we decided better than running and something happening, somebody getting in the truck and running off, we'd just sit there and wait from some backup to get on scene so we could secure it.

Q When you got back, did you actually see anybody else?

A No, sir. We never saw anybody.

Q Did you do a protective sweep of the premises?

A Once backup units arrived, yes, sir, we went in and did a protective sweep of it.

Q Was there any sign of anybody else there?

A No, sir, none that we could find.

Q Anybody else's vehicle there?
A No, sir.
Q Did you hear any talking?
A No, sir, never heard any talking.
Q Was there anybody else that showed their face in the window?
A No, sir.
Q And who showed themself in the window?
A Mr. Ashe.
Q And that was on the second story?
A Yes, sir.
Q When you got back over there, what did you determine, if anything, that noise to be that you heard?
A I didn't. I don't know what it was. It could have very well been something falling down out of -- the place is pretty -- you can't really see it from here, but in the inside of it is pretty run down. Matter of fact, one of our officers fell through the floor because of how bad it is on the second story. So it could have been anything, I guess.
Q At that point, what did you do?
A After we did the protective sweep, or?
Q What did you do in the protective sweep?

A We actually waited on other units to arrive. Once we got several units so we could go in and clear and make sure nobody else was inside the building, we went in and cleared the building.

Q Why would you do something like that?

A Just to make sure that everybody -- for one, from the odor we smelled, that there's nobody laying in there, you know, possibly hurt or injured; two, to make sure there's nobody sitting right there with a gun, waiting to shoot us.

Q So it was for your own protection?

A For my protection and the other officers on the scene.

Q And after you did not find anybody else and you did your protective sweep, what did you do then?

A During the protective sweep, when we got up to the second story in the two-story structure, we immediately saw items that are commonly used in methamphetamine labs and that have been identified to us as identifiers for methamphetamine labs. We immediately, after we saw nobody was up there, got out, backed all the way up, and called for Chris Stout, our meth tech, to come look at what we had.

Q Who is Chris Stout?

A He is an agent with the Lexington County Narcotics Enforcement Team.

Q And why did you feel it necessary to call him?

A Because my area of expertise is not in dealing with those labs. That's what they're trained on, and they're very, very, very dangerous.

Q What do they train you to do when you come across something that looks like it could be a meth lab?

A To get everybody out, get back at least 100 to 300 feet, depending on how bad the odor, how much is there, and call one of them and allow them to come.

Q And what is the reasoning behind that?

A Because there are gases -- from my understanding from the training, there's gases and other things that we can inhale that we can kill us instantly.

Q Is it protocol to be certified in handling meth labs for the Lexington County Sheriff's Department? Do you need to be certified to handle these meth labs?

A Yes, sir.

Q Are you certified?

A No, sir.
Q Is that why you called Agent Stout?
A Yes, sir.
Q Is he certified?
A Yes, sir.
Q Going back to the truck, did you ever determine whose truck that was?
A Yes, sir.
Q How?
A We ran the vehicle's tag through our dispatch, and it came matching the ID of the defendant that we had in our hand that he gave us prior to running.
Q Driver's license?
A Yes, sir.
Q Matched the tag on the truck?
A Yes, sir. The names were the same.
Q Came back registered to the defendant?
A Yes, sir.
Q Did you see anyone else on the premises?
A No, sir.
Q Please answer any questions Mr. Williams has.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Officer, as I understand what you and Agent Stout were doing, you were there to investigate the possibility of a meth lab in that area, is that correct?

A No, sir. Agent Stout wasn't with me.

Q Who was with you?

A Agent Bailey.

Q I'm sorry, Agent Bailey. That's what y'all were there to do, is that correct?

A To investigate a meth lab?

Q The possibility of a meth lab.

A Possibility, yes, sir.

Q Now, when you went to that location, I assume you knew where you were in the county, right?

A Yes, sir.

Q And you knew -- were there numbers up on the residence that would indicate -- because you gave numbers when you testified earlier -- to give yourself an idea of who owned the property?

A Right. We found those yes, sir.

Q All right. Well, since you knew who owned the property, 1208 Daralynn Drive, did you check with the Register of Means Conveyance to determine who was the licensed owner of the property?

A No, sir.

Q Well, wouldn't that be important in regards to who the person is that's operating a meth lab, is to determine who owns the property?

A I don't quite understand what you're asking.

Q Okay. If you go to my house right now, and if there's a big meth lab there, to find out who's actually operating that, it would be important to find out who owns the property, wouldn't it?

A If nobody else was there at the time of it, I would assume yes.

Q Right. Now, what happens if somebody just shows up at my house and is really not working on my house? He's a visitor or somebody who just shows up on that. That doesn't mean that they're the ones that's operating the meth lab if I'm the meth lab guy who's making up all this methamphetamine, does it?

A Not necessarily.

Q The point of all this, it's important to know who owns the property, isn't it?

A Yes.

Q Okay. Now, you were at this meth lab location, and surely you weren't manufacturing methamphetamine at this location, right?

A No, sir.

Q But you happened to be at this location?

A Yes, sir.

Q But you're not guilty of operating a meth lab?

A No, sir.

Q Okay. Now, have you gone back, since this occurred back on the 22nd day of December of 2005, and determined who the owner of this property is?

A I believe it's Brian Jenkins, if I'm not mistaken.

Q Thank you. Brian Jenkins, all right. Do you know whether or not Mr. Brian Jenkins has been arrested and charged with operating a meth lab?

MR. MOSES: Objection, Your Honor.

THE COURT: On what grounds?

MR. MOSES: Relevance to this case.

THE COURT: Overruled.

Q Do you know whether or not Brian Jenkins has been arrested and charged in the past with operating a meth lab?

A I do not know a hundred percent, no, sir.

Q Well, what do you know 95 percent?

A I know that he has been the subject of investigations.

Q All right. And on how many occasions has he been arrested for operating meth labs?

A I do not know.

Q Do you know that he's been arrested for operating meth labs?

A No, sir, I do not know.

Q Do you know if he's been charged for operating a meth lab?

A No, sir, I do not know.

Q Do you know if he's been arrested?

A No, sir, I do not know.

Q And why wouldn't you check that out? If you understand that he has -- maybe this will help. If you understand that he is the focus or someone who operates meth labs, why wouldn't you check that out to see if he's been arrested before, since you know that he owns the property?

A Well, I have received information that he has, but I do not know for sure that he has.

Q But you keep records at the Sheriff's Department of people who have been arrested, don't you?

A Yes, sir.

Q So you could check, and it would tell you if he's been arrested for operating a meth lab?

A Yes, sir.

Q But you didn't do that?

A No, sir.

Q All right, let me ask you about the condition of the house. You've indicated that the house was in somewhat of a run-down condition. How about the trailer? Was the mobile home livable?

A I do not believe it had electricity or any of that, and it looked pretty run-down itself.

Q Did you check with -- do you know who provides the service out there at that location, which electricity company?

A No, sir.

Q Well, would you have the ability to find out who operates the utilities out there and check to see whether or not Mr. Jenkins had power turned on to the residence and was using power at that residence?

A You're asking would I have the ability to?

Q Yes.

A Yes, sir.

Q And, now, if you had done that, that would indicate to you that Mr. Jenkins, who we have since learned may be a suspect in operating the meth lab, was actually living at the location, wouldn't it?

A It did not appear anyone was living there.
Q But you didn't check that, did you --
A No.
Q -- the electricity to see whether or not someone was using electricity?
A No, sir.
Q All right. Do you know whether or not that this was
-- this is obviously out in the county, so probably there is no water that's being provided by the Town of Red Bank, is there, to this location?
A I do not know.
Q Did you see a well at the location?
A I do not remember.
Q Well, if you didn't see a well, that would indicate that perhaps, if it had water going there, it would be on some Red Bank Town, right?
A Right.
Q But if it didn't, if it had a well, you would know that obviously the person was using well water to live there, right?
A Correct.
Q Did you check out the kitchen to see if there was food located in either one of the buildings to indicate that someone was living there?

A We didn't check it out immediately, no. I mean, I don't remember. I didn't search the mobile home, so I don't really know.

Q What about the two-story structure? Did you check the two-story structure?

A No, sir. I didn't spend enough time in there to be able to tell you if there was food in there or not.

Q Well, when you were doing your protective sweep, how do you perform a protective sweep?

A You go in and clear the building, make sure there's no people in there hiding.

Q Now, you performed that after you waited for backup to get there, is that correct?

A Right.

Q All right. Who was the backup that got there?

A I think the first person that got to us was Lt. Crawford, and there were several other units. I don't remember who all got there.

Q How many people got there total?

A I'd have to look back at their CAD report, but I'd probably say about five or six.

Q All right. And is that when you did your protective sweep?

A Yes, sir.

Q All right. What building did you go through?

A I went through the bottom section of the two-story structure and into the top section almost all the way.

Q What section did the other individuals go through?

A I think they all cleared the mobile home, and that was it. The rest of them -- well, I mean, there were several of us that went in the two-story structure, if that's what you're asking, how many of us went in there.

Q Are you assigned the areas when you do a protective sweep?

A Not really assigned areas, but like four people -- four officers would go in one building, and four officers would go in another building, if that's what --

Q Did you know which four officers were going -- which three other officers were going to accompany you when you searched the two-story structure?

A Lt. Crawford and I believe Joe Burroughs, and there was another deputy there that I didn't

recognize.

Q All right. And is it your testimony that you don't recall whether or not there was any groceries or any clothing or anything that indicated someone was living in the two-story structure?

A I do not remember seeing anything in there, no, sir.

Q Is it your testimony that no one was living there?

A I don't know if anyone was living there, but it didn't look like it.

Q What about the trailer? Did you go through the trailer and subsequently determine that someone was living in the trailer?

A No, sir.

Q Do you have any pictures of the inside of the trailer that would indicate what the condition of the inside of the trailer was?

A No, sir.

Q Well, is there some reason why you didn't take pictures of the inside of the trailer?

A I wasn't taking any of the pictures because the area around there was all -- we were all told to stay back out of there and the med techs would go in.

Q All right. But there was nothing inside of the trailer itself, was there? There was no hazardous material inside the trailer itself, was there?

A I do not know.

Q Well, you secured a search warrant, didn't you, to search the residence -- didn't you?

A Yes, sir.

Q All right. And when you have a search warrant, when you go through the search warrant, who executed the search warrant?

A I believe Chris Bailey was the actual executing officer on it.

Q All right. So he will be able to testify about the clothing and whether or not there was food in that trailer or not, is that correct?

A I doubt he would, because we didn't go in.

Q But he's the one who actually used the search warrant, right -- who executed the search warrant, right?

A Well, the meth techs would have gone in and like taken all the evidence and other things. Then once it's secured, they brought it all back to us, and that's where it would come on the search warrant.

Q But they wouldn't have taken out the groceries, the corn flakes, and the clothing?

A No.

Q So that would still be in there whenever you executed the search warrant, wouldn't it?

A Yes, sir.

Q All right. And who executed the search warrant?

A Chris Bailey did.

Q So he would be able to testify about that, is that correct?

A If he saw it, yes, sir, I guess.

Q All right. Now, I believe that you testified that you saw my client waving from a two-story window, and you waved back to him, is that correct?

A Yes, sir.

Q All right. And how would you describe the clothing that he had on?

A He had on a white -- I believe it was a white T-shirt and a camouflage jacket.

Q All right. And could you see the pants at that time?

A I think he had jeans, but I'm not a hundred percent sure.

Q When he came outside and he met with you and Chris Bailey, did he have a hat on or anything like that?

A I think he did have a hat on, but I don't remember exactly.

Q But he did have a hat on when he was waving at you from the window, is that correct?

A Like I said, he had a hat on when he was in the window. But I just don't remember what kind of hat it was.

Q Oh, you saw the hat when he was in the window?

A Yes, sir.

Q Okay. And you don't remember what the hat looked like?

A No, sir.

Q When he took off from you, when he outran you two guys, did he lose his hat when he was running?

A No, sir.

Q The hat stayed on his head?

A Yes, sir.

Q Was it tied underneath his chin?

A No, sir.

Q Are you sure it might not have been

somebody else who was in that two-story window who was waving at you?

A No, sir

Q Well, when you filled out your incident report with Lexington County Sheriff's Department, you indicated to everybody at the Sheriff's Department that there was a second subject, didn't you?

A I indicated there appeared to be a second subject.

Q Okay. What's the difference between appeared to be a second subject and being a second subject? What does that mean?

A Well, the way I meant it in the report was, is that we heard -- like I told you before, we heard a sound in there, and we thought maybe there might have been somebody else in there.

Q But you didn't put that in the incident report, that "I thought I heard something." You put in that you thought there was a second suspect, didn't you?

A Yes, sir -- that it appeared to be a second suspect.

Q And as a matter of fact, it so appeared to be a second subject that you contacted the Sheriff's

Department and had them bring out the bloodhounds, didn't you?

A Well, the bloodhounds were originally called for Mr. Ashe.

Q So you didn't use the bloodhounds for Mr. Ashe. You used the bloodhounds -- you used the bloodhounds for Mr. Ashe, is that correct?

A No, sir. They were -- Lt. Crawford called for the bloodhounds to come out. Mr. Ashe was caught before the bloodhounds arrived on the scene, and he terminated the bloodhounds from continuing to the scene.

Q So you never used the bloodhounds to check for what you thought was a second suspect, is that correct?

A No, sir. They were terminated. It was a lot going on, and they cancelled them before.

Q And the reason why you determined that there was no second suspect is because when you went back through the house, you didn't see him, is that right?

A Well, we didn't see anybody else, and so, you know, the rest of our investigation didn't reveal that anybody else was there.

Q And what was the rest of your

investigation in terms of did you go out in the back behind the house where the second suspect supposedly was and check for footprints and things like that?

A I didn't. I believe Maj. Brothers with our man-tracking team did.

Q Your what kind of tracking team?

A The man-tracking team.

Q Now --

A It's like the bloodhound unit.

Q But you've got a man that's doing it?

A Right.

Q Meaning he picks up -- like the Western frontier people, he looks for broken branches and stuff like that, is that what you're indicating to me?

A No, sir. He looks for footprints and other things. You'd have to ask him exactly what he looks for, but that's what he does.

Q All right. And do you know how far he went tracking this other person who turned out to be there?

A No, sir.

Q How long was he gone?

A I do not know.

Q Did you ever talk to Mr. Jenkins about

where his whereabouts were on December 22, 2005?

A I'm sorry?

Q You remember the individual who is the subject of some investigation about methamphetamine labs, owned the property. Did you ever talk --

A Oh, Brian Jenkins.

Q Brian Jenkins.

A I'm sorry. I didn't understand what you said.

Q I couldn't remember his first name. I just called him Mr. Jenkins.

A Oh, no. We tried to talk with him, but we couldn't find him.

Q Couldn't find him? So you don't currently have Mr. Jenkins, is that correct?

A I don't, no, sir.

Q He's not in jail?

A I do not know.

Q You don't know where he's at?

A No, sir.

Q And it was his property that you were on?

A Yes, sir.

Q All of the stuff that you pulled out that's going to be introduced at some point in time with this meth lab stuff, did you have any

fingerprint analysis done on any of this stuff to see if Mr. Jenkins' hands were on it versus my client, Mr. Ashe?

A No, sir.

Q Why wouldn't you do that?

A That's not normal procedure for us to do.

Q Are you the agent in charge of this case?

A Yes, sir.

Q And wouldn't it be important, since this was the residence of Mr. Jenkins, that he's no longer able to be found, that he is the subject of an investigation about meth labs, that you check to see if his fingerprints might be on this evidence?

A Would it be what, I'm sorry?

Q Important.

A Important. Yes, sir, but your client, when I asked him, stated that he was there by himself.

Q So this other noise was just -- was it something that fell in the house, is that right?

A Well, I don't know. I have no idea.

Q The driver's license that you took from my client, do you have that?

A I didn't take one. Chris Bailey did.

Q Does Chris Bailey still have the driver's

license?

A I believe it was probably returned to him in his property.

Q So you don't have the driver's license?

A No, sir, I don't have it.

Q That's all the questions I have.

THE COURT: Mr. Moses?

REDIRECT EXAMINATION

BY MR. MOSES:

Q Agent Gleaton, you just said that when you asked him who else was there, he said he was there by himself?

A Yes, sir.

Q The defendant said that?

A Yes, sir.

Q How did that come about?

A When he was arrested and brought back to the scene, I went back there and Mirandized him, gave him his Miranda warnings, and asked him if anybody else was in there. And he said no, he was there by himself, because then I asked him about --

Q That's good. How far after the first time you saw him waving at you out the window was he back there in custody telling you that nobody else was

there? How much time had elapsed?

A Thirty, maybe 45 minutes.

Q How good of a look did you get of him?

A Of him?

Q The first time, when you first arrived, how good of a look did you get of him?

A Pretty good look. We weren't that far from him.

Q How far apart from you was he when he came downstairs to greet you, before he knew you were an officer?

A Probably about two foot from me then -- two to three foot from me.

Q This far?

A Yes, sir. He might have been a little closer.

Q Can you see my face from this far?

A Yes, sir.

Q See my eyes?

A Yes, sir.

Q See what I'm wearing?

A Yes, sir.

Q Thirty minutes from now, can you tell me what I look like, if I walk away from you?

A Probably give a pretty close description.

Q Is that what happened here, with the defendant here?
A Yes, sir.
Q Any doubt in your mind that he's the one that waved at you --
A No, sir.
Q -- and walked downstairs and greeted you?
A No, sir, not one bit.
Q And then fled from you when you told him that you were with law enforcement?
A No, sir, no doubt.
Q Why would you look for somebody else if the defendant told you there wasn't anybody else there?
A Wouldn't have any need to at that point.
Q Were you in fear of your safety over corn flakes or clothing at the place?
A No, sir.
Q Were you looking for corn flakes or something -- some sort of breakfast foods or something that would have showed that somebody might live there?
A No, sir.
Q What were you looking -- what were you trying to do with that protective sweep?

A To make sure nobody else was there that was going to hurt me or anybody else.

Q And what did you find?

A Well, we didn't find anybody. Nobody else was there.

Q What items that could have potentially been hazardous did you find?

A Well, when we went upstairs in the two-story structure about where that window is open, there was a -- I believe there was a trash can, some type of square, plastic, blue container that had looked like frost on the outside of it -- there was smoke coming out of it -- and other -- some ether cans, starter fluid cans, and a couple of other items. I don't remember exactly what they were. And the odor was horrific, so we immediately evacuated it.

Q Do you have any knowledge of whether the defendant and this Brian Jenkins are even friends or know each other?

A We didn't at the time. We didn't have any knowledge of it.

Q What do you know now?

A We know that they were acquaintances and that they apparently liked to do things together --

MR. WILLIAMS: Your Honor, I'm going to object to that as hearsay in nature.

THE COURT: Sustained.

Q What did you see him wearing?

A When we first saw him, he had -- you're talking about the defendant, right?

Q Yes, sir.

A Well, when we first saw him, he had a camouflage jacket on that I know of, and he had on -- I'm pretty sure it was blue jeans and a white T-shirt.

Q A white T-shirt?

A Yes, sir.

Q What was he wearing when he came back, after he had been out there fleeing from you?

A He just had the T-shirt on, and the jacket was gone.

Q What color was the T-shirt?

A White.

Q Did you see his face?

A When he came back?

Q When he came back.

A Yes, sir.

Q Did you get a good look at him?

A Yes, sir.

Q Who was he?
A Mr. Ashe.
Q Point to him. Let the record reflect he's pointing to the defendant. The upstairs of that building right there, where the meth lab was found, what was it like? What was the structure like?
A The floor in that front section was pretty decent, would hold us. But the back section was pretty much washed out, I guess, from the rain. There was a hole in the back side of the roof.
Q Was it inhabited?
A Did not appear to be.
Q Were there any beds in there?
A I do not remember seeing any beds, no, sir.
Q The area in front, right up here -- the area in front, across the front of these windows, right behind these windows, what is that?
A Right behind the windows?
Q Yes, sir -- inside the building, right behind the windows.
A That was where the cooler was that was smoking.
Q Point to it. Do you still have the pointer?

A Yes, sir. I believe the cooler was actually about right in there, right inside that window.

Q Is that where the defendant was waving?

A Yes, sir.

MR. MOSES: No further questions.

RECROSS EXAMINATION

BY MR. WILLIAMS:

Q And did you record Chris Ashe saying that he was the only one in the house?

A No, sir, I did not.

Q And who else was present when he made this statement?

A I believe Lt. Crawford was standing there. I'm not a hundred percent sure he was standing on that side.

Q But there's no record, there's no tape-recording of him making that statement, is there?

A No, sir.

Q And you were just in error when you put in your report that there was another person who appeared to have -- who fled out the back side of the residence?

A ~~In error~~? No, sir.

Q You didn't make a mistake?

A No, sir. At the time, I thought maybe someone had gone out the back side.

MR. WILLIAMS: I don't have any other questions, Your Honor.

MR. MOSES: Nothing further, Your Honor.

THE COURT: You can come down.

MR. MOSES: Let me get my next witness.

THE COURT: You can leave that right there.

MR. GLEATON: Okay.

MR. MOSES: The State calls James Crawford.

(The witness was sworn.)

CLERK OF COURT: Have a seat, state your full name on the record, and spell your last name.

MR. CRAWFORD: My name is James Crawford -- C-R-A-W-F-O-R-D.

JAMES CRAWFORD, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLLINS:

Q Where are you employed?

A I am currently employed with the Lexington County Sheriff's Department.

Q What do you do there?

A I am a lieutenant with the Department. I'm commander over the Community Services Division.

Q Did you have the opportunity to work on a case back on the day of December 22, 2005, that was located at 1208 Daralynn Drive here in Lexington County?

A I did.

Q And what did you do there?

A I responded to a call for assistance by Agent Gleaton. He had advised that he had a suspect who had ran on foot from a suspected meth lab where he was at.

Q And what did you do in response to that?

A I took a portion of my division of deputies to assist him in the apprehension of the suspect that fled and for containment of the crime scene and other ancillary duties normally associated with such a discovery.

Q And did you eventually locate the defendant?

A I did.

Q Okay. Please explain to the Court and the

jury what happened.

A We had set up a perimeter of officers in the community based on sightings from neighbors and other officers. It was a large tract of woods, probably several hundred acres, if I was to guess. And myself and another officer saw a white male running through this large parcel of woods.

And I had already observed the defendant's photo ID. And when this subject was observed running through the woods, myself and another deputy pursued him on foot and subsequently apprehended him in this wooded area.

Q You apprehended him. And then what did you do?

A Once we apprehended him, we, of course, physically assisted him to the ground and placed handcuffs on him, extracted him out of the woods through other units on the paved portion of the road. And then he was searched incident to the arrest.

Q And who is the person that you retrieved out of the woods that day?

A The defendant.

Q Is he in the courtroom?

A Yes, sir. He is seated right over here in

the pink shirt.

Q Please let the record reflect that he pointed out the defendant, Christopher Ashe.

And upon the searching, what did you find on his person?

A There was a small quantity of a white powdery substance that we believed to be methamphetamine or cocaine.

MR. COLLINS: May I approach the witness?

THE COURT: Yes.

Q If you could perhaps --

MR. COLLINS: Your Honor, I'm going to allow him to open up the bag.

THE COURT: Has that been marked for identification?

COURT REPORTER: This is Plaintiff's -- State's Number --

MR. COLLINS: State's Exhibit Twenty-One.

COURT REPORTER: Yes.

THE COURT: Twenty-one?

MR. COLLINS: Yes, sir.

Q If you can look in there and see a small baggie in the larger bag --

A Yes.

Q -- can you identify that?

A That appears to be the same substance that was found on his person that day.

Q Do you need to see it up a little closer?

A Yes, sir. I don't have any instrument to open the bag up.

Q Could you please tell us what that appears to be?

A This appears to be crystal methamphetamine.

MR. WILLIAMS: Objection to that, Your Honor. There's been nothing in the record to indicate that he has the qualifications to make that assessment.

THE COURT: Sustained.

Q Does that appear to be the substance that you retrieved off the defendant's person on that particular day?

A It does.

MR. COLLINS: Your Honor, actually, can we mark them -- I'm going to mark each one of them individually. Is that okay -- because I have several items that are in there.

A It's four separate bags.

COURT REPORTER: We'll do them Twenty-One A, B, C, and D.

MR. COLLINS: Okay, we can do that.

(State's Exhibits Twenty-One A, B, C, and D, Drugs, were marked for identification purposes.)

Q Could you place those back in the lab bag?

A Sure.

Q What did you do with the items that you took out of the bag -- what did you do with the bag that you took off the defendant on that particular day?

A Okay, I turned that bag over to Agent Bailey.

Q And there's no doubt in your mind that that's the items that you took off the defendant that day?

A Yes, sir, that is correct.

THE COURT: Which item are you referring to? Everything is under twenty-one. Which one are you referring to in your question, Counselor?

Q We're referring to the one that's 21A?

A Yes, sir.

COURT REPORTER: Your Honor, for the

record, I've marked Twenty-One A, B, C, and D.

THE COURT: So your question is involving 21A?

A Yes.

Q Did you pull one or two bags off of him on that day?

A This is the bag that I pulled off of him - -

Q Okay.

A -- A.

Q Thank you.

A Uh-huh.

Q Do you know where you retrieved it off -- what location on his person you retrieved it out of?

A His right front pocket.

Q Thank you. That's all the questions.

THE COURT: Mr. Williams?

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Lieutenant, as I understand it, you were there to provide assistance, and it was you and how many people?

A Approximately eight to ten officers.

Q You and eight to ten officers. And you only had one with you, is that right?

A That is correct.

Q And as I understand your testimony, you actually ran along with another officer into the woods when you spotted the suspect or someone that matched the description as the person who had supposedly been at the scene sometime earlier, is that right?

A That's correct, sir.

Q And how long a time span had it been since this person had been located at the scene?

A Probably 45 minutes, give or take --

Q Forty-five minutes?

A Give or take 15 minutes.

Q Maybe as much as an hour?

A It's possible.

Q And when you and this other -- who was the other officer who was with you?

A Traffic Deputy Burroughs.

Q As I understand it, you actually saw him in the woods?

A Yes.

Q All right. And you say you tackled him, is that correct?

A No, sir, I apprehended him. But I had to physically assist him to the ground to effect an

arrest.

Q Okay. Tell me -- can you kind of break it into numbers. You saw him and told him to stop. And then what happened?

A Told him to stop, and he didn't stop. And so we ran him down and apprehended him.

Q Okay. And who put him to the ground?

A I did.

Q And what did he have on?

A I don't recall, sir.

Q Do you know if he had a hat on or not?

A I don't recall. The only thing I do recall is that he had shed a jacket that he was wearing at the time he was located at before actually apprehending him.

Q So at the time that you seized Mr. Ashe, then, you don't recall -- he didn't look like the person that y'all were looking for 45 minutes earlier in terms of description of clothing, anyway?

A With the exception of the jacket, that's correct.

Q All right. And the jacket, what size jacket was it?

A I don't recall the exact size.

Q Did you seize the jacket?

A I don't recall, sir. I didn't personally, no.

Q Do you know how big the jacket was?

A No, sir.

Q Can we call it "a jacket" for right now?

A Yes, sir.

Q Now, do you recall the item which you say you seized out of his right front pocket? Is that 21A, is that correct?

A Yes, sir.

Q Now, was it in the same condition now as what it was at the time that you seized it?

A No.

Q Did you take any photographs of the item once it was taken off of Mr. Ashe?

A I did not, no, sir.

Q Did you perform any fingerprint analysis on the item once you took it off Mr. Ashe?

A No, sir, I did not.

Q What kind of shoes did Mr. Ashe have on?

A I don't recall, sir.

Q What kind of shirt did Mr. Ashe have on?

A I don't recall.

Q Did you find anything else on Mr. Ashe?

A Not to my knowledge, no, sir.

Q That's all the questions I have.

REDIRECT EXAMINATION

BY MR. COLLINS:

Q Is there any doubt in your mind that Mr. Ashe, the defendant sitting right there, is the person that you were looking for that fled from the scene at 1208 Daralynn Drive?

A No, sir, there's no doubt in my mind. That's one and the same person.

Q And you located him soon thereafter from that location?

A Yes, sir.

Q Thank you. No further questions.

THE COURT: Thank you, sir. You can come down.

MR. CRAWFORD: Thank you. Would you like me to gather the substances here?

MR. COLLINS: You can place them all back in the bag.

MR. CRAWFORD: Okay.

THE COURT: Counselor, how long do you anticipate for your next witness?

MR. COLLINS: The next witness, Your Honor, about 15 minutes, maybe less.

THE COURT: Do you want to take -- I

promised you we'd take a break about every hour and a half. Do you all want to take a break now, or you want to wait?

MR. COLLINS: I would like to now.

THE COURT: Okay.

Ladies and gentlemen, we'll take about a ten-minute break. So you can go to your jury room, and we'll get you back out here in about ten minutes. Thank you.

Court will be in recess for ten minutes.

(The jury left the courtroom at 3:52 p.m.)

(Recess taken.)

THE COURT: Thank you, ladies and gentlemen. Be seated.

MR. COLLINS: Your Honor, we're missing Mr. Moses.

THE COURT: All right. You want to go find him?

MR. COLLINS: I will go forthwith.

THE COURT: Let's get the jury in and get your next witness.

MR. COLLINS: How long do y'all want to go today, Judge?

THE COURT: I don't know, 5:00 or 5:30 -- whatever is a good stopping point around five. I usually stop around 5:00. But if we're in the middle of a witness and we need to go a little past that, that's no big deal.

And if we're going to go past 5:30, you all need to let me know before we call that witness. Your next witness is going to be relatively short?

MR. COLLINS: Yes, sir.

THE COURT: Okay. Well, when it gets close to five, if it works out that way, we'll try to quit.

BAILIFF: Are you ready?

THE COURT: Yes, sir.

(The jury returned to the courtroom at 4:10 P.M., after which the following proceedings were had:)

Mr. Solicitor, you can call your next witness.

MR. COLLINS: The State calls Chris Bailey.

THE COURT: Mr. Bailey, if you'll come around and let the Clerk swear you in, please, sir.

MR. BAILEY: Yes, sir.

(The witness was sworn.)

CLERK OF COURT: Have a seat, state your full name on the record, spelling your last, please.

MR. BAILEY: Okay. Christopher Bailey -- last name is B-A-I-L-E-Y.

THE COURT: Mr. Collins?

CHRISTOPHER BAILEY, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLLINS:

Q Agent Bailey, where are you employed?

A West Columbia Police Department.

Q And what were your duties back on December 22, 2005?

A A drug agent for the Lexington County Drug Team.

Q And what did you do on that particular day? Did you have the opportunity to work on a case against the defendant --

A Yes, sir.

Q -- Christopher Ashe?

A Yes, sir.

Q What did y'all do that day?

A Followed up on a tip, and I attempted to identify the location that we arrived at, which was

1208 Daralynn Drive. And we made contact with the defendant at that residence.

Q Who were you with that day for that purpose?

A Investigator Gleaton.

Q What did you do that day when y'all arrived at the location?

A We were trying to identify the address and location. As we approached the two-story structure in the back, we saw the defendant in the second story wave out the window at us and then come down. As he was walking down, we detected a strong of ether coming from the building and around the area. He stepped out, and we made contact with him.

Q You see a picture there. Does that fairly and accurately represent --

A Yes, sir.

Q Can you show what -- can you tell the Court what window he was waving to you from?

A That open window with the ladder going up on the second story.

Q Do you have a pointer there?

THE COURT: There's a laser pointer right there, if you'll push that red button.

Q After he came down, what happened?

A Based on my experience after smelling the ether, I believed we had a possible meth lab on the premises. So we attempted to identify him, asked him for his driver's license or any identification.

He went to his truck, got his ID. Then we were going to detain him, realized I didn't have any handcuffs on me at the time, because we were in an undercover capacity, walked back to the vehicle, got a pair of handcuffs, explained to him he was under detention or being detained, at which time he took off running.

Q Then what happened?

A I chased him for a good while, then I stopped. Meanwhile, my partner was on the radio trying to get backup en route. The dogs came, several officers came to assist.

Q I'm going to hand you what's been marked as State's Exhibit Twenty-One A, B, C, and D. Can you please what each of those items is?

A This bag right here is the substance that Lt. Crawford gave me off of his person after he was arrested, the defendant.

THE COURT: What is the exhibit number on that, please, sir?

Q It's 21A.

A Twenty-one A. This was some substance given to me by Chris Stout at the scene.

THE COURT: Which exhibit is that, now?

A I'm sorry -- 113?

THE COURT: There's not a sticker on that bag?

A Twenty-one B.

Q Okay.

A Twenty-One C was also a substance given to me by Chris Stout at the scene. And also 21B was given to me by Chris Stout.

Q And how can you identify all those items?

A They were just given to me at the scene by --

Q And what did you do with them?

A I placed them in my custodial control until I logged them into evidence.

Q What did you -- you placed them into what?

A A best kit in a tamper-evident bag and then dropped them into the evidence locker at the Lexington County Sheriff's Department.

Q Could you please explain what a best kit is?

A It's just a standardized bag we use to

drop evidence into that we're going to get tested by the chemist. It's just a tamper-evident bag.

Q Okay. After you placed them in the bag, what did you do with the items?

A Dropped them into the evidence locker at Lexington County Sheriff's Department.

Q What day was that done?

A The same day.

Q Could you explain to the Court and the jury what the evidence locker is?

A Basically, at the evidence room, you walk in and there's standard lockers, and you log them in there. And once you lock them, you can't unlock them. They have to be unlocked by the evidence custodian.

Q While those items were in your custody --

A Yes, sir.

Q -- did you do anything to them to alter them or anything like that?

A No, sir.

Q Did you tamper with them at all?

A No, sir.

Q Were they always in your custody?

A Yes, sir.

Q Did you have a chance to see the defendant

up close on that day, the person that walked out of that house?

A Yes, sir.

Q So you got a really good look at him?

A Yes, sir.

Q Do you know who that was?

A The defendant sitting right there.

Q Please let the record reflect that he indicated that it was Christopher Ashe. The person who was apprehended in the woods by Agent Crawford, did you have the opportunity to see him?

A Yes, sir, they bring them back to the scene. He was in a patrol car. And that was also the defendant sitting right there.

Q Please let the record reflect that that person was Christopher Ashe. That would be all.

THE COURT: Mr. Williams, you can cross-examine this witness.

MR. WILLIAMS: May it please the Court.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Officer Bailey, as I understand it, you and Officer Gleaton were following up some leads about a methamphetamine lab that may be located at

Daralynn Drive, is that correct?

A Yes, sir.

Q And did you check to see who the owner of the property was at Daralynn Drive?

A Prior to arriving on the scene?

Q Yes.

A No, sir.

Q Have you subsequently checked to see who the owner of the property is?

A I didn't personally, but I wasn't the case agent.

Q Do you know who the owner is?

A No, sir.

Q All right. Did you do any workup in terms of -- you say that that's the case agent's job basically?

A The case agent will follow up how he deems necessary, deems relevant.

Q And in terms of what you did that day, you were along with Gleaton, you came up to the scene, and you saw someone waving from the two-story window?

A Yes, sir.

Q Did you wave back?

A No, sir.

Q Did anyone wave back?
A I do not recall.
Q So you didn't see anyone wave back at him, yet whoever was waving from the two-story window, who didn't know neither you nor the other officer, waved back, as far as you know?
A I don't recall.
Q Well, do you recall what the person who was waving from the window looked like?
A It's the defendant.
Q Okay. Do you recall what they had on, whether or not they had a hat, they had --
A It's been a while, but I believe he had a camouflage shirt or either jacket on, blue jean pants, and I think I remember a hat.
Q What kind of hat?
A I have no idea.
Q When the person came outdoors, did you observe that same person who supposedly was waving as being the one that you were meeting?
A Yes, sir, he came out the door.
Q And did that person have a hat on?
A Yes, sir.
Q Now, what kind of hat was it?
A I have no idea. It was like a baseball

style kind of hat.

Q Was it colored?

A It may have been -- a red, maybe. That's the only memory -- I really don't remember.

Q It was a red hat?

A Yes, sir.

Q When Mr. Ashe was brought back to the scene, did Mr. Ashe have on a red baseball hat?

A I don't remember.

Q Did Mr. Ashe have on a hat at all?

A I don't remember.

Q Did Mr. Ashe have on a camouflage jacket?

A It was either a camouflage shirt or jacket, like an outer jacket, yes, sir.

Q So he had it on when y'all came back to the scene?

A I believe so. It's been about a year ago, so I'm not really sure.

Q All right. Well, do you have any -- are you sure of anything that Mr. Ashe had on, either before or after supposedly he was arrested?

A Yes, sir. I remember the blue jeans and the camouflage outer shirt or jacket, whichever it may have been.

Q Which he had on when he came back to the

scene?

A He may have. I just don't recall. The only reason I remember what he was dealing because I had filled out the description as he was running away. I don't know if he dropped some of the clothing while he was running, but I was putting out the description on the radio of what he was wearing.

Q Well, when he came out, it's your testimony he came out and gave you his driver's license, is that right?

A Yes, sir.

Q And when he gave you his driver's license, is that when he ran?

A No, sir. I advised him he was going to be detained. And as I recall it, I believe I was pulling out my handcuffs when he took off running.

Q Okay. You went back to your car to get handcuffs --

A Yes, sir.

Q -- and you left him standing in the middle of the yard?

A No, he walked up to the vehicle with us.

Q And he just took off?

A Yes, sir.

Q You ran for him a while, and then you put

the call out and had people come with dogs, is that right?

A Yes, sir.

Q And what did the dogs do when the dogs got there?

A As far as I understood, they put them on the ground at the last known location we saw him run and started tracking him that way.

Q All right. Do you know how long the dogs were out there running?

A No, sir.

Q Did you come into the Lexington County Jail before the dogs came in, or were the dogs still out there running, looking for something?

A Can you repeat that question?

Q Did you come into the Lexington County Jail before the dogs came in, or did you remain at the scene until they pulled the dogs back in?

A I believe I was still on the scene at the site when they stopped tracking.

Q All right. Do you know how many hours the dogs were tracking?

A No, sir.

Q Do you know where the dogs tracked?

A They asked me to point out the location

where he last ran, and they just started combing the area.

Q How many people were running with the dogs?

A Maybe two or three -- two.

Q Two officers were with the dogs?

A Yes, sir.

Q Now, who was the officer that brought Mr. Ashe back to the scene?

A I believe it was Lt. Crawford.

Q Now, is he the individual who gave you what has been marked as 21A?

A That first bag I pulled out?

Q I don't know. I wasn't there.

A Yes, sir, 21A.

Q What is the difference between 21A and 21B?

A Twenty-one B, that's what was given to me by Investigator Stout from the scene.

Q Now, how do you know that that was given to you from Agent Stout?

A He handed it to me.

Q Is there something remarkable about the plastic bag that you're looking at that indicates that he's the one who gave it to you?

A It's a different color. It's like an off-white.
Q The bag is?
A Yes, sir.
Q So it looks different from 21A?
A Yes, sir.
Q And then he also gave you 21C and 21D, is that correct?
A Yes, sir.
Q And do you they look different from 21A?
A Yes, sir.
Q And how are they different?
A Bigger quantity, different bag.
Q So they're larger?
A Yes, sir.
Q And Stout was the one who gave those bags also?
A Yes, sir.
Q And what did you do with these bags when it was given to you?
A I took them into my control and then logged them into evidence.
Q All right. How did you take them into your control?
A Physically received it, put it in my

vehicle, drove to Lexington County Sheriff's Department and logged it in.

Q All right. Were you driving your vehicle on that date?

A No, sir, I was riding with Investigator Gleaton.

Q All right. So then exactly how did you take it back to Lexington County Sheriff's Department?

A With Investigator Gleaton.

Q So he was driving --

A Yes, sir.

Q -- and you took the items?

A Yes, sir.

Q And you put them in the car with you, is that correct?

A Yes, sir.

Q Was Officer Gleaton with you the whole time?

A I believe so, yes, sir.

Q What happened to the defendant that you say that was brought back to the scene? Did y'all not ride with him to the Sheriff's Department?

A No, sir.

Q Who took him to the Sheriff's Department?

A I'm unsure.

Q Did you leave before the defendant went to the Sheriff's Department?

A No, sir.

Q You left after the defendant went to the Sheriff's Department?

A Yes, sir.

Q Did you perform a search on the trailer?

A No, sir, I'm not a meth tech. I didn't have the equipment -- proper equipment -- to do the search.

Q So you were not involved in any searching?

A No, sir.

Q So in terms of your knowledge about any possible drugs, you didn't find any drugs?

A No, sir.

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

THE COURT: Thank you.

Mr. Collins, do you have anything further?

MR. COLLINS: No further questions, Your Honor.

THE COURT: Thank you, sir. You can come down.

MR. BAILEY: Who wants this back?

THE COURT: If you'd leave that down there with the Court Reporter.

MR. COLLINS: The State calls Chris Stout.

(The witness was sworn.)

CLERK OF COURT: Have a seat, please. State your full name on the record and spell your last.

MR. STOUT: Chris Stout -- S-T-O-U-T.

CHRIS STOUT, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COLLINS:

Q Mr. Stout, where do you work?

A Lexington County Sheriff's Department.

Q What do you do there?

A Okay, I am an investigator with the north region.

Q How long have you worked there?

A Going on seven years.

Q Have you previously worked in narcotics?

A Yes, sir, I did.

Q What were you doing back on December 22, 2005?

A I was assigned to the Lexington County Narcotics multi-agency narcotics team.

Q Have you ever had any special training?

A Yes, sir, I have.

Q And what does that consist of?

A Narcotics schools, I've been meth schools, been certified as a meth tech.

Q How many investigations of methamphetamine would you say you've done?

A Probably over 75.

Q How many meth labs would you say you've worked as a meth tech?

A Easily over 75.

Q So being a meth technician, as you call it, what does that qualify you to do?

A As a meth tech, we're able to go inside a meth lab and actually clean up, observe the chemicals, dispose of the type of chemicals -- volatile chemicals -- that are in there, as meth techs.

Q Did you get called out to a suspected meth lab at 1208 Daralynn --

A Yes, sir.

Q -- Road by the NET team? What did you do?

A I was called by Agent Jimmy Gleaton, got

to the house at 1208 Daralynn in Lexington County. And the first thing I did was I got out of the car, and I could smell some ether, and I smelled some what I thought to be ammonia.

They advised me what situation that they had. They said that what they thought may be a lab was in this house, which is the house that you're looking at there on the screen there. What I did was I put on my APR, which is a gas mask basically, got properly equipped so I could go in the house.

As soon as I got up the stairs, went into the door, you had a stairwell you've got to go up. The thing is not finished completely built, so you could see almost to the second floor in certain parts of the house.

We go around. I walked upstairs, and Travis Bass was there also. We walked upstairs, and as soon as I walked in, I observed what was a meth lab and an ammonia lab being in process.

Q Then what did you do?

A At that time, which I realized we had an ammonia lab, I backed out, because, one thing, we didn't have the proper equipment on to stay in there for a lengthy period of time with just a gas mask.

I backed out. I personally had not experienced a whole lot of the ammonia labs, so at that time I called Agent Thomas Hamilton, which has been doing meth a lot longer than I have been certified, with more experience. So I called him and got his advice. He said he'd be right there.

MR. WILLIAMS: Objection to hearsay, Your Honor. If that's all he's going to say, no objection. I thought he was going to go into a further litany.

THE COURT: Okay. You can't testify as to what he told you. Just what you just said is fine, but don't go any further.

MR. STOUT: Yes, sir.

THE COURT: Okay.

Q Did you have the opportunity to collect any drugs?

A Yes, sir, I did. What, drugs?

Q Yes --

A Yes.

Q -- drugs or any substances.

A I collected substances to make drugs, yes, sir.

Q Can you please take a look through that bag and tell us had you the opportunity to take

those items?

A Yes, sir, I'm familiar with them.

Q What is that item?

A This is crushed-up Sudafed, what we suspect to be crushed-up Sudafed.

Q What number is that?

A It's State Exhibit Twenty-One C.

Q And what did you do with that item?

A We -- I gave it to Chris Bailey to put on the search warrant, to be collected to be tested.

Q Who did you get it from?

A We actually got it out from Thomas Hamilton out of the house when he went upstairs and was bringing stuff down to me. He and Travis Bass were upstairs dismantling it, bringing it out to me to a safe area where we had set up for --

Q Can you look at the rest of the items?

A Yes, sir, Exhibit Twenty-One D.

Q And what is that?

A That is also crushed-up Sudafed, which --

Q Where did that come from?

A That come from out of the house with Agent Hamilton.

Q And who did you give that to?

A Agent Hamilton.

Q Who did you give it to?

A Oh, I give this to Chris Bailey to put on the search warrant.

Q Okay. Can you look at the other items and please tell us if you had the opportunity and what you did with them, and who you got them from, and who you gave them to?

A Twenty-One A I'm not really familiar with, because I didn't collect that. Twenty-One B looks like the same baggie that come out of the green duffel bag that we found upstairs in the house.

Q Who did you get 21B from?

A I give 21B to Chris Bailey.

Q Okay. Where was the green duffel bag located?

A Sir, I'm sorry?

Q Where was the green duffel bag that you spoke of earlier located?

A It was found upstairs in the upper portion of that second-story building house.

Q Can you point approximately, would it be on the front half, like near the windows, or where?

A It was more where the open window is, go to your right, and on back in that corner in that area right in there is where the --

Q You have a pointer up there. Maybe you could point it out.

A Right here at this window, over in this area, behind this window in this area where the ammonia lab was being cooked and all the items that was just spoke of were found up there.

Q Where were the stairs?

A You go in the door here, go right in. There's studs that's not sheet rock. The floor, this segment floor is here. It's not any subflooring except right back here in this corner area. You go around what would be a wall if there was sheet rock there.

You go up the stairwell, up along in this area here where it's just studs. It's not -- like I said, not any sheet rock. As you walk up, very open stairwell, it's not even got backs to it, so you've got to be extremely careful.

You go up, and you have to walk over some boards they laid down onto just the beams of the floor. And then you walk around, and that's where you get to the actual lab where they had subflooring in there to stabilize everything.

Q That would be all the questions.

THE COURT: Mr. Williams, do you have

any cross?

MR. WILLIAMS: May it please the Court.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Officer Stout, is it officer, or detective, or agent?

A It's detective now, sir.

Q All right, sir. Detective, when you arrived there, how many people were there?

A When I got on-scene, it was Agent Jimmy Gleaton, Chris Bailey, myself, Travis Bass, and that's the only ones I remember, and they advised me what was going on. There may have been a patrol car there, but I don't remember who was actually driving it when I got on-scene, sir.

Q All right, sir. And when you arrived there, inasmuch as you've said that Thomas Hamilton was the one who performed the search of the house, you didn't go into the house to do the search at this point in time?

A Yes, sir. Once I was called to the scene, I went in, because they advised me that they felt strongly they had a meth lab up in this area of the house. As a meth tech, I got properly equipped,

along with Travis Bass.

We went upstairs, went into the room. And when I got upstairs with the proper equipment on and got into the actual floor where the meth lab and the ammonia lab was being cooked was where I observed everything. And that's when I backed out due to us having an actual ammonia lab being cooked.

Q Did you see the green duffel bag up there?

A I -- briefly, yes, sir, I do. I didn't go through it because at that time, I knew we had ammonia, and I wanted to get out because we didn't have the proper equipment on. And I needed other people there to assist me with the cleanup of this lab.

Q All right, sir. So I assume you waited downstairs for a period of time until Hamilton got there, is that correct?

A That would be correct, sir, yes.

Q And when Hamilton showed up, did he put the protective clothing on?

A Myself, him, and Travis Bass, and one of the fireman from the -- that was called out to the scene -- put proper equipment on, yes, sir.

Q And then all three of you went in, is that correct?

A No, sir -- no, sir.

Q At that time, Travis and Detective Hamilton -- Thomas Hamilton -- went in and actually did the dismantling of the lab. Myself, along with the firefighter that was on the scene to assist us, was downstairs. They were bringing everything to us, and we were putting it in safe havens to make sure it didn't get mixed up and got it cleaned up.

Q All right, sir. So in terms of where these items were found in the house, you don't know, because you didn't find them and bring them down, someone gave them to you?

A Yes, sir. I did not actually pick them out of the house. My first initial seeing is the only thing I can tell you what I remember seeing. I didn't actually pick anything physically out of that house and bring it down.

Q Did you perform a search on this trailer right here which is next door?

A I did not, no, sir.

Q Did anyone perform a search on that trailer?

A Not that I'm aware of. It may have been done prior or after, while we were suited up. When I got on the scene, my main concern was the meth

lab.

Q You referenced a search warrant. What was the search warrant for?

A It was for a methamphetamine lab that was being cooked in process in this house.

Q And was it also for the residence located there also?

A Without looking back over the search warrant -- because I didn't write the search warrant. I just give them what --

Q Who did the search warrant?

A Agent Jimmy Gleaton.

Q All right, sir. Do you know who went through the trailer next door?

A No, sir, I do not.

Q Do you know if anybody went through the trailer next door?

A Not to my knowledge, no, sir.

Q Do you know whether or not anyone was living in the trailer?

A By the conditions looking outside, I would say. But I couldn't say for sure because I did not go inside.

Q Now, were you there when Mr. Ashe supposedly was brought back to the scene?

A Yes, sir, I was.

Q And can you describe what he had on when he came back?

A No, sir, I cannot. He was in the back seat of a car, and I don't know what he was wearing. I don't even remember going over and speaking to him, if I did speak to him.

Q The items which you received, did you secure any items to have them fingerprinted to see who had touched these items?

A No, sir, I did not.

Q There were some receipts found -- or did you receive any receipts? Did you just receive the drugs?

A No, I received -- everything that come down from upstairs from Agent Hamilton was brought to myself, along with the other firefighter that was suited up. And once it was brought down to us, Agent Hamilton dismantled it in our safe haven. And then the stuff that was brought down that needed to be searched, I went through and actually did the search outside the house.

Q And who brought all those items to you -- Agent Hamilton?

A Yes, sir.

Q All right. And were they just drugs, or did you have bottles and things like that that you see?

A No, we had things of -- gas cans that had tubes coming out of them. We had your file boxes that you get for your filing at the house with the blue lids, it's clear plastic. Or you can use them for about anything, which it's mainly for file boxing -- had those with dry ice and regular ice in them, had fire extinguishers stuck into one where they were making their ammonia lab -- the ammonia going into the fire extinguisher and being condensed into coolant.

Q It was a boatload of stuff, then?

A Yes, sir.

Q Were there any receipts that were found in that that you had, that was given to you, like receipts where items were purchased or things like that?

A Yes, sir, there was.

Q Now, those receipts, did they indicate where they were purchased?

A If I remember correctly, I think it was Wal-Mart. But without looking back, I couldn't be for sure.

Q And did it provide the date when those items were purchased?

A It should be on the receipt. But without looking, I couldn't tell you what it is, sir.

Q Do you know whether or not cash or whether or not a credit card was used for the purchase of those items?

A There again, without looking back, I couldn't tell you and be a hundred percent sure. But it says on the receipts.

Q Did you attempt to verify the receipts with Wal-Mart to see who had purchased those items?

A No, sir, I did not.

Q Who would have been in charge of doing that?

A Probably the case agent.

Q And who was the case agent?

A Jimmy Gleaton and Chris Bailey were the two initial officers on the scene.

Q Do you know Brian Jenkins is?

A I've heard of him, yes, sir.

Q All right. And how have you heard of Brian Jenkins?

A Just my years in Narcotics, I've heard his name brought up.

Q On how many occasions?
A I'd say a couple, several.
Q Have you been involved in his arrest for trafficking methamphetamine?
A I was involved on one occasion where he was found in his vehicle sleeping on the side of the road, and they found some items in his car. They called me to that scene, actually to his house, and to look and see if he had anything in the house, which he did not.
Q Do you know the owner of the property where you were performing this search?
A I think it belongs to Brian Jenkins.
Q Do you know where Brian Jenkins is today?
A No, sir, I do not.
Q Do you know if he's arrested?
A I think he may be, but I couldn't positively say without going back and looking.
Q Do you have the ability to run a search on your computer to see if he has been arrested?
A Yes, sir, I do.
Q Could you report that to us at some subsequent time if he has been?
A Yes, sir.
Q Were you there when they had the dogs out

chasing someone?

A Yes, sir, I was on-scene when I heard the dogs being called. I never seen the dogs, because that was happening elsewhere. I was just on-scene at this particular location.

Q Were you aware that there was a report of a second suspect at the scene?

A No, sir, I don't remember it being that. They -- the two initial officers said something about they heard something go out the back, but they weren't for sure what it was. But there was nobody ever mentioned named or identified as being at the house.

Q So you recall them saying that they heard someone go out the back, is that correct?

A Well, not go out the back. They heard somebody, and that's when they went back into the house to make sure there was no one else in the house, after Mr. Jenkins took off running from them.

Q After Mr. Jenkins took off running?

A I mean Mr. -- not Mr. Jenkins but your client, sir.

MR. WILLIAMS: I don't have any other questions, Your Honor.

THE COURT: Anything further from

you, Mr. Collins?

MR. COLLINS: Your Honor, may I approach the witness?

REDIRECT EXAMINATION

BY MR. COLLINS:

Q I'm handing to you what's been marked State's Exhibits Twenty-Two and Twenty-Three.

A Yes, sir.

Q Can you identify those items?

A Yes, sir. Twenty-two would be four boxes of Sudafed, a decongestant cold medicine. And Twenty-Three is an American Way scales, which is commonly used to weigh out items.

Q Have you seen those items before?

A Yes, sir, I have.

Q When did you see those items?

A This particular day at this location.

Q Did you retrieve those items?

A Yes, sir. I retrieved them out of that pickup truck that's right there in the front of the house.

Q Okay. Are they still in the same -- do they still look the same? Are they still in substantially the same condition as when you retrieved them?

A Yes.

Q Have they been changed in any way?

A No, sir. They're still closed and haven't been altered in any way.

MR. COLLINS: Your Honor, may I approach?

THE COURT: Yes, sir.

MR. COLLINS: We would offer State's Exhibit Number Three.

MR. WILLIAMS: Your Honor, I have a matter of law to take up with the Court outside the presence of the jury. Maybe we could approach.

THE COURT: Okay.

MR. WILLIAMS: I think that would be easier.

THE COURT: I was just trying to see whether I need to send them home for the day.

MR. WILLIAMS: We have no objection to the introduction of this photograph.

THE COURT: Okay. What's State's Exhibit is that?

CLERK OF COURT: That's State's Exhibit Number Three, Your Honor.

THE COURT: Number three?

CLERK OF COURT: Yes, sir.

THE COURT: State's Exhibit Three is in without objection.

(State's Exhibit Number Three, Photo, was entered into evidence.)

Q What is that? What is that a picture of?

A It's a photograph of State Exhibit Twenty-Two before it was put in the plastic bag --

Q Okay.

A -- at the scene.

Q What is State's Exhibit Twenty-Two?

A State Exhibit Twenty-Two is the four boxes of -- you've got Equate, two boxes of Equate, and two boxes of Dollar General decongestant.

Q And where did you retrieve those from?

A Out of the pickup truck that's sitting right there on the photograph.

MR. COLLINS: I'd like to move to move those into evidence, Your Honor.

THE COURT: Okay. State Exhibit Three is in.

MR. COLLINS: I'm actually back to the physical bag.

THE COURT: Oh, you're talking about -- I'm sorry, I thought you were talking about the photograph. Now you're talking --

MR. COLLINS: Now the actual bag, Your Honor.

THE COURT: So you're talking about State's Exhibit Number Twenty-Two?

MR. COLLINS: Yes, sir.

MR. WILLIAMS: Your Honor, subject to the Court's prior ruling on that.

THE COURT: Okay, I understand. Outside of my prior ruling, do you have any objection to this?

MR. WILLIAMS: No, sir.

THE COURT: Okay. State's Exhibit Twenty-Two is into evidence.

(State's Exhibit Number Twenty-Two, Bag of Cold Medications, was entered into evidence.)

COURT REPORTER: That's A, B, C, and D.

THE COURT: No, this is Twenty-Two now.

MR. COLLINS: That's Twenty-Two and Twenty-Three.

THE COURT: Twenty-Two doesn't have A --

COURT REPORTER: Oh, I've got you,

Twenty-Two. Thank you.

THE COURT: Okay.

COURT REPORTER: Yes, sir.

Q Twenty-Three, what is that?

A That is the American Way scales that was located inside the pickup truck that I retrieved out of that truck right there.

Q And whose truck is that, to your knowledge?

A It comes back to Mr. Ashe.

MR. COLLINS: I'd also like to move State's Twenty-Three in, Your Honor.

THE COURT: What's the defense's position on Twenty-Three?

MR. WILLIAMS: Same position, Your Honor.

THE COURT: Okay. State's Exhibit Twenty-Three is entered into evidence.

(State's Exhibit Number Twenty-Three, Scales, was entered into evidence.)

MR. COLLINS: That would be all we have.

THE COURT: Anything further from the defense from this witness?

MR. WILLIAMS: Yes, Your Honor.

RECROSS EXAMINATION

BY MR. WILLIAMS:

Q These items that you've just identified and placed into evidence --

A Yes, sir.

Q -- the Sudafed boxes, you didn't perform any fingerprint analysis on these boxes, did you?

A No, sir, I did not.

Q And you didn't perform any fingerprint analysis on this item right here?

A No, sir, I did not.

Q And in terms of these items, there's nothing illegal about this whatsoever, is there?

A No, sir.

Q And there's nothing illegal about this either, is there?

A Not that, no, sir.

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

THE COURT: All right. You can step down.

MR. STOUT: Okay.

THE COURT: Mr. Solicitor, how long is your next witness going to be?

MR. COLLINS: Judge, it might be a

good time to take a break.

THE COURT: Like for the day?

MR. COLLINS: Yes, sir.

THE COURT: Okay.

MR. COLLINS: Unless we want to stick around.

THE COURT: Well, I promised the ladies and gentlemen of the jury -- or at least Judge Cooper did, one of us did -- that we'd try to break around 5:00 or 5:30. And if your next witness is going to be lengthy, this may be a good time. I'm sure they have other things to do.

I caution you to be sure that you don't discuss this case among yourselves or anyone else. And I'm sure when you get home this afternoon, your spouse is going to say, "What have you been doing all day?" And you're going to say, "Well, I'm on a case."

And they're going to want to hear about it, and then they're going to want to give you their opinion about it. Well, they haven't been in this courtroom, and they don't know what you know. So it would be improper for you to discuss this case with them.

And I'm going to tell you

throughout this trial it's improper for you to discuss it among yourselves when you go back in the jury room. And the reason for that is if you start discussing it early, you'll start forming an opinion. And you'll form this opinion before you hear all the evidence.

And that would be improper. You need to hear all the evidence and all the law before you even start discussing it where you won't form some opinions early on, and then you'll be trying to defend those opinions when you deliberate. So what I want you to do is enter this thing with a clear mind.

Don't form any opinions yet till you hear all of the evidence and the law, and then I'll instruct you to deliberate. And that way, we'll assure that you will get a good and fair verdict. So that's why I'm telling you this, and that's why it's important not to discuss it.

So if you will be back in the morning at 9:30, and please do not discuss this case. Also, you may run into some of the lawyers or some of the parties in this case, and they're not going to speak to you. It's not that they're being rude. They just can't as long as you're sitting on

this case.

So don't be offended. They may say "hello," but that's it. Anyway, I appreciate you being here. I'll see you at 9:30 in the morning. Thank you.

(Whereupon, the jury left the courtroom at 4:52 P.M., in recess for the day.)

THE COURT: Anything from the State?

MR. COLLINS: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

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

THE COURT: From a scheduling standpoint, do you think this case is going to get to the jury tomorrow?

MR. COLLINS: Yes, sir.

THE COURT: Okay. And I'm not pushing anybody. I'm just trying to think --

MR. WILLIAMS: It's going to take tomorrow.

THE COURT: Okay. And if you think, you know, we're going to argue and charge tomorrow, if you've got any charges that you want to submit, and maybe you all could work on them tonight and submit

them to me in the morning. And if we don't reach them, at least that way I can get ready on the charge if we do go.

And it depends on how late we run tomorrow whether I'm going to give it to the jury. Sometimes I don't give it to them real late because I've spent too many nights in courthouses, and I'd just as soon not. But if we have to, we will.

MR. WILLIAMS: We're used to it here, Judge. Judge Westbrook was bad about those late trials.

THE COURT: I know. I remember Judge Westbrook when I used to sit out there too, and I'm too new yet to do all that. So we're not necessarily -- unless you want to --

MR. COLLINS: No, sir.

THE COURT: Okay. And we may. It just depends on how things fall. And if we get it to them early enough, I think we can get out of here. But, anyway, if not -- is there any legal matters we need to take up in the morning?

MR. COLLINS: None that we can think of, Your Honor.

THE COURT: And I'll be here between 9:00 and 9:15 at the latest. So if it does, you all can

come -- counsel can come to chambers, and we'll deal with that. If not, I'll try to get rolling and begin at 9:30.

MR. COLLINS: Yes, sir.

THE COURT: Thank you. Court will be in recess till 9:30.

MR. WILLIAMS: Judge, we'll finish tomorrow.

THE COURT: You can finish tomorrow? Okay. But it won't be before one or two tomorrow, right?

MR. WILLIAMS: No, sir.

THE COURT: Okay.

MR. COLLINS: Probably.

Tuesday, October 24, 2006

(The defendant, together with counsel, was personally present in the courtroom.)

THE COURT: Anything from the State before I bring in the jury?

MR. COLLINS: Nothing from the State, Your Honor.

THE COURT: From the defense?

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

THE COURT: Okay.

If you will get us the jury, please, sir.

(The jury returned to the courtroom at 9:37 a.m., after which the following proceedings were had:)

THE COURT: You all can be seated. Good morning, ladies and gentlemen.

As you remember, when we left yesterday afternoon, the State was offering evidence in their case, and we're going to continue with the State presenting evidence. I hope you all had a good evening.

Mr. Solicitor, you can call your next witness.

MR. MOSES: Thank you, Your Honor. The State would call Agent Thomas Hamilton.

THE COURT: Come around, Mr. Hamilton, and let the Clerk swear you in.

(The witness was sworn.)

CLERK OF COURT: Have a seat, state your full name, spelling your last, please.

MR. HAMILTON: My name is Thomas W. Hamilton -- H-A-M-I-L-T-O-N.

THOMAS W. HAMILTON, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOSES:

Q Mr. Hamilton, how are you classified at your employment? Are you an agent?

A Actually, I am a supervisor with the Joint Emergency Team for Lexington County.

Q And which agency do you work for? Where do you work?

A My original discipline was for the Sheriff's Department. I'm a certified Class One officer. Now I am also with medical and fire also.

Q And that's with Lexington County Sheriff's Department?

A Yes, sir, that is Lexington County.

Q How long have you been employed there?

A I've been with the Sheriff's Department for approximately eight years.

Q And can you describe what your duties are?

A Basically, the Joint Emergency Team is designed on a public safety concept. We have law enforcement, fire service, and EMS personnel. We respond to a variety of calls, to include we are the HAZMAT Team for the county.

We have the HAZMAT truck that was originally with the fire service. It's now ours.

We are first on any kind of hazardous materials. We also do medical backup for the Sheriff's Department, backup for SWAT, and other specialty items like that.

Q What does HAZMAT stand for?

A It stands for hazardous materials, everything from 18-wheelers turned over with acid on the interstate to meth labs or any other kind of scene where there could be chemicals involved.

Q And have you had extensive training in learning how to deal with these chemicals?

A Yes, sir. I am a HAZMAT technician instructor at the South Carolina Fire Academy, as well as having special training in numerous subsections of hazardous material, to include meth lab investigation among them, WMD, chemical warfare, biological warfare, and numerous other hazardous materials.

Q Did you have the opportunity to get involved with this case?

A Yes, sir. I was called and requested to respond to the scene.

Q And why were you called?

A I was called because I have the specialties as before mentioned. I have a great

deal of experience in working with meth labs. Prior to coming to the JET Team, I worked Narcotics for eight years.

Q Did you arrive at the scene on the night of December 22, 2005?

A Yes, sir. I arrived at Daralynn Drive in the afternoon of the 22nd December, 2005, sir.

Q I'm showing you what's been marked as State's Exhibit One. Is that the location that you arrived at?

A Yes, sir, that is.

Q What did you observe when you arrived there?

A I arrived and staged equipment back down -- not actually observable to this location, down the driveway to give us the proper distances from the scene. But I observed this place to be in a rundown condition, lots of trash and other such items laying about the area in the yard.

Q Was anybody there when you got there?

A There were numerous people there prior to my arrival, law enforcement, and I had called -- I was actually off duty at this time, was called at the house. I had called for the people who were on duty with the Joint Emergency Team to respond with

the HAZMAT truck, and they had arrived prior to me.

Q Where were you before you got there?

A I was located at my residence. I was off that day.

Q Okay. When you got there, what did you do?

A I started the process of preparing to make entry into the residence, staging fire equipment. Our general standard operating procedures are to place the fire truck there with water, as well as getting out the equipment necessary -- boots, SCBAs, chemical tech clothing, things of that nature.

Q And did you have a chance to enter the residence here?

A Yes, sir, I did. I was the entry team for the residence of this location.

Q Is that pointer still up there?

A Yes, sir.

Q When you entered that building back there, did it appear to be occupied or inhabited? Was anybody living there?

A It did not appear to be lived in, sir. The building here, upstairs is basically devoid of furniture. There were no beds, couches, dressers, or anything of that nature up there.

Downstairs, over towards this side where the pointer is, was a conglomerate of junk, old tools, things of that nature. The walls are not finished. Basically, they're just stud two-by-fours where walls would be, nothing on them, no flooring other than a subfloor, which in areas was weak and appeared to have been damaged by water or some other type of environment.

Q What was on the upstairs?

A Located upstairs, I observed the manufacture of ammonia and other components for the production of methamphetamine.

Q What kind of components are you talking about?

A There was -- once again, there was the production of anhydrous ammonia, which anhydrous just means without water. That's all, just a fancy word for that. There was lithium, which is a component along with ammonia for the production of meth.

There was bags of substance that was crushed substance that appeared to possibly be involved in the manufacture of meth. There was a converter -- a power converter. There was an air pump -- pressurized air pump. There was ammonium

sulfate, sodium hydroxide, which is commonly known as Red Devil lye. There was sulfuric acid, the trade brand of Liquid Fire.

And there were filters -- coffee filters. And I observed a bucket containing a residue. There was starter fluid, which is ethyl ether. It is 85 to 90 percent ethyl ether, which is also used in the manufacture.

Q Agent Hamilton, I'm going to show you what's been marked for ID purposes as State's Twenty-One. And inside State's Twenty-One is 21A, B, C, and D. I'd like you to take a look at all that. Can you identify any of that?

A Yes, sir. Twenty-One C is one of the bags that I observed. It is a --

Q Hold it up.

A It is a white powdery substance. It was located in a green duffel bag in the upstairs of this location.

Q How about any of the others?

A Twenty-One D, a powdered substance, pinkish in color with small flecks of red, was located on the floor near where the duffel bag is in the same location.

Q And could you point out where that duffel

bag was found?

A It was located in this room, right in this area right here. There is a plain stud wall dividing this room from one on the other side, and it was right near that stud wall.

Q Are there any walls disconnecting that room on the right from the room on the left?

A No, sir. Like I said, there's a stud wall in this area here. There's a set of stairs behind that area there, or a partial beginning of stairs, not true finished stairs.

Q Is it accessible from this point of the house to this point of the house?

A Yes, sir. And the whole area is accessible. I walked through the stud wall areas, even in protective gear, passing from one to the next.

Q Can you identify any of the other items up there?

A Yes, sir, Twenty-One B.

Q Yes, sir.

A Inside of the green duffel bag was a small black nylon case, I guess you would refer to it. This was in there inside that duffel bag, sir.

Q What did you do with 21B, 21C, and 21D

when you found them?

A All of the items that I located inside the top of the residence I brought down. They were then turned over to Agent Chris Stout. Being in full SCBA protective gear, it's kind of hard to manipulate things, especially in big gloves. What we do normally is we bring them out into an open area that is not a confined stage and turn them over.

Q While those items were in your custody and control, did you alter them or change them in any fashion or form?

A No, sir.

Q And you gave them to Agent Chris Stout?

A Yes, sir, that is correct.

MR. MOSES: Your Honor, at this time I'd like to end my questioning with leave to recall this witness at a later time.

THE COURT: Okay.

Are you ready to do your cross-examination?

MR. WILLIAMS: I am, Your Honor.

THE COURT: All right, Mr. Williams.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Detective Hamilton, when you arrived at the scene, how many individuals were there?

A There was somewhere in the neighborhood of 12 to 14 people there, to include fire service, joint emergency, and sheriff's SWAT team.

Q All right, sir. And as I understand what you've testified to, you put on your HAZMAT suit, and you went upstairs, and you found the items which we've talked about in the green duffel bag, over in the room which has the window which is closed.

A That is correct, sir.

Q Did you find anything in the window which is open, in the room with the window that is open?

A The things I talked about with the ammonia production was basically between those two areas. Once again, this is an open space. So it was basically here.

Q Is there like another little room between those two rooms?

A No, sir.

Q It's just an open area?

A It's an open area. Once again, this is an unfinished structure, sir.

Q Okay.

A There are basically a couple of stud walls

in there, sir, but no finished walls, no sheet rock, pictures, or anything else.

Q So the lithium, the anhydrous ammonia, the crushed substance, the power source, the air pump, the red dye -- the Red Devil dye, Red Devil --

A Red Devil lye, sir.

Q -- the Liquid Fire, the filters, the bucket of residue, and the starter fluid were all found in one location next to the room that had the window which is closed?

A They were all in that area, sir. There was not like one little corner with all the stuff.

Q Okay.

A It was actually along the walls, sir.

Q Okay. All right, sir. And is there another room area on the other side where the -- because it looks like the house extends. Is there another room on the other side of where the open window is?

A This room, if you look at the roof line back here,

sir --

Q Right.

A -- that's where it ends. That's all there is. It's a little square -- it's a little square

two-story building. There is a room area back behind this one.

Q All right.

A And there is a set of stairs or what -- basically unfinished stairs --

Q Okay.

A -- that are right behind this area.

Q Okay. Now, what did you find in the downstairs area of the house?

A There was a large black plastic tub containing what appeared to be cast-off stuff like old tools --

Q Okay.

A -- and junk. There was a lot of trash or things that appeared to be discarded. Nothing of evidentiary value was taken from downstairs, sir.

Q Okay. So there was no -- what about was there like an old waterbed downstairs? Do you remember seeing an old waterbed?

A No, sir. I didn't observe no waterbed in there. If it was, it was stacked up in a corner. It wasn't put out or anything.

Q So there was nothing worthwhile that was found downstairs --

A No, sir.

Q -- in this house?

A No, sir.

Q All right, sir. Did you go next door to where the trailer is to check out the trailer to see what was in the trailer?

A Yes, sir, I went through there, number one, to check for any hazards, any other components from the production of meth, or anything of evidentiary value.

Q What did you notice about the trailer which was downstairs -- which you went through? How did you get it open? First, let me ask you that. Did you have a key?

A No, sir. The door was open.

Q Okay.

A The door was open to the trailer. I'm not sure from the appearance of the door that the door would shut, sir. Inside, number one, it was hard to move through the rooms. There were --

Q Just say it.

A It was a situation where it looked trashy.

Q Okay.

A There were things all over the place, looks like old clothing. The furniture was in great disarray. Much like it would look after a tornado

had hit would be my best description of --

Q Okay.

A -- the interior of that trailer, sir.

Q So we've got old clothing there and a bunch of trashy stuff.

A Yes, sir.

Q Did you go to the kitchen area of the trailer?

A I went through the kitchen area, yes, sir.

Q All right. Did you notice if there were like plates where it looked like there had been food which was left out on the plates?

A I don't recall anything. It looked like -- there were plates everywhere, sir -- I'll tell you that -- as if somebody had eaten there at some time in the past and just thrown stuff around like you would find in an abandoned place.

Q All right, sir. Now, in that it's a trailer, you can't tell from looking at this how many windows it has or anything like that. Were there drapes over the windows, or were the windows just -- or did it not have drapes over the windows?

A I cannot tell you whether there were drapes over the windows per se. It was not drapes like you would find in an old house --

Q Okay.

A -- I can tell you. I believe that one room had a -- one part of the trailer had a blanket over a window.

Q Okay. And when you went in there, do you recall whether or not you turned a light on to look around in the trailer?

A Number one, no, sir.

Q You wouldn't do that because you're on the HAZMAT Team?

A Yes, sir. I would never turn on any kind of power source. If I recall correctly, because that's one of the things we do in a scene that size, prior to, is check for power. I believe that the meter had been pulled on this location. Whether it had been hotwired or not, I cannot tell you, sir. I do not --

Q Did you check to see if it was running?

A Everything I looked at did not have power into it, sir. But I don't take a volt meter and put in on things. We note whether there is a meter to it. Now, there are ways to go around a meter reference to tapping in.

Q How the jury how you would do that.

A I'm not really sure. I don't deal with a

lot of electricity. That's not my specialty. We do lockout, tag-out. We place a piece of plastic in a cover to make it safe. As far as the illegal wiring, I don't know, sir.

Q All right. Did you check to see if the water was running there?

A I did not turn on any kind of faucets or anything else, sir.

Q All right. Did you find anything inside the trailer that could be used for drug production?

A No, sir. Nothing of evidentiary value was found in the trailer per se.

Q Did you find anything out in the yard that could be used for drug production?

A There was some -- trash pile basically containing things that had been used for meth. But I can't tell you other than ether cans --

Q And so was -- I'm sorry, I didn't mean to cut you off.

A No, sir -- no problem.

Q So essentially everything that you found that could be used for drug production was found in the upstairs portion of the dilapidated building that was there?

A Yes, sir, that is correct.

Q Essentially, your task, since you're the HAZMAT person, is simply to secure the evidence or the items which may be harmful or dangerous. And then I assume you transported those items, or did you give them to somebody else to transport?

A No, sir. All the items -- I'm the one who broke down the lab, basically. Prior to ever making entry, I had already called for a cleanup crew through the DEA and trooper fund. If you have a meth lab, you call for a cleanup crew, and it's paid for throughout the federal government.

In other words, the taxpayers of Lexington County don't have to pick up the bill except through their federal tax dollars. They respond to the scene. Basically, everything that was deemed contaminated was given to them for destruction, sir, in that many of these things can't be held.

The water where the ammonia was released into a 55-gallon bucket, it was -- once the ammonia went into the water, it became a hazardous substance. It was actually a very strong base.

Q So basically you had this team that came in and cleaned up everything for what you seized --

A Yes, sir.

Q -- and what you brought back?

A We bring everything out. We then turn it over to them outside where they place it into safe containers. They are charged with taking it to a HAZMAT fill and disposing of it.

Q Okay. Now, of the items which you found in the upstairs room, did you -- you probably don't know how to take fingerprints off of things, do you? You aren't fingerprint certified, are you?

A Yes, sir, I am.

Q You are?

A Yes, sir. I've done over 400 comparisons IDs.

Q Did you attempt to fingerprint any of the evidence which was capable of fingerprinting -- because you had a bunch of stuff that you could fingerprint, didn't you?

A In a normal situation outside of a HAZMAT zone, yes, sir. Basically, number one, we don't fingerprint things at a meth lab in a normal routine because if you have something that is contaminated, you would then have to bring it back into a lab setting to fume it or to dust it.

Ethyl ether, which was recovered in this lab -- starter fluid, once again -- will

destroy fingerprints. Fingerprints are made of oil. Oil in your fingers does it. Any kind of hard substance -- plastic, things of that nature -- that would normally hold a fingerprint don't hold a fingerprint when exposed to ether vapor.

In cases where a suspect is located at the lab, we're not going to process, number one, because of the dangers; number two, because of the lack of evidence. Now, in a few certain situations, we have processed items. That involves taking the containers, letting them off gas, making them safe beforehand, to get rid of any kind of HAZMAT -- any kind of chemicals that are on there. Most of the time, 99 percent of the time, we've been very unsuccessful at raising fingerprints because of the solvents and things used in the production, sir.

Q All right. There was still a bunch of items that you could have fingerprinted, weren't there, but you just didn't attempt to fingerprint them? You could have. How about the duffel bag? Could you have fingerprinted the duffel bag?

A No, sir. The duffel bag was placed in destruction. Anything that's porous -- your clothing, nylon -- what happens is in a hazardous material incident, vapors go into it. And once you

take that thing out of there, vapors then come out of it.

That is why all of our protective clothing is non-porous. It's basically Teflon -- excuse me, not Teflon -- Tyvek, the stuff you wrap your house with, heat-coated in plastic. Those are Tyvek. That is what makes the suit. It is non-permeable.

Anything permeable needs to be destroyed. Taking it as evidence, you're taking something that is possibly going to gas somebody later, sir.

Q So you didn't do it because you thought that there might be some hazardous material on the outside of the surfaces, is what you're indicating -- that may harm you in some way?

A With duffel bags and things, no, sir, it's not on the outside. It's throughout, sir. It is ingrained.

Q What about the containers, the metal containers that you had?

A Once again, the only container that was removed from that and taken as evidence is on the bucket that had a small bit of residue in it, sir. It was a plastic bucket. Everything else went with

the cleanup crew, sir.

Q I'm sorry, everything went with the cleanup crew?

A The one container, sir, that you're referring to, it's a plastic container that has a small amount of residue in the bottom of it. That was the only thing kept as evidence.

Q What about was there any starter fluid there?

A Yes, sir. There were four cans of starter fluid, sir. Because of an incident that we have had with starter fluid cans, basically HAZMAT response to Lexington County Sheriff's Department evidence, we have found that those ether cans, after a couple of months, start leaking.

And they will eat through the metal of the shelves where the evidence is sitting. So, no, sir, all ether cans that now go to evidence and then turned around and disposed of. I get called to deal with them.

Q The question really isn't what happens to them about disposing. I'm just wondering about why you didn't take some of these items and fingerprint them back at the lab, because some of the items you could have fingerprinted, couldn't you?

A Like I said, that's nothing something we do, sir, in a meth lab where we have a suspect.

Q How were the cans -- were the cans in a box, or were they loose?

A They were in a box, sir.

Q All right. Could you have fingerprinted the box?

A No, sir. It was a cardboard box, number one. And once again, in a hazardous environment, if you have something porous like cardboard, you don't need to take it out, sir.

Q How about the Red Devil lye? We've talked about that. You couldn't fingerprint that either?

A We did not, no, sir.

Q But that's not the same as saying you could not, is it?

A All things are possible, sir. But it's not something we do, sir.

Q Now, what about the little black case that was found there?

A The nylon case, sir?

Q Yes, sir.

A Once again, sir, we disposed of it.

Q But you could have fingerprinted it?

A Nylon doesn't hold fingerprints, sir.

Q Did you fingerprint any of the door knobs there or any of the walls there to see who had been in the house?

A No, sir, not when you have a suspect who is there.

Q Well, did you understand that there was a possibility that two people actually had been in that house?

A Did I understand that? Yes, sir.

Q All right. So assuming, if you will, that my client was one of the ones who was in the house, did you check to see if perhaps there was another person who was in the house?

A The house was cleared prior to me going in.

Q Were you there when the dogs were out looking for the person?

A No, sir. Actually, when I arrived on the scene, the defendant was in the back of a patrol car over to a side, sir.

Q So the dogs had already gone back home?

A I do not know, Counselor, whether the dogs were on-scene or not, sir. I was dealing with the HAZMAT scene, sir.

Q Is ammonium sulfate the same thing as just

flower fertilizer?

A It's a fertilizer, yes, sir. I don't know about flowers or not, sir.

Q Well, it's got a picture of flowers of bag, doesn't it?

A Yes, sir. But --

Q Zinnias or something?

A Sir?

Q Zinnias. Where did you find the flower fertilizer?

A Actually, upstairs. Once again, it was actually on top, in a bucket on top of part of the production of the ammonia, sir, holding a piece of it down into.

Q Did you go to the power company to see when the power would have been shut off, or was it not shut off -- did you check on that -- to the trailer?

A No, sir. I did not, sir.

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

THE COURT: Anything at this time?

MR. MOSES: Just subject to recalling this witness at a later time, Your Honor.

THE COURT: Okay.

Mr. Hamilton, you can step down.

MR. MOSES: The State would call Beth Harmon.

(The witness was sworn.)

CLERK OF COURT: Have a seat, please, ma'am. State your full name and spell your last.

MS. HARMON: Margaret Elizabeth Harmon -- H-A-R-M-O-N.

MARGARET ELIZABETH HARMON, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOSES:

Q Ms. Harmon, where are you employed?

A Lexington County Sheriff's Department.

Q How long have you been employed there?

A Four years.

Q What are your duties there?

A I'm an evidence custodian.

Q What's that? What's your job description as an evidence custodian?

A Officers bring in evidence to the evidence room. We take that evidence out of a secure locker, catalog it in, and then place into the areas that it belongs in.

Q You've got in front of you what's been

marked as State's Exhibit Twenty-One A, B, C, and D. Can you take a look at those, please, all four of them?

A Sure.

Q Can you identify those?

A Yes, sir. These were items that were placed in a best kit.

Q And have you had the opportunity to see those before?

A Yes.

Q And can you explain what the occasion was?

A The officer turned in the best kit. I took the best kit out of the locker, signed it in, and put it into what we refer to as a drug lab temp box. Those are where the drugs are in a secure area. It's locked with an alarm. Only three people have access to it. The drugs are stored there until they go to the lab.

Q Do you know who put them in the evidence locker where y'all received them?

A I believe it was Officer Chris Bailey.

Q And once you got them, did you materially alter or change them in any way?

A No.

Q What did you do with them immediately?

A Once I took it out of the locker, I checked the best kit bag to make sure that the seal was still intact, checked to make sure that he had done all of his paperwork and that it had been filled out properly, according to policy, signed the evidence in, put a bar code on it labeling it as our evidence, put in the drug lab temp box.

Q Is this drug lab temp box a secure place?

A Yes.

Q Explain what a best kit is.

A A best kit is a drug kit. It's used for anything other than -- well, it's used for any type of drugs that they're going to send to the lab to be tested. If an officer doesn't know what something is and they want to find out, they put the drugs into this kit. It's a kit that's designed for the Sheriff's Department.

It has our name on it. It has information that the deputy fills out, such as the case number, the date that it was sealed, who it was sealed by. It has a tamper-resistant seal on it, and the seal must be intact when we receive it.

Q What is a tamper-resistant seal?

A It's the green seal at the front. It's got sticky stuff on it, and if you try to pull it,

it'll distort the images underneath.

Q What would happen if there's evidence that the best kid had been tampered with?

A We'd call the officer in.

Q In this case, had that best kit been tampered with?

A No.

Q And where did you put it when you were finished with it?

A In the drug lab temp box.

Q Thank you, Ms. Harmon. No further questions.

THE COURT: Mr. Williams?

MR. WILLIAMS: No questions, Your Honor.

THE COURT: Okay.

Thank you, ma'am. You can step down.

MR. MOSES: The State would call Candy Kyzer.

(The witness was sworn.)

CLERK OF COURT: Have a seat, state your full name, and spell your last, please.

MS. KYZER: Candy Kyzer, and it's K-Y-Z-E-R.

CANDY KYZER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOSES:

Q Good morning, Ms. Kyzer. Where are you employed?

A Lexington County Sheriff's Department.

Q How long have you been employed there?

A For 11 years.

Q What is your job at the Lexington County Sheriff's Department?

A I'm an evidence custodian.

Q And what is your job description as an evidence custodian?

A What we do is once every morning, we empty out the lockers, sign everything in that we get in, and log it in and everything. And then we put it away.

Q What are these lockers that you're referring to?

A It's the lockers that all of the deputies have usage to, and they are able to put the evidence into there. And then after they put their evidence in, they push a button and it locks. And the only way that it can be unlocked is by us.

Q Nobody else has a key to it?
A No.
Q The only people that have a key are the evidence custodians?
A Yes.
Q And did you have an opportunity to become involved with this case?
A Yes, I did.
Q Right in front of you is State's Exhibit Twenty-One A, B, C, and D. Can you take a look at all four of those items, please? Can you identify them?
A Yes, sir.
Q Have you ever had them in your possession?
A They were. They were in the best kit that we got in.
Q Okay. Where did you come across those? How did you come across them?
A Usually about once a week, what I have to do is go into what we call our drug lab temp box that's in our drug room that's locked up and get out so many best kits for the chemist to test. And what I did is I had to get out this particular one for her to sign it over for her to complete.
Q Is the drug lab temp box a secure place?

A Yes, it is.
Q And when you received it from there, who had put it in there?
A Beth Harmon.
Q And had it been tampered with?
A No, sir.
Q How do you know?
A The seal was still intact.
Q Once you received those items, what did you do with them?
A I went ahead and signed it out and gave it to the chemist, Emily, to test.
Q Did you hand it to her physically, or does she have a locker to put it in as well?
A I handed it to her physically.
Q No further questions.

THE COURT: Any questions?

MR. WILLIAMS: No questions, Your Honor.

THE COURT: Thank you, ma'am. You can step down.

MR. MOSES: The State calls Emily Homer.

(The witness was sworn.)

CLERK OF COURT: Have a seat, please,

ma'am. State your full name on the record, and spell your last.

MS. HOMER: My name is Emily Diane Homer -- H-O-M-E-R.

EMILY DIANE HOMER, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MOSES:

Q How are you doing, Ms. Homer?

A Good. How are you?

Q Will you please tell the Court and the jury where you're employed?

A I'm employed at Lexington County Sheriff's Department.

Q And what do you do there?

A I'm a chemist for the drug lab.

Q As a chemist, what do you do?

A I analyze unknown samples for or evidence for controlled substances.

Q How long have you done that?

A Since November of last year.

Q Can you please tell -- what's your education?

A I have a Bachelor's of Science from University of South Carolina in 2000, and I went to

graduate school at University of South Carolina in organic chemistry. I have a master's in organic chemistry.

And following that, I was employed by Charleston City Police Department as an officer. And I was then employed by Lexington County Sheriff's Department where I went to -- for the first six months, I went to SLED, and I'm a certified chemical analyst.

Q What types of training have you had as it relates to chemical analysis?

A With the training at SLED, I'm trained to be a forensic chemical analyst.

Q Will you pull the microphone to you a little bit?

A I was trained at SLED as a chemical analyst. I'm a certified chemical analyst through the South Carolina Law Enforcement Division. I am also a HAZMAT technician, and I was certified through the Charleston City Police Department.

Q What all types of classes and training do you have at SLED to become certified?

A We had actual written tests on different classes of controlled substances, a series of written tests. And also I had a proficiency test.

It was the end of my training.

Q And what were the results of those tests?

A The proficiency was a hundred -- I had to identify a controlled substance, a hundred percent match. The written tests, there was a series of them. You had to score greater than an 85.

Q Would you tell the Court how many times you've tested drugs during your tenure as an analyst?

A During my tenure, I have tested 340 cases.

MR. MOSES: I'd like to have the witness qualified in the field of forensic chemistry as a drug analyst and in drug identification as an expert, Your Honor.

THE COURT: Any objection?

MR. WILLIAMS: Just a couple of follow-up questions, Your Honor, if I could.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Ma'am, I understand that -- in looking at your resume, I guess, that you did your training in forensic chemistry in the year 2006, is that correct?

A The training at SLED?

Q Right.
A Yes.
Q So you did it this year -- your training at SLED was this year?
A I started the training there in January of 2006.
Q When did you complete your training at SLED?
A About April of 2006.
Q So basically you've been certified under SLED since -- four months, three months?
A Since April, about six months or so.
Q That's all the questions I have.
THE COURT: Okay. Any objection to her being qualified as an expert in chemical analysis?
MR. WILLIAMS: No, Your Honor.
THE COURT: Okay. I find that she is an expert in the field of chemical analysis.
MR. MOSES: May I approach the witness, Your Honor?
THE COURT: Yes, sir.

DIRECT EXAMINATION CONTINUED

BY MR. MOSES:
Q I'm going to hand you all of these items

which are marked as State's Exhibit Twenty-One, A through D. Can you look at those, please, and can you identify those, what those items are?

A Well, first, 21B is my evidence one from case number one -- Lab Case #191; 21C is again Lab Case #191, this is evidence number three; 21D is Lab Case #191, evidence four; and 21A is Lab Case #191, evidence two.

Q Okay. Where -- did you receive that evidence to test for drugs?

A Yes, in this best kit.

Q Who did you receive that from?

A From Candy Kyzer -- from Candy Kyzer.

Q Whenever you receive the drugs, what do you do with them?

A Well, when I first receive the drugs, whether or not
-- if I have time to test them that day, I'll then take the drugs over to the forensic lab, our drug lab, and then begin analysis. If I --

Q Do you remember what date you received them on?

A July 17th.

Q Did you test them on that day?

A Yes, I did.

Q Did you perform a report as a result of your analysis?

A Yes.

Q May I please see that report? This is what's been marked as State's Exhibit Twenty-Four. Will you please tell the Court what the results of your findings were?

MR. WILLIAMS: Your Honor, I'm going to object to the publication of the results at this point in time. The chain involving the evidence has not been established.

There were at least two other witnesses who testified prior to the chemist testifying. And in their testimony, at no point in time did they reveal during what time period they interacted with the evidence. There was no testimony about when they received it or when they delivered it to the next person.

So, Your Honor, we would contest that the chain of custody hasn't been established sufficiently to allow the evidence into evidence yet. And, obviously, publicizing the results would be improper if they can't introduce the evidence in at this point, Your Honor.

MR. MOSES: Your Honor, I'd like to

move the evidence into evidence at this point, item number -- State's Exhibit Number Twenty-One. I'd like to move those in first.

MR. WILLIAMS: And that would be the same objection, Your Honor, in that they failed to establish the chain by failing of the two witnesses to testify when they had contact with the evidence and received the evidence.

THE COURT: Okay.

MR. MOSES: Your Honor, that may be a matter of law we need to take up outside of the jury.

THE COURT: All right, ladies and gentlemen, I'm going to ask you to return to your jury room at this time. I will get you back out as soon as we resolve this issue. Thank you. Please do not discuss this case.

(The jury left the courtroom at 10:29 a.m., after which the following proceedings were had;))

THE COURT: All right, sir.

MR. MOSES: Your Honor, as it relates to the drugs, every person who has been named in the chain, they said they were originally received on December 22nd. And now every person in the chain

has testified, until they got to Ms. Homer. I think as a result thereof we've completed the chain to Ms. Homer. She analyzed the drugs, and it's time to publish her results, as well as enter the drugs into evidence.

MR. WILLIAMS: Your Honor, that's just not true. Beth Harmon and Candy Kyzer -- and I was listening carefully to both witnesses -- I didn't ask any questions on that, Your Honor, which I would normally do.

But the reason for it is because they never testified when they had the drugs -- never. I'm sure the Court Reporter would have it transcribed if they had testified when they had the drugs. There was never testimony about any dates whatsoever.

THE COURT: Are there -- and I haven't seen the drugs. Are there any markings or anything on the drugs with their initials or dates or anything on it?

MS. HOMER: My initials and date, sir.

THE COURT: I understand yours are. But are there anybody else's?

MR. MOSES: No, sir, not on the actual drugs. I think they actually used cards in the

evidence. As it relates to the chain, Your Honor, I don't have to prove dates or anything. I just have to prove that -- I proved that Mr. Bailey put everything in the -- or actually put everything in the best evidence bag.

The best evidence bag, he sealed it. It was intact. Every person in the chain said the drugs were intact when they received it. She received it, and the best evidence kit was intact when she received. She tested it. I think the drugs come in as a result of that.

I don't have to prove anything as it relates to dates or anything like that. If Mr. -- you know, if he wants to argue that to the jury in closing, that's fine. But, I mean, it's just the weight of the evidence. But, I mean, it doesn't keep the drugs from coming in.

That's just something for him to say to the jury, "Oh, well, they didn't say anything about dates." If he wants to do that, that's fine. That's his choice.

MR. WILLIAMS: Your Honor, it's not my job to prove chain. And he has to indicate that the evidence is reliable, that there has been absolutely no chance of any tampering with the evidence in any

way whatsoever.

And without establishing when these people had contact with it, there's -- you can't prove, because -- well, you just can't prove when they had contact. You can't prove how it relates to the chain, because there's no dates.

MR. MOSES: Your Honor, he just said -- he said you just have to prove that no one has messed it. We proved that. Whenever it was put in the best kit, it was intact, and whenever she received it, it was intact in the best kit.

She's the one that opened the best kit. And everybody testified it hadn't been tampered with. Dates have nothing to do with it. If he wants to argue that to the jury -- I mean, but the drugs should come in.

THE COURT: Mr. Williams, in going back through the chain, based on my notes, there's at least -- Ms. Harmon got them from Ms. Kyzer, Ms. Kyzer got them from Beth Harmon, which went back to Chris Stout, which ultimately went back to Bailey. Are you objecting as far as the actual completion of the chain, other than the dates?

MR. WILLIAMS: Well, at that point in time, I was only objecting to the dates. But, Your

Honor, I guess I didn't understand that Harmon got them from Chris Stout. I had down here that she got them from Chris Bailey.

THE COURT: That's right.

MR. WILLIAMS: Okay.

THE COURT: She got them from Chris Bailey. Chris Bailey got them from --

MR. MOSES: Stout.

THE COURT: -- Stout.

MR. WILLIAMS: Yes, sir. My objection has to do with the dates, when she received it and for what period of time she had them.

THE COURT: Based on my recollection of the testimony in this case and my notes, I think that they have established the chain in that they have presented it from the location there on the screen through each officer who has touched it, and that each one has testified that when they got that they did not tamper with it or change it in any way, and the fact when they got it that the best kits had been sealed and properly sealed until the chemist analyzed them.

I don't think the dates are important. The situation is whether they in fact were intact and not tampered with. And I think the

State has completed their chain, and I think they're admissible.

MR. WILLIAMS: Thank you, Your Honor.

MR. MOSES: Thank you, Your Honor.

THE COURT: Anything else before we bring the jury in?

MR. MOSES: Nothing, Your Honor.

THE COURT: Now, your -- let me -- your objection to the report coming in was through the chain, right?

MR. WILLIAMS: Yes, sir.

THE COURT: So if the chain is good, you don't have an objection at this point?

MR. WILLIAMS: No, sir. If the chain is good, then she can testify on it.

THE COURT: Okay.

All right, bring us the jury, please, sir.

(The jury returned to the courtroom at 10:39 AM, after which the following proceedings were had:)

THE COURT: You can be seated. Thank you, ladies and gentlemen.

Mr. Collins, we'll proceed with the testimony.

DIRECT EXAMINATION CONTINUED

BY MR. MOSES:

Q Ms. Homer, did you produce a report of the drugs you analyzed?

A Yes, I did.

Q Can you please share that with the Court and relate it to each individual baggie, if you would. Each individual baggie, if you'd pull it up and say, "This is what my findings were on this."

THE COURT: Has it been marked as an exhibit?

MR. MOSES: Yes, sir.

THE COURT: Then it needs to be moved into evidence.

MR. MOSES: Yes, sir. And I would like to move that into evidence as well, the analyst's report. I think it's number --

COURT REPORTER: Twenty-Four.

MR. MOSES: -- item number Twenty-Four as well as Twenty-One -- item Twenty-One, which is all of the drugs, move those into evidence as well.

THE COURT: They're entered into evidence, subject to defense's objection.

(State's Exhibit Number Twenty-One [A, B, C, and D], Drugs, was entered into evidence.)

(State's Exhibit Number Twenty-Four, Report from SLED Lab, was entered into evidence.)

THE COURT: All right. Thank you, sir.

A The first thing is item one. I wrote that on the bag, and this is 21B, was a tied plastic bag containing what I describe as a viscous substance. This is really just a very thick, damp material. And I found it was methamphetamine, five-hundredths of a gram, .05 grams.

Item two, which is labeled 21A, was a tied plastic bag containing powder substance. And I didn't find any controlled substance in item two. Item three was in a Zip-loc bag containing another Zip-loc bag containing a powdered substance.

Q What number is that marked for the Court's information?

A Twenty-One C.

Q And what does that contain?

A This was pseudoephedrine, 94.5 grams. And item four was a Zip-loc bag containing powder

substance, and it's labeled 21D, and it's pseudoephedrine, 193.3 grams.

Q Can you show the Court how you tested each of those items?

A Well, there's two different types of tests that I do. The first is a presumptive test, which will give an idea of the type of class of controlled substance that I have of this unknown substance.

The second type of test that I do is a confirmatory test where I place it on an instrument that will give -- will narrow the result down to a specific drug and gives a definite confirmation. The presumptive test -- should I --

Q Go ahead.

A So for item one --

Q What's the presumptive test called? Just go into that.

A A presumptive test is like a color test where I use different chemical reagents, and I watch the color change that occurs. And it will identify -- it will give me an idea of the type of class of drug that I have.

Q And then what type of confirmatory tests do you perform?

A There are two types of confirmatory tests.

You can either use the FTIR, which is an infrared spectrometer, or the GCMS, which is the gas chromatograph mass spectrometer. And should I --

Q What do those do? Just tell us generally what those do.

A Generally, the infrared spectrometer will shoot a specific radiation -- infrared radiation -- through a solid sample and out to a source. And it will show me the -- I'll get the spectrum from my unknown sample, and then I'll match it to a library of spectrums of other controlled substances.

Q That's all the questions I have.

THE COURT: Mr. Williams?

MR. WILLIAMS: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q As I understand it, you tested four substances by two methods: one by color, and the other was by comparison to other colors that appear to be the same color to determine what kind of group it would fit within. Is that what you said?

A Not exactly.

Q All right. Well, would you explain it to

me exactly.

A There is two types of tests --

Q Okay.

A -- the presumptive and the confirmatory.

Q All right.

A And when I describe the presumptive test, I use different chemical reagents, and I watch the color change. And based on known color changes that control substances have or the colors that I've seen in other known controlled substances, that will give me an idea of the type of controlled substance that I have. But I don't base my results just on presumptive tests.

Q Because you're just looking for color then?

A Uh-huh.

Q And then what you do is you use some sort of infrared equipment to go through the substance, is that right?

A Then the confirmatory test, one of the confirmatory tests that I could use is an infrared spectrometer.

Q I just want to know what you used on these items.

A There were two confirmatory tests.

Q All right.

A So -- and also it's based on the state that my unknown is in. If it's like a liquid state, because my infrared spectrometer -- it's a very expensive instrument, and if it's in sometimes a liquid state, it can damage the instrument. So I have to use either -- then if I can't use the infrared spectrometer, I use the GCMS, which is the gas chromatograph mass spectrometer.

Q What did you do on these items?

A For item one, because it was a wet type sample, I used the gas chromatograph mass spectrometer, along with my presumptive test.

Q So you used different testing items on the four different types of items that you tested. You used a gas on the first item, and on the other three items, you used the infrared, is that what you're telling me?

A No. The second one, I also used an FTIR for my confirmatory analysis. The presumptive analysis, I used the same type of chemicals for all four. When I moved it to the confirmatory analysis, like for the second sample or the second unknown -- the ID on this was 21A -- I used the FTIR and the gas chromatograph. And --

Q That was the second one, right -- 21A was the second one?

A Uh-huh. And the third, I used the FTIR. And the fourth, I used the FTIR.

Q Now, just so I guess I can understand it better, when you use this, some sort of gas goes around the liquid or goes through the liquid. Is that how it works?

A So you want me to describe --

Q Please.

A -- the GCMS?

Q Please.

A The gas chromato -- GCMS stands for gas chromatograph mass spectrometer, GCMS. And, first, a sample is dissolved in a relevant solvent. Then my gas chromatograph will take a sample of it, volatilize it, and shoot it onto a very long column.

And based on how long that unknown substance sticks to that column will tell me -- it will compare it to known samples, and that will also give me my second idea of the type of class of substance that I'm working with.

The definite -- now, what it also does is it then shoots it onto a mass spectrometer. And what this does is it gives the unknown sample

kind of a fingerprint that is specific for a controlled drug. Only one type of controlled drug can have this fingerprint pattern. And --

Q And as I understand it, you didn't find any controlled substances in either one of the large bags, is that correct?

A Well, pseudoephedrine is not a controlled substance, but it's over-the-counter.

Q Right.

A So --

Q So you didn't have a controlled substance that you found in those two big bags.

A No, but the IR did match it up with pseudoephedrine --

Q All right.

A -- on its library.

Q And then in the one which is 21A or 21B -- one of the little packages?

A Which one?

Q I don't -- the one that tested out that you didn't get a test for, it didn't come up with anything.

A That was 21A.

Q Twenty-One A?

A Uh-huh.

Q How do you explain that your test came back with nothing? It has to be -- we see it's something, and you have no controlled substance, you have no identification that it's pseudoephedrine. What is it?

A Well, even if -- there are thousands of chemicals present in the world. In my lab, I only carry known libraries for some of the either controlled substances or precursors, such as ephedrine, pseudoephedrine. Because I wasn't able to -- I did come up with a result, but I wasn't pleased with the match. So I don't report out any controlled substance.

Q Or non-controlled substance.

A I mean, I didn't get a good enough match.

Q And when you say "good enough match," what you're saying is that when you looked at it, the colors that you looked at didn't match up with what other colors known to mankind as being a substance, is that correct?

A Well, I didn't take the test any further. I was just testing for -- I don't test for a wide range of things. But for these tests that I did, I didn't find any methamphetamine, or ephedrine, or pseudoephedrine present in just item two, which is

in just 21A.

Q So would it be safe to say that when you were testing these items, you were actually looking for a particular drug? You approached it from that way of thinking, that "I'm going to find drugs in these particular items, because I'm going to focus on these drugs versus" -- I don't know -- sugar, flour?

A Well, if you think about -- in any type drug experiment that you do, I don't necessarily just -- see, you're asking --

Q You were only testing for pseudoephedrine or for methamphetamine, right -- that's all you were testing for?

A Well, that's the only -- for the presumptive test, those are the only chemical reagents that I used. I didn't -- the reagents that I use, they also test for possible cocaines, possible other controlled substances. But because I didn't get a color reaction to match any other controlled substance, when I took it to the confirmatory test, it also matched with my presumptive test results.

Q You don't have any idea where these items came from. You basically just found them at the

Sheriff's Department, and you tested the items. You didn't seize them off anybody. You weren't in charge of keeping up with them. You don't know where they were bought or anything other than what you just did with the lab, is that correct?

A Yes, sir.

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

THE COURT: Any further questions?

MR. MOSES: A couple more, Your Honor.

REDIRECT EXAMINATION

BY MR. MOSES:

Q When you get an item in -- just to clear up -- you do a presumptive test which narrows it down out of thousands of items that it potentially could be. It kind of narrows it down for you --

A Yes.

Q -- and you do the confirmatory test --

A Yes.

Q -- which is what you did on these four items. But the items that did come out as 21B, 21D, and 21C, are you within a reasonable chemistry certainty that that was what those items were, that 21B came back as methamphetamine, 21C came back as

pseudoephedrine, and 21D came back as pseudoephedrine --

A Yes.

Q -- is that correct?

A I'm a hundred percent that 21B, which was item one, was methamphetamine; 21C, which was item three, is pseudoephedrine; and 21D, which is item four, is also pseudoephedrine.

Q Thank you.

RECROSS EXAMINATION

BY MR. WILLIAMS:

Q The Solicitor asked you about the 21B, which you said the methamphetamine was?

A Yes, sir.

Q How much is five one-hundredths of a gram?

MR. MOSES: Your Honor, this is outside the realm of her qualifications as an expert.

MR. WILLIAMS: I certainly hope not.

THE COURT: Overruled.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: She can answer the question if she can.

Q How much is five one-hundredths of a gram?

A When you ask how much, what do you mean?

Q How big is it?

A How big is it? If you take a gram and you divide into a hundred parts, five of those parts.

Q How big is a gram of methamphetamine?

A One gram is 15.43 grains.

Q In comparison to salt -- a grain of salt -- how big would it be?

A Well, if you want to talk about salt, what type of salt? Because you know salts can be all different sizes.

Q Okay. Can you help the jury and me out with how big it's going to look? Because all that white stuff is not methamphetamine, is it, in 21B?

A Twenty-One B is here.

Q Right. That's not all methamphetamine, is it?

A Some of it is.

Q Five one-hundredths of a gram -- should be, right?

A Well, there is also another bag in here that it came packaged in, in wax paper.

Q So how much of that little package that's methamphetamine, and what is the other stuff?

A Well, we don't -- I don't do quantitative analysis. So I don't know what the other stuff is.

But the majority of it was methamphetamine, so much so that I got a very high lighter match for methamphetamine for this substance.

Q How much is the sample you actually test? How much size-wise do you actually test?

A Usually, one-hundredths of a gram are required to test.

Q One-hundredths of a gram is what you tested?

A Uh-huh.

Q So are you saying that out of one one-hundredths of a gram, you tested five one-hundredths of methamphetamine?

A I couldn't have possibly tested five one-hundredths because it's here today. I don't need five-hundredths.

Q Right, right.

A I tested one-hundredths of a gram.

Q All right. And how much of that tested out to be methamphetamine of the five-hundredths? Are you saying that it's all consistent, I guess is the question?

A Yes, and it was from the same consistent sample.

Q But some of the items in there is not

methamphetamine?

A I have no idea.

Q Because we didn't test that?

A I did test this sample.

Q Not the whole sample.

A I don't have to test the whole sample, because it was consistent. It was a consistent mixture. It was homogeneous.

Q Would one grain be approximately a speck of salt, in common table salt?

A I can't answer. I don't know.

Q I don't have any other questions.

THE COURT: Anything further?

MR. MOSES: Nothing, Your Honor.

THE COURT: Thank you, ma'am. You can step down.

MR. MOSES: The State would recall Thomas Hamilton.

THE COURT: How long do you think his testimony is going to be?

MR. MOSES: This might be a good time for a break, Your Honor.

THE COURT: All right. It's time for our midmorning break, and we'll take 15 minutes, ladies and gentlemen, before we proceed with this

case. If you will return to your jury room, and please do not discuss this case.

THE COURT: The Court will be in recess for 15 minutes.

MR. MOSES: Thank you.

(The jury left the courtroom at 10:55 a.m., recess taken.)

THE COURT: How long do you anticipate this next witness will be? I'm trying to figure out about lunch.

MR. MOSES: The rest of the morning -- whenever you want to break for lunch. We might be able to finish him up by lunch, but I'm sure Mr. Williams might have a few questions for him.

THE COURT: Okay.

(The jury returned to the courtroom at 11:12 a.m., after which the following proceedings were had;))

THE COURT: You can call your next witness.

MR. MOSES: Thank you, Your Honor. The State will recall Thomas Hamilton.

CLERK OF COURT: He's still under oath, Your Honor.

DIRECT EXAMINATION

BY MR. MOSES:

Q Agent Hamilton --

A Yes, sir.

Q -- how long have you worked in the Narcotics Division?

A I was in Narcotics for approximately eight years, sir.

Q Do you have any special training in the field of narcotics?

A Yes, sir.

Q What is it?

A I've been trained in many types of fields, to include the clandestine production of drugs, meth, GHB, and PCP.

Q Pull that mic down just a little bit.

COURT REPORTER: Closer to you, please.

Q I'm sorry, could you say again what your training consists of?

A I've been trained in clandestine labs, to include the clandestine production of methamphetamine, GHB, or gamma hydroxy butyrate, and PCP.

Q About how many hours of training have you had in all these fields?

A In the narcotics field, I have had hundreds of hours of training. In the clandestine production of drugs, I have also had hundreds of hours, both local, in Quantico, Virginia, and out in California.

Q These training classes, what do they consist of? What are they like?

A Some of them have been as far as getting into the suits, dealing with the chemicals, the hazards, the dismantling, the sampling, processing of labs. Some of them have been in reference to the effects of the drugs on people. Some of them have been the effects of the different chemicals on the body.

Q Have you ever had the occasion to teach courses in the identification, detection, manufacturing, disposing, or anything such with narcotics?

A Yes, sir. I have taught numerous classes, to include technician-level classes reference to the clandestine production of methamphetamine.

Q What types of narcotics training have you specialized in?

A I have specialized in my time with the production of methamphetamine.

Q Do you have any special certifications that you've been awarded through your training?

A Yes, sir. I have been certified by the DEA in clandestine labs.

Q Have you ever participated in the investigation of illegal narcotic activity?

A Yes, sir.

Q About how many times?

A In illegal narcotics, hundreds and hundreds. I have worked on over a hundred meth labs in the last eight years.

Q Have you ever made arrests of persons engaged in illegal narcotic activity?

A Yes, sir.

Q About how many times?

A Well into the three hundreds.

Q Have you had the occasion to speak with individuals engaged in illegal narcotic activity?

A Yes, sir. I have interviewed numerous subjects reference to use of drugs or manufacture of drugs.

Q Have you ever been called upon by other members of law enforcement to examine and render an opinion as to whether a certain article was or was not in fact an illegal narcotic or a meth lab in

production?

A Yes, sir. I have been called numerous times.

Q Have you ever seized illegal narcotics?

A Yes, sir.

Q Have you ever broken down meth labs?

A Yes, sir.

Q About how many times?

A Well over a hundred.

MR. MOSES: Your Honor, at this time I'd like to move that Agent Hamilton be qualified as an expert in the detection of meth, an expert in the production of meth, an expert in dismantling a meth lab, an expert in the handling of hazardous by-products of meth labs, and an expert in the effects of hazardous chemicals on the body.

THE COURT: And what says the defense?

MR. WILLIAMS: Your Honor, I don't know that there's sufficient foundation for any testimony about the hazardous effects. He hasn't testified in regards to any training he's had from medical school or from any advanced degrees that would qualify either as a medical doctor or as a druggist.

We have no objection if the Solicitor wants to use him as the person who's going to testify that whatever items they found appear to be a meth lab. But we just don't think he's qualified to talk about effects on the body and things of that nature.

THE COURT: All right, Mr. Solicitor, are you going to have a response to that?

MR. MOSES: Yes, sir. I'd like to continue with a few questions. It might clarify a few things.

THE COURT: Okay.

DIRECT EXAMINATION CONTINUED

BY MR. MOSES:

Q Agent Hamilton, have you ever had any training in the effects of hazardous chemicals on the body?

A Yes, I'm an emergency medical technician. Also, I have been through specialized training in Long Beach, California, in reference to what chemicals that are normally found in meth labs do in the body and have viewed numerous studies, most of them from the National Jewish Center out of Denver, Colorado, in reference to the effects of different chemicals found in the production of meth.

Q And you're a certified emergency what?

A Medical technician, sir. I have a license from DHEC, as well as a National Registry license.

MR. MOSES: Your Honor, at this time we'd like to move that Agent Hamilton also be qualified as an expert in the effects of hazardous chemicals on the body.

MR. WILLIAMS: The objection is the same, Your Honor. Can I ask him just a couple of questions?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q When did you finish high school?

A I finished high school in 1988.

Q And when did you finish college?

A '94.

Q And what graduate schools have you been to?

A I have been to no graduate school after bachelor program.

Q And you haven't been to any medical school or any school dealing with pharmacology, is that correct?

A No, sir. I am not a registered doctor or

a registered pharmacist.

MR. WILLIAMS: Same objection, Your Honor.

THE COURT: I will qualify him as an expert in the other fields. But as far as the effects of hazardous chemicals on the body, I just think that's too broad. And I understand he is an EMT, but it's a far less extensive medical background. And I don't know how relevant that is to this case anyway.

I mean, I think as an expert in these other fields he can certainly talk about the hazards of these chemicals. But as far as the effects of chemicals in a broad way on the human body, I don't know that he's qualified to testify to that other than giving general opinions that any lay person would know.

MR. MOSES: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. MOSES:

Q Agent Hamilton, on December 22, 2005, did you have the occasion to visit this residence?

A Yes, sir. I was called to this residence.

Q Would you call this a residence or an abandoned building?

MR. WILLIAMS: Objection, Your Honor, leading, suggesting an answer.

THE COURT: Sustained.

Q How would you refer to this place that you visited?

A It appeared from the exterior and interior to be an abandoned residence that at some point in time somebody had lived there, but it did not appear to be occupied in a habitable manner at the time.

Q How were you called out there, and why?

A Agent Chris Stout called me in reference to questions he had for a scene. He was uncomfortable with a scene.

Q Do you work with Agent Chris Stout?

A I do not at a normal basis. When I was in Narcotics, I worked with him at a daily basis. But now, since I have been promoted to the Joint Emergency Team, I was not on a daily working basis with him.

Q Do you know if Chris Stout was trained in detecting meth labs, a certified meth tech?

A Yes, sir. He did his apprenticeship, his training time, with me after graduating from NES school of meth labs.

Q Would that make you his mentor?

A I would guess so, sir.

Q When you got there, what did you observe?

A I observed these two buildings. There was a strong smell, chemical in nature, that from my experience is from ethyl ether, ethyl ether being, as I testified earlier, the main component of starter fluid. I also noticed a trace smell of ammonia.

Q What precautions do you take when you come to an unknown place and you smell these things?

A First, we -- as with any HAZMAT scene, we do a scene size-up, look outside, see what we have. Our SOPs, our policies, what we normally do from the fire services side, is we bring in a fire truck.

We put two people in protective suits who are going to make entry. We put two people in protective suits who are standing outside. They are a backup team in case the two inside fall down, pass out. They are designed to go in and save them. They are a red team, what we refer to them as.

In this case, with the amount of smell of ether, I also had a third team that was in full protective firefighting gear and SCBAs, which an SCBA is a self-contained breathing apparatus, much like a scuba tank. But it comes with a full

face piece. It doesn't have just a regulator.

It's air that you take with you wherever you go. You know where that air got bought. You don't breathe the air that's outside. I had a third team that was there in case of a flash fire. They had a charged hose line, full protective fire gear. The chemical suits do not protect you in any way from a fire. They actually become Saran Wrap on your skin.

Q The smells that you smelled out there, what did they indicate to you?

A They indicated from my experience that there was the production of methamphetamine in process.

Q And why is that?

A As I stated, I've worked on over a hundred meth labs. When you have a strong, noticeable odor of ether and ammonia, the ammonia you use in your house. You're not going to be able smell from outside your house.

If you can smell the ammonia from outside of a residence, it would have to be anhydrous, which is a hundred percent ammonia versus five percent ammonia that's underneath your sink.

Q You're talking about common household

ammonia that you would clean the floor with?

A Yes, sir.

Q How much percent of ammonia is that?

A That's roughly five percent.

Q And the ammonia that you smell on the outside of houses, what are you --

A Anhydrous ammonia is a hundred percent or nearly a hundred percent pure ammonia.

Q We're talking about 95 percent stronger than regular household ammonia?

A Yes, sir.

Q Why is it important to have someone with specialized training to investigate methamphetamine?

A Well, first off, you cannot wear protective gear unless you have been certified, according to OSHA rules. And this is an OSHA state. We have to follow under the Occupational Health standards.

The requirement for entering into a hazardous area is to wear the protective gear, and you have to be certified first. The specialists in methamphetamine are more familiar with the hazards in the chemicals that you're going to find in a meth lab versus a general HAZMAT technician that studies the whole range of different chemicals.

Q What are the dangers?

A There are, number one, inhalation dangers, i.e. breathing stuff in, your vapors. There is a strong danger of flash fires. Mostly, many of the chemicals used in the production of meth are flammable, they burn, ethyl ether being the worst of the chemicals that burn.

Also, you have substances that are either acidic or bases. Both of them, when they contact the skin, will burn through. Basic substances with a pH greater than seven are more of a concern because the body cannot defend against them, and they will burn through. Ammonia is a very strong basic substance.

Q When you arrived on the scene, you stated a minute ago you immediately smelled ether and ammonia?

A Yes, that's correct, sir.

Q Was that a strong smell?

A Yes, sir, especially the --

Q Point up there with the laser about where you were standing when you first detected that smell.

A Actually, I detected it farther back than this picture shows, down the driveway.

Q Further back than this picture shows?

A Yes, sir.

Q Did the strength of that smell get stronger as you approached that open building?

A Yes, sir, it did.

Q In your expert opinion, if somebody were inside of that building, is there any mistake that they could have made on detecting the odor of ether or ammonia?

A No, sir.

Q If somebody were upstairs in that building, is there any mistake that they could smell the odor of ether or ammonia?

A No, sir. It would be an impossibility, sir.

Q How strong of a smell was it up there when you got up there?

A I was in protective gear carrying my own air, sir. I can't tell you how bad it was. But from outside, it was bad enough that we staged prior to setting up at the back of the pickup truck and approached no closer without protective gear, sir.

Q Explain to this jury the process you began when you entered the building. Let's back up. Explain to the jury the process you began upon

arriving on the scene. Did you have to suit up?

A Yes, sir. The first thing I did was obviously do a site safety, which includes looking for any open flame or anything of that nature from outside. We then designated our teams.

We raised this ladder right here. This ladder was placed there as a second means of escape. If we couldn't get back down through the inside and something went bad upstairs, we placed a ladder there so we could escape. We suited up, as I said, three teams of two, and then prepared for entry and also used what is a positive pressure fan.

It's a large fan, gas-powered, that moves air in case there was a release. There are some houses in this area. We didn't want any vapors going towards those houses, so we essentially made our own wind to keep anything from going towards them.

Q At that point, what did you do?

A Myself and Agent Bass, who was the one who entered with me -- Agent Bass had just come back from certification and was doing his training hours also -- so I designated him as my second person so that he could see and observe as I pulled things out, took him inside.

There was a small ladder that was on-site. The non-complete stairs did not appear safe, and we did not use those as our initial wave going up. There was a ladder inside that we used to get up to the second floor.

Q What did you observe on the second floor?

A On the second floor, I observed containers with different substances. I observed, as I testified earlier, starter fluid cans, the green bag.

I observed what appeared to be the production of ammonia, a large metal container with tubing coming out of it going to a second, basically a Mountain Dew bottle, and then tubing coming off that, or actually PVC piping coming off that, going into a plastic bucket that had a white substance giving off vapors that from my experience I know to be dry ice.

Q I'm showing you what's been previously marked for identification State's Exhibits Four through Twenty. If you'll take a minute to look at those, please. Do you recognize the items in those pictures?

A Yes, sir. These are items that were in the upstairs area of this location that I removed,

sir.

Q And did you take any pictures inside of this dwelling?

A No, sir.

Q Why?

A When you have an atmosphere that possibly has explosive vapors, the ether smell, you do not use cameras inside of there. There are such cameras as considered being intrinsically safe. But when it's my life on the line, we don't use them. Anything that could make a spark or had electricity is not considered safe to take into an atmosphere that could be explosive.

Q So how were those pictures taken?

A After I brought the items outside, they were then photographed in the yard.

Q Do you recognize those items?

A Yes, sir. These are the items I brought down.

Q Do they fairly and accurate show the same items that you brought out of this dwelling and set up in the yard?

A Yes, sir, they do.

MR. MOSES: Your Honor, at this time I'd like to move State's Exhibits Four through

Twenty into evidence.

THE COURT: Any objection?

MR. WILLIAMS: If I could see the exact ones for two seconds.

THE COURT: All right.

MR. WILLIAMS: Your Honor, I have no objection to the introduction of all of four through twenty, with the exception of State's Exhibit Number Four, State's Exhibit Number Twenty, and State's Exhibit Number Seventeen, because they haven't been identified as being the items that were found upstairs.

(State's Exhibits Number Five through Sixteen, Photos, and State's Exhibits Number Eighteen and Nineteen, Photos, were entered into evidence.)

Q I'm showing you what's been marked as State's Exhibit Seventeen, State's Exhibit Four, and State's Exhibit Number Twenty. Do you recognize the items in those pictures?

A Yes, sir.

Q What's in State -- the item in State's Exhibit Number Twenty, where did it come from?

A Number twenty came out of the green bag that has been testified to earlier.

Q Where was the green bag?

A Upstairs in this area, right here.

Q Along the wall or where?

A Actually, as I stated earlier, sir, there is a stud wall --

MR. WILLIAMS: I have no objection, Your Honor, once he's identified it as being in the green bag.

THE COURT: Okay.

MR. WILLIAMS: No objection to that one.

THE COURT: Okay.

MR. MOSES: Your Honor --

THE COURT: So number twenty is in without objection.

MR. MOSES: Yes, sir.

(State's Exhibit Number Twenty, Photo, was entered into evidence.)

Q Which exhibit is that?

A Seventeen, sir.

Q Can you identify what's in that?

A Yes, sir. This is a receipt from Wal-Mart, sir.

Q Where was it found?

A That was located also in the green bag,

sir.

MR. WILLIAMS: No objection.

THE COURT: And what number was that -- four or seventeen?

A Seventeen, sir.

THE COURT: Okay.

(State's Exhibit Number Seventeen, Photo, was entered into evidence.)

Q What exhibit number is that?

A This is Exhibit Number Four, sir.

Q Do you recognize what's in it?

A Yes, sir.

Q What is it?

A There is a coffee grinder.

MR. WILLIAMS: May we approach, Your Honor?

THE COURT: Yes, sir.

Q Agent Hamilton, you're looking at State's Exhibit Four. What's in that picture?

A There is a white cylindrical object that is a coffee grinder that was found in the upstairs, loose.

Q How did it get to where it is in that picture?

A What we do when we bring stuff out of a

meth lab, is we separate them. Chemicals that are similar are nature, flammable liquids are put in one area, acids put in another, bases put in another, with distance between them. Non-chemical items are grouped together. Electronic devices, whether it be cell phones or in this case a pill grinder, are grouped together that are non-chemical in nature.

Q What else is in that picture?

A There are four boxes of decongestant that was located inside of the pickup truck, not inside the house, and a set of scales that was also located in the pickup truck, not inside the house.

Q Are those the same objects as State's Exhibit Twenty-Three and State's Exhibit Twenty-Two?

A Yes, sir. Those are the same objects that are in this picture.

MR. MOSES: Your Honor, we'd like to move that State's Exhibit Four be entered into evidence.

MR. WILLIAMS: Now we have no objection, Your Honor.

THE COURT: Okay.

(State's Exhibit Number Four, Photo, was entered into evidence.)

THE COURT: So State's Exhibits Four

through Twenty are into evidence now without objection, is that correct?

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

MR. MOSES: Your Honor, if you'll indulge me for one second, I'm going to get these pictures back in order.

THE COURT: Okay.

Q I'm showing you what's been marked State's Exhibit Four. What is that in that picture?

A Once again, that is the white cylindrical object. It is a grinder. The bright item is a set of scales, and the four boxes are decongestant/cold meds.

Q In your expertise, what is that grinder used for when it's found in connection with a meth lab?

A It is used to grind up the pills into a powder so that it will readily -- so the powder can be readily converted from pseudoephedrine hydrochloride into methamphetamine.

Q What kind of pills are being put into this grinder?

A Cold medicine pills, sir.

Q I'm showing you what is State's Exhibit

Twenty-Two. These type of pills?

A That is correct, sir.

Q The type of pills in that picture?

A Same pills, sir.

Q What else is in that picture?

A A set of digital scales, sir.

Q State's Exhibit Twenty-Three, are those the kind of scales that you would weigh yourself on, seeing if you've lost weight on the South Beach diet?

A No, sir. They don't carry those kind of weights.

Q What do you use those for, in your expertise when they're found in connection with a meth lab?

A Drug weight, sir, reference to sales.

Q What does it measure? What are the measurements on it?

A It will do grams and ounces, sir.

Q Where were these found?

A They were found in the truck that was located outside the residence, sir.

Q Who did the truck belong to?

A The defendant, Mr. Ashe, sir.

Q I'm showing you what's State's Exhibit

Five. What's that a picture of?

A That is a bag containing a white crushed-up substance, sir, that was located in the green bag upstairs of the addition.

Q Is that the same substance that you seized?

A Yes, sir, it is.

Q Is that the same substance you gave Chris Stout?

A Yes, sir, it is.

Q I'm showing you what's State's Exhibit Twenty-One C. Is that the same substance in that picture?

A Yes, sir, it is.

Q Do you know what that tested for? Do you know what this is?

A Yes, sir.

Q What is it?

A Pseudoephedrine.

Q Do you know how many grams?

A I do not recall, sir.

MR. MOSES: Your Honor, if I may use a copy of the drug analysis that's already been put into evidence but we can't find it.

MR. WILLIAMS: Your Honor, I would

request that he use the evidence as opposed to something the Solicitor has.

THE COURT: Yes, we've got to find the evidence. Check both counselors' desks. Ms. Homer didn't take it with her, did she?

Madam Court Reporter, did you have it after she left?

Can you find her?

Q I'm showing you what's marked as State's Exhibit Seven. What is that?

A That is a plastic bucket, sir, white in color with a blue handle, sir.

Q Anything in it?

A There is a residue that is off-white to pink in color with pieces of red in it also.

Q I'm showing you what's been marked for ID as State's Twenty-Five. Do you recognize that object?

A Yes, sir. This is the container pictured there that I located upstairs from the location on Daralynn, sir.

Q Is that the same container that's in that picture?

A Yes, sir, it is.

Q Is it in the same condition as it was when

you found it?

A Yes, sir, it is.

MR. MOSES: Your Honor, I'd like to move that State's Twenty-Five be put into evidence.

MR. WILLIAMS: Without objection, Your Honor.

THE COURT: Okay. State's Twenty-Five is in without objection.

(State's Exhibit Number Twenty-Five, Bucket, was entered into evidence.)

Q Where did you find that?

A That was upstairs in the open area between the two rooms, sir.

Q Anything inside of it now?

A Yes, sir, the same residue that is consistent with the bagged substance, pink with red flakes in it, sir.

Q I'm showing you what's been marked as State's evidence Twenty-One D. Is that the bag that was found in that box?

A It was found on the floor, sir, not actually in the box, sir.

Q Was it near the box?

A Yes, sir, it was.

Q Do you recall what this tested for?

A Pseudoephedrine also, sir.

Q I'm showing you State's Eight. What is that a picture of?

A That is a picture of a cardboard box that was located upstairs. Inside of it is trash, to include the casings from lithium batteries. Those battery casings had been cut open and the insides removed. The plastic -- white plastic -- in there is part of the insides that the lithium strips from the battery go between and are wrapped around in the battery casing.

Q What in the world would you need batteries for?

A Lithium batteries are used in conjunction with anhydrous ammonia in the conversion of pseudoephedrine hydrochloride into methamphetamine.

Q And we'll get there in a minute. State's Exhibit Nine -- State's evidence Nine -- what is that?

A The clear liquid of that container, that container was upstairs at this location. The clear liquid was found to be a solvent that is consistent with ethyl ether. The black strips in there are lithium.

Lithium is normally found to be gray

when not exposed to any kind of moisture. Lithium is a Class D metal. In other words, if you put water on it, it catches on fire. Lithium when oxidized turns black in color, like that.

Q And what is it suspended in?

A A substance that is a solvent that had the odor and nature of ethyl ether, starter fluid.

Q I'm showing you State's Exhibit Ten. What is pictured in that?

A There are two bags of ammonium sulfate. There are three containers of sodium hydroxide or Red Devil lye. There is one container of Liquid Fire, Liquid Fire being sulfuric -- concentrated sulfuric acid.

Q Where did these items come from?

A They were all upstairs, sir.

Q Going back to State's Nine, the jar with the lithium strips, where did it come from?

A That was upstairs also, sir.

Q And going back to the lithium batteries involved, the strips, where did they come from?

A They were also upstairs, sir, in the box.

Q Going back to State's Eight, in your experience with the production of meth and dismantling of meth labs, what state or what stage

of the process was this done?

A Lithium is added when you are converting the pseudoephedrine into methamphetamine, sir.

Q Are these discarded, or are they getting ready to be used?

A Those casings are discarded.

Q In your experience, they've already been used?

A The lithium has been removed, sir.

Q And where were they found?

A They were upstairs at this location, sir.

Q Were they out in the open?

A They were inside the structure. They were not hidden, but they were in the box, located along one of the walls, sir.

Q Going back to State's One, if somebody were up there, were they in very close dominion and control or proximity?

A Yes, sir. You could readily observe from standing up there.

Q Going to State's Eleven, if you'll use your pointer -- there are several things in that picture --/can you explain what all that is and where it came from?

A Once again, this was upstairs in the area

behind the two windows. This metal container here is a reaction vessel. Inside of it is a chemical reaction with the ammonium sulfate and the sodium hydroxide.

Basically, coming out of this tubing here is a gas. Ammonium sulfate and sodium hydroxide are reactive chemicals when mixed with a little bit of water. They are non-compatible. They off-gas ammonia, basically pure ammonia -- a little bit of water vapor in there, but not a lot.

This tubing coming off would catch this gas. Into this Mountain Dew bottle, this gas was filtered. That Mountain Dew bottle was in a white bucket of ice water. In that ice water, most of the water vapor that was contained in the ammonia would come out and condense.

Ammonia as a pure substance has a freezing point of -- excuse me, it turns from a gas to a liquid at negative 17 degrees Fahrenheit. So ice water wouldn't condense ammonia. All that was condensing into this was regular water. There is a piece of PVC piping running down into this bucket.

In this PVC piping would be basically pure ammonia gas. In this bucket is the white substance that was smoking, basically, dry ice,

which has a freezing point well below zero and would be able to condense the gaseous ammonia into a liquid.

Q This dry ice, was it melted when you got there?

A No, sir. As you can see the level of it, as dry ice melts, it basically does not go into a liquid state. If you've seen smoke or things in special effects, it goes straight from a solid to a gas.

It does what we call sublimates. It skips the liquid state. So as it gets warm, it immediately gases off and disappears, dissipates into the atmosphere.

Q In looking at this bucket in the picture, how much -- how full was that bucket of dry ice?

A It is nearly all the way full.

Q State's Twelve, what is that?

A That was the bucket that the ice water was in, that the Mountain Dew bottle went into in an attempt to condense water vapor out of the gas.

Q Where is that bucket now?

A That bucket was disposed of with the cleanup crew.

Q Why?

A It was part of the ammonia reaction. There is no way to physically tell what has penetrated that plastic in that reaction, so it could not be considered to be safe to be toted around and left in an open space. So it was disposed of, sir.

Q State's Thirteen, what is that?

A That is where the PVC piping is going into the dry ice and into a vessel that was inside of the dry ice.

Q What's the significance of the cut-up Coca-Cola bottle?

A The Coke bottle appeared to be there just to keep the dry ice off of the PVC piping so that the gas wouldn't condense until it struck the actual vessel that it was supposed to be contained in.

Q Where was that found?

A That was upstairs, sir.

Q State's Fourteen, there are several things in this picture. First of all, who is that?

A That would be me, sir, in modified level B HAZMAT suit, sir.

Q We'll come back to that. Using your pointer, can you explain to the jury what all of that is that you have on?

THE COURT: What exhibit is that?

MR. MOSES: I'm sorry. It should be State's Fifteen -- State's Fifteen.

THE COURT: Okay, thank you.

Q Looking at State's Fifteen, what's pictured in that picture?

A The person in the Sta-Puff marshmallow man suit is myself.

Q All right. Explain that suit. Let's talk about the suit for right now. Why is it important that you wear that thing?

A That is a level B suit. It is designed for protection versus chemicals. As I talked about earlier, it is Tyvek, the same thing you wrap houses in, with a plastic coating over there to make it impermeable. It is designed so that liquids will run off of it, and gases do not readily pass through it. They are rated in break-through times of how long they can stand in an atmosphere absorbing a chemical before they will fail.

Q What's on the back?

A That's is what I've been talking about an SCBA is, a self-contained breathing apparatus. That one right there is rated for one hour of work. You can basically get one hour of air to work in with

that SCBA.

Q What's around your ankles?

A That is chem tape. Basically, it's duct tape plus a chemical protective coating on top of the duct tape. It is designed so that you may close up any openings in your suit to make a level B suit, which is normally a splash suit, into a vapor suit so that gases will not readily pass through the openings.

Q How about around your head? What kind of protective gear do you have around your face and your head?

A The face piece for the SCBA, and then around that is chem tape, with the hood from the suit. So that there is not an opening around the top, sides, or bottom, we place the chem tape on there.

Q Where does your breathing apparatus come into the head gear?

A Right there, sir. It is mask and a breathing device.

Q How about on your hands?

A On my hands, I have -- and you can't see, but we have two layers of gloves. We have an inner glove and an outer glove. The outer glove is

generally a butyl rubber because it affords basically the best protection from most of the chemicals normally found. And around the wrists, once again, we have the chem tape to keep any openings closed to vapor.

Q Why is it so important that you have all this on?

A In dealing with the different chemicals, the different mixtures of chemicals, you have vapors as well as liquids and sometimes solids that are all hazardous to the human body.

Q Is that protocol that requires you to wear this?

A Yes, sir. Once again, this is an OSHA state. And to enter into a hazardous environment, we have to be wearing protective suits, sir.

Q Do they take this kind of thing lightly?

A No, sir.

Q Going back to State's Fourteen, what are you doing in that picture?

A I have broken down the ammonia reaction. This red thing right here was what was inside of the dry ice. It's actually a fire extinguisher, the body from a fire extinguisher. It was condensing the ammonia gas into the metal container of the fire

extinguisher.

Upon removing it from the dry ice, I immediately placed this in this 55-gallon drum. Ammonia is miscible with water, meaning it's mixable. The ammonia underneath your sink that you clean your house with is just regular ammonia mixed with water.

One of our protocols is to make it safe. To convert it from a gas back into a liquid substance that we can deal with, we place it into water. Upon removal -- immediate removal of this container from the dry ice, I immediately placed it into the water upside down and let the ammonia gas bubble into the water.

I also put the tubing and the PVC into the water. What I am doing right here, this reaction vessel still had gas coming off of the reaction. So I am bubbling that reaction gas into the water to where it is contained inside of this 55-gallon drum. It contaminated the water, so the water had to be taken off by the cleanup crew. But it made it so that we didn't have an air release, which is much harder to control.

Q This container here, this 55-gallon drum full of water, did y'all have to carry that off full

of water? You couldn't dump it right there?

A No, sir. Actually, it was placed into a non-reactive medium. Basically, the cleanup crew I believe was using vermictasil (PH), which is a fluffy substance that sucks up liquids. And then they packaged it in their containers, sealed them, and then transported them off, sir.

Q Would you want to drink that water?

A No, sir. That substance had a pH of eleven. Water is normally a seven, or neutral. The strongest basic substance is thirteen. So it's an extremely strong base that would cause great bodily injury.

Q Is that what they call caustic?

A Yes, sir. It is caustic, sir.

Q And you can't see it too good, but we've got another picture. What's in there? What's in that reactive container?

A That is where the ammonium sulfate and sodium hydroxide was mixed, sir.

Q Ammonia and sulfur?

A Ammonia and sulfur, yes, sir.

Q Do ammonium sulfate and -- what was the other one?

A Sodium hydroxide.

Q Sodium hydroxide. Do they just get into a container like that by themselves?

A No, sir.

Q How do they get into that container?

A Somebody has to mix them. They are reactive chemicals and would not be packaged together, because they would cause a reaction in transport.

Q And stored, are they even near each other?

A No, sir.

Q Why is that?

A Once again, they are reactive and do not do well with each other.

Q Here's a little better picture of it. About what size container you can see looking at your legs and compared to that 55-gallon drum -- how much of this hazardous whatever type of chemical that is reactive is the ammonia and the sulfur? Is that what it was?

A Sodium hydroxide.

Q Sodium hydroxide. How much of that vapor and gas was in that container?

A The container was between and a half and a quarter full of the slurry mixture -- slurry being a mixture of two substances with some water.

Q And you found them in the house?
A Yes, sir.
Q What was going on? Was anything going on with them?
A It was reacting at the time. When I was even pulling it apart, it was still reacting and ammonia gas was still coming off of the mixture.
Q And in order for that to happen, would somebody have to be there doing that?
A Somebody would have put the two chemicals together -- would have to hook up the system, put the chemicals together to begin the reaction, yes, sir.
Q Would that produce an odor?
A Yes, sir. As I stated earlier, I could smell the ammonia from down the driveway.
Q State's Sixteen, what's in that picture?
A There are four containers of starter fluid and what I believe -- the black thing I believe was some type of light, a plug-in light, if I recall correctly, sir.
Q And in State's Fifteen, Fourteen, and Sixteen, the other objects that are pictured in those pictures, where are they now?
A All those items were disposed of in that

they are not something that we could keep safely because of their hazardous nature.

Q Is that why you took pictures of them?

A Yes, sir.

Q Did you do anything to these objects in Fourteen, Fifteen, or Sixteen to materially alter them or change them from any from that they were when you found them inside the house?

A No, sir, not until they were rendered safe. Obviously, I broke down the ammonia lab, and made it into pieces, and placed it in water.

Q State's Seventeen, do you recognize that?

A Yes, sir.

Q What is it?

A That is a receipt from Wal-Mart that was located in the green bag found upstairs of this location, sir.

Q What's on it? What was bought, and how was it paid for?

A Two things of cotton balls and six containers of starter fluid, sir.

Q I'm showing you what's been marked for ID as State's Twenty-Six and Twenty-Seven. Do you recognize those?

A Yes, sir.

Q How do you recognize them?
A They were removed from this location. They were upstairs.
Q Are they in the same condition as they were when you found them?
A Yes, sir. They are unopened, sir.
MR. MOSES: Your Honor, at this time I'd like to move State's Twenty-Six and Twenty-Seven into evidence.
MR. WILLIAMS: No objection, Your Honor.
THE COURT: Okay. State's Exhibits Twenty-Six and Twenty-Seven are in without objection.
(State's Exhibit Number Twenty-Six, Cotton Balls, and State's Exhibit Number Twenty-Seven, Cotton Balls, were entered into evidence.)
Q What's on that receipt?
A Cotton balls, sir.
Q What are these?
A Cotton balls, sir.
Q How many are on there?
A Two, sir.
Q How many did you find?

A Two, sir.
Q What would you use cotton balls for?
A In the drug world, people who use intravenous drugs will often -- first, they have to make a solid drug into a liquid. They will then put the needle and suck the liquid up through the cotton balls to strain out anything from the liquid that was solid. They don't want solid pieces being injected into their body.
Q Two cotton balls and six cans of starter fluid, how were they paid for?
A Cash, sir.
Q From where?
A They were paid from cash, sir.
Q From where?
A From Wal-Mart, sir.
Q And on what date?
A These were purchased the morning of the incident, sir.
Q Point with your laser where that date is on that receipt.
A 12/22/05 at 09:55:43.
Q What date did this incident occur?
A December 22, 2005, sir.
Q I'm showing you what's been marked State's

Eighteen. Can you identify the objects in that picture?

A Yes, sir. That is the green bag that I've referred to with the coffee filters.

Q If you'll point with your laser as you go in the bag and point out --

A This is the green bag, sir. This is the coffee filters. This is where the pump was. In this blue Zip-loc, the black case that I testified to earlier is there.

Q What was found in that black case?

A The methamphetamine, sir -- excuse me, the bag with -- the small bag with the substance, sir.

Q I'm showing you what's State's Twenty-One B. Where did you find that?

A Inside this black nylon folded container.

Q Do you recall that this tested for methamphetamine?

A Yes, sir, it did.

Q What else is in that bag?

A There is a converter here. This converts DC in a car battery to AC, which you would normally plug something in from a wall outlet, sir.

Q I'm showing you for State's ID as Twenty-Eight and Twenty-Nine. Do you recognize those?

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable Alexander S. Macaulay, Circuit Court Judge

Case No. 2014-001407

Christopher W. Ashe, ... Petitioner,

vs.

The State ..... Respondent.

APPENDIX VOLUME THREE
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A Yes, sir. These are the same items that are pictured there.

Q How did you come across them?

A They were upstairs --

MR. WILLIAMS: We have no objection to those items --

THE COURT: Okay.

MR. WILLIAMS: -- if he wants to put them in.

Q How did you come across them?

A They were found upstairs at this location, sir.

Q Like you see in the picture?

A Yes, sir.

MR. MOSES: Your Honor, we'd like to move that Twenty-Eight and Twenty-Nine be moved into evidence.

THE COURT: Both are in without objection.

(State's Exhibit Number Twenty-Eight, Coffee Filters, was entered into evidence.)

(State's Exhibit Number Twenty-Nine, Battery Converter, was entered into evidence.)

THE COURT: Which one is Twenty-Eight, and which one is Twenty-Nine?

MR. MOSES: Twenty-Eight is the coffee filters.

THE COURT: Okay.

Q Did it look like somebody was getting ready to drink a cup of coffee using these coffee filters?

A No, sir.

Q What in the world would these be there for?

A We have often found from my experience that they filter their liquids through the coffee filters during production of meth.

Q How does that work? How does that process work?

A After you combine your substances and they react, converting the pseudoephedrine into methamphetamine, you want to get the solids out of that liquid before going to the next step. So they will use coffee filters, in that it's a fairly fine filter and it will take nearly all of the particles out that are not suspended in liquid.

So they will run the ether through that, pulling out all of the solid pieces. They

will generally keep these filters after use in that some meth is inside the filters, and they will eat them, smoke them, use it in other ways to get the meth out.

Q Where did you find this duffel bag?

A Upstairs, sir.

Q State's Nineteen, what are the three bottles on the left?

A Those are Red Devil lye, commercial name. They actually contain sodium hydroxide.

Q What would you use those for?

A Normal people use them to clean drains in their bathrooms.

Q If there was a meth lab in production and you saw these, through your experience, what are they used for?

A To mix with fertilizer to produce ammonia gas, sir.

Q How about the Liquid Fire?

A Liquid Fire is a commercial brand. It contains concentrated sulfuric acid. It is also used as a drain cleaner for non-legal purposes.

Q Through your experience as a meth tech, what is Liquid Fire used for in the production of meth?

A Liquid Fire, sulfuric acid, when you put salt with it, you then produce -- salt and sulfuric acid are reactive substances also, like I talked about, things that don't like each other. They produce hydrochloric -- HCL -- acid. They will react at room temperature.

They will boil, and the hydrochloric acid will come off as a gas. It is used to get the methamphetamine, when it's in the ether, after it's already been filtered, to become non-soluble in the ether, and it will fall to the bottom.

Q And State's Twenty, what is that?

A That is a compressor, sir.

Q What's that used for?

A When they produce the hydrochloric acid, many times they will take a pump to pressure it to get more of the gas to come off of the reaction of the sulfuric acid and the salt.

Q Why would they want more pressure?

A You get more of the gas to come out of the container. Hydrochloric acid gas is heavier than air. So, unless it's under pressure or it's filled up the container over what it can contain, it won't come out readily. As you pressurize it, it comes out more readily out of the container.

Q I'm showing you what's been marked as State's Exhibits Thirty, Thirty-One, and Thirty-Two. Starting with State's Thirty, what is that?

A This is the receipt that was located in the bag, sir.

Q What's Thirty-One?

A Thirty-One is the compressor pictured here.

Q And Thirty-Two?

A Thirty-Two is the coffee grinder that was located inside the upper floor of this structure.

Q Where was the fish pump found?

A In the green bag, sir.

MR. MOSES: *Your Honor*, at this time I'd like to introduce these into evidence.

MR. WILLIAMS: Without objection, Your Honor.

THE COURT: Okay. Exhibits Thirty, Thirty-One, and Thirty-Two are in without objection.

(State's Exhibit Number Thirty, Wal-Mart Receipt, was entered into evidence.)

(State's Exhibit Number Thirty-One, Compressor, was entered into evidence.)

(State's Exhibit Number

Thirty-Two, Coffee Grinder, was entered into evidence.)

Q How far away from the house was that truck parked?

A A matter of feet, sir. I would approximate 25 feet, sir, maybe 30 feet max.

MR. MOSES: Your Honor, if I might ask that the witness to be able to step down at this time.

Q Can you explain to this jury -- in all these pictures we've just gone through, can you put them together for the jury and explain how all these different items that were obtained from this scene are used together in the production of methamphetamine?

THE COURT: Do you want him to come down and do it by photograph or by item?

MR. MOSES: Your Honor, he's got a Power Point presentation using these very photographs that are into evidence.

THE COURT: Any objection?

MR. WILLIAMS: Yes, Your Honor. My objection would be asked and answered. We've watched all this for quite some time. We think that it's fairly clear how it's used in the production of

methamphetamine.

MR. MOSES: Your Honor, we're just identifying these items through these items. There was no explanation on how they work together, and that's what we'll tie together with the Power Point presentation.

It was purposely not asked in the original questioning because the Power Point presentation will tie it all together. We're just identifying the items in those pictures.

MR. WILLIAMS: I thought I heard him explain how it worked in the production.

THE COURT: Sc at this point, is he going to actually talk, or is he going to present a Power Point presentation? Does this Power Point presentation have audio to it, or is it just pictures?

MR. MOSES: It's just pictures. It's these very pictures, and it's got some writing, some explanations out to the side on how this whole process works. And he's going to talk and explain the process.

MR. WILLIAMS: Your Honor, again, it's been asked and answered, and it's not necessary for the jury to have this Power Point presentation.

And we object to the format also, Your Honor. It's not question-and-answer.

MR. MOSES: Your Honor, it is question-and-answer. The question is, can you explain to the jury how all this works together? And we're asking that the witness be able to use a Power Point presentation in his explanation.

THE COURT: Well, I will assume that the Power Point presentation is in fact what you say it is and the things that are in evidence. And I will allow him to do that subject that during the process, if it's outside of that, the defense counsel can object --

MR. MOSES: Yes, sir.

THE COURT: -- if we get outside the rules.

MR. MOSES: That's fine.

MR. WILLIAMS: Your Honor, it's my understanding, then, if there's anything in this Power Point presentation which is not into evidence at this point in time, that I can make an objection at that point in time and perhaps move for a mistrial.

THE COURT: And my understanding is that if you're going to present something in this

Power Point, it's into evidence. And I don't know.

MR. MOSES: Your Honor --

THE COURT: If anything goes in that's not into evidence, you certainly can make the appropriate motions --

MR. WILLIAMS: Thank you, Your Honor. I was just concerned.

THE COURT: -- and I will deal with them.

MR. WILLIAMS: Thank you, Your Honor.

Q At this time, Agent Hamilton, could you please explain to this jury how all these different items are used in conjunction in the production of methamphetamine and what was going on with the stage of the process that you found this methamphetamine lab to be in?

MR. MOSES: May the witness step down, Your Honor?

THE COURT: Yes, sir.

MR. WILLIAMS: Your Honor, I have a matter of law to take up with the Court outside the presence of the jury.

THE COURT: Okay.

Ladies and gentlemen, if you would go to the jury room, and I will bring you back

-- if this takes real long, I'll bring you out and we'll go to lunch. But if not, I'll have you back in a few minutes.

(The jury left the courtroom at 12:28 p.m.)

THE COURT: Mr. Williams?

MR. WILLIAMS: Your Honor, I would at this time move for a mistrial. The very first item which was flashed up on the screen included various drug identifications which were not part of an exhibit which was introduced into evidence. There was items which was not testified to. And if we could look at that --

THE COURT: Okay.

MR. WILLIAMS: -- these items, all of these things right here, these are not evidence items that he has placed into evidence. And we're not in closing argument, Your Honor. If we were in closing argument where there was a question about demonstrative evidence that he could use to argue his case, that might be different.

But what he is doing at this point in time is he is showing what purports to be evidence, because that's the only thing he can do in the trial of the case, except in the argument stage. So these

items right here, Your Honor, are just -- it's not in evidence.

And I can only assume there's only more to come with this, since this is the first. And I guess we can preview the rest of it.

MR. MOSES: Your Honor, if Mr. Williams wants to use Court time to look at the whole slide show, that's fine with us.

MR. WILLIAMS: Your Honor, I think it's a waste of time to even show it. So I don't want to use Court time. I think it's a waste of time to even show it.

THE COURT: Why is all that stuff on the side?

MR. MOSES: Your Honor, it's a computer. That stuff on the side is just the back page of the start of the Power Point presentation. It's not even -- I can't read what it all says. It's not part of the presentation.

And for the three, five seconds, ten seconds that it was flashed up there before we even started talking, I certainly don't think that there was any error incurred by this being flashed.

THE COURT: Okay.

Your objection, Mr. Williams, is not

the objections of class one and two, but it's the stuff that's on the side?

MR. WILLIAMS: Sure. He's publicizing stuff which is not in evidence, and that's --

MR. MOSES: That's the beginning of a Power Point presentation. It's explaining that it's a Power Point presentation. That's the cover page of the presentation. There's nothing harmful about that. He's just wanting to get it thrown out because he objected to begin with, to say that nothing in evidence can go in. Well, that's the cover page of what we're proposing to put in.

MR. WILLIAMS: And it's not in evidence, Your Honor.

THE COURT: Right. And the cover page is not in evidence. You don't have the Power Point presentation in evidence. And what I was told was that the presentation was merely a recap of the stuff that was already into evidence.

MR. MOSES: It's going to use the same exact pictures. I don't know how to use it.

THE COURT: You might better show it, because at

least --

MR. HAMILTON: The first slide, sir,

because -- there was a slide there, sir. But counsel had the photograph cut out of the slide, so we removed it from the show because it did not accurately depict what is in evidence, sir.

THE COURT: The only thing that we've cut out is that. But it's in evidence now. The first picture to come in, he objected because you didn't establish a proper foundation. But later in the trial, the foundation was established, and the photograph came in.

MR. MOSES: Yes, sir.

THE COURT: Okay.

MR. MOSES: But out of the abundance of caution, Your Honor, we took that whole picture out since you had ruled that we needed to cut it out of there.

THE COURT: I understand.

MR. MOSES: So out of the abundance of caution --

THE COURT: Okay.

MR. MOSES: -- we weren't even trying to use that picture.

THE COURT: Well, go --

MR. MOSES: And those things on the left are the slide captions, so there's no harm in that.

MR. WILLIAMS: Your Honor, it's not a question of harm. It's a question of what is proper under the rules. And he's showing things to the jury which is not evidentiary in nature. It's just not covered by the rules.

MR. MOSES: Your Honor, when you asked me what was on the slide show, I said the very pictures we put in evidence and captions and wording explaining them as he talks and explains them as they appear on the Power Point presentation. That's exactly what that is.

THE COURT: Go ahead with the next one. Keep going.

MR. WILLIAMS: Your Honor, you'll note the little notes there, "Do not see anhydrous method." You'd think that this is like Civil Court, where you've got little mushrooms drawn in Civil Court for the Japanese in the Honda case.

It's the same idea, Your Honor. It's the subliminal messages that they're trying to impart that, you know, I guess that my client is a Nazi or something.

MR. MOSES: Your Honor, he's been qualified as the expert, not Mr. Williams. That's what they use, the terminology they use as an

expert. That's exactly what they use. You can ask him. He can testify that that's what the terminology that they use in his capacity as a meth tech.

THE COURT: Okay, go ahead. Let me see the rest of it.

MR. WILLIAMS: Your Honor, that wasn't the way they found the materials.

MR. MOSES: He said --

THE COURT: Right. But I understand that the material -- and you can bring that up on cross-examination as to the way, but you allowed the picture in. And that's -- they went outside and set that up outside --

MR. MOSES: Yes, sir.

THE COURT: -- based on the testimony.

MR. HAMILTON: That's correct.

THE COURT: But that picture is in.

MR. MOSES: Yes, sir.

THE COURT: Okay. Obviously, this is -- there you go -- some type of educational presentation.

MR. MOSES: Your Honor, it is an educational presentation. However, the State feels that it's very necessary in his capacity as an

expert on meth production and meth dismantling that the jury understand the full ins and outs of what he --

THE COURT: I understand that. And he can explain that simply by testifying and showing the pictures. But the actual presentation is not in evidence before this jury. So I don't have -- you know, you didn't put the disk or whatever this presentation is on in and establish a proper foundation.

So I don't have any problem with him testifying as an expert as to what the evidence in this case shows and tying it all together. And if you can just do the same thing without writing and show the photographs and let him explain as an expert this is what these photographs mean, and this is how it all ties into a meth lab, then I don't think there's an issue.

The problem is you're introducing a Power Point presentation that's maybe a training tool or an educational tool for teaching classes on meth labs, which then that is not into evidence. And that's my understanding of what the defense counsel is objecting to.

I think certainly as an expert he has

a right -- you have a right to present to present your evidence, have him pull what is in evidence together and explain how it all fits. Now, if you can do that, I'll be glad if you want to take an early dinner or lunch hour, I mean, and modify this to do that.

MR. MOSES: We can do it by the pictures, Your Honor. They're the same pictures that we've already put in. So we don't -- the only reason we were doing it like this is -- we weren't trying to put this in evidence.

We were just using it as demonstrative evidence. And I think the witnesses are entitled to use demonstrative evidence to explain things. However, if the Power Point slide causes Mr. Williams heartburn, then we won't use it, and we'll use the regular pictures.

THE COURT: And he certainly -- you know, he can use demonstrative evidence. He can get up there with a chalkboard or a pad, and he can write these issues down and explain this presentation. You know, if you --

MR. MOSES: Your Honor, if he can use a chalk and say that he wrote this up and this is his demonstrative evidence, he created that Power Point

presentation.

THE COURT: But I don't know that. You know, you can establish that basis and put it in.

MR. WILLIAMS: Your Honor --

THE COURT: It could have come in, maybe probably with the right basis established on it. But, you know --

MR. WILLIAMS: We haven't even talked about Rule 5 either, Judge.

THE COURT: Well, I assume -- you haven't made a Rule 5 objection, and I don't know of any --

MR. MOSES: This isn't discoverable material, Your Honor, under Rule 5.

THE COURT: How is it not discoverable under Rule 5?

MR. MOSES: Because the pictures that we're -- the pictures that are in are already in evidence. That is --

MR. WILLIAMS: All the other stuff was through discovery.

THE COURT: I understand that. But you're trying to put a Power Point presentation in, which uses the pictures that are in.

MR. MOSES: We're not trying to put it into evidence, Your Honor. We're using it as

demonstrative evidence only, the same as if he were to get up here and draw on a chalkboard at trial, during trial. That's not discoverable material. He can't draw on the chalkboard and then let us give it to Mr. Williams 30 days prior to trial. That's the same concept, is what we're contending.

THE COURT: And I understand what your argument is. The difference is the wording that it's put in, in the presentation, the last slide is this is what you do for meth. In the chalkboard, he's writing the words in front of the jury based on what's in evidence, and he can object to it just like him testifying. And he can testify based on what's into evidence. And if you have it all in a Power Point presentation, because you in fact can take the evidence and publish it to the jury using somewhat of that same technology.

MR. MOSES: Okay.

THE COURT: I have no problem with him using those pictures and testifying as to what they say and how it all hooks together -- because on what I saw, that would be relatively easy to do, it seems like. And it seems to flow versus having the words, because the problem, you know, is if you put the Power Point into evidence, I'll rule on that. But

it seems to clear that you can do it without that.

MR. MOSES: We can do it without it, Your Honor.

THE COURT: Now the question is, it's 20 minutes till one. Is it something you need a few seconds, a few minutes, or 30 minutes to put it together? Do you want to break for lunch, or do you want to just do it now and finish up your testimony before lunch?

MR. MOSES: Your Honor, we can have it ready in three minutes.

THE COURT: Okay.

MR. MOSES: We would rather go on forward before we break for lunch.

THE COURT: That would be great for me. If this is the last thing this witness is going to testify to on direct, then we can get that done.

Now, how long do you think your cross is going to be?

MR. WILLIAMS: We probably ought to eat lunch after he's done.

THE COURT: Okay. Then if you can do it that way and explain it to the jury, I have no problem with him recapping. But if it was an educational Power Point that's used in educationals,

then that is not into evidence.

MR. MOSES: Your Honor, if we can have three minutes to get organized?

THE COURT: Certainly. And I'll take a quick break during that three minutes. As soon as you get organized, if I'm not back, come get me, and we'll get the jury in and roll. We'll be in recess three to five minutes or till they come get me.

(Court in recess.)

(The jury returned to the courtroom at 12:51 p.m., after which the following proceedings were had:)

THE COURT: Thank you. Ladies and gentlemen, I'm informed that to finish this testimony may take more than 15 or 20 minutes. So what we were going to do is break for lunch and come back at 2:30, just in case.

I had a long ride this morning, and I missed breakfast too. And I'm sure you've lost your full stomach. So we'll break for lunch and be back at 2:30. Please do not discuss this case during your lunch hour. Have a good lunch, and I'll see you back at 2:30.

Everybody else remain seated while the jury leaves.

(The jury left the courtroom at 12:52 p.m. for lunch recess.)

THE COURT: Okay, gentlemen, from a scheduling standpoint, do you think we're going to get this case to the jury this afternoon?

MR. MOSES: No, sir.

THE COURT: Okay. And that's fine. I just wanted -- we need to get up charges and all this ready to go. You think actually it's probably going to be in the morning?

MR. MOSES: Yes, sir.

THE COURT: Okay. All right, we'll be in recess till 2:30.

MR. MOSES: Judge, the only issue is there's a piece of evidence that we can't find. We've got to work on that.

THE COURT: The report?

MR. MOSES: Yes, sir. Your Honor, I have the analyst on her way presently.

THE COURT: Okay.

MR. MOSES: We'll see if she has it.

THE COURT: Well, we've certainly got to find that.

MR. WILLIAMS: Was it introduced into evidence?

THE COURT: Yes, it was.

COURT REPORTER: It was received.

THE COURT: It was introduced. My notes show it was introduced and received.

COURT REPORTER: It was received.

THE COURT: We've just got to find that over the lunch hour.

MR. WILLIAMS: She probably walked off with it.

THE COURT: She probably put it back.

MR. WILLIAMS: I've seen that happen a lot.

MR. MOSES: I think that's what happened, Your Honor. But I talked to her personally.

THE COURT: Okay. Well, you all be sure we find it.

COURT REPORTER: Twenty-Four.

THE COURT: Okay, I'll see you all at 2:30.

MR. MOSES: Yes, sir.

MR. WILLIAMS: Thank you, Your Honor.

(Court in recess.)

BAILIFF: Court is now in session.

THE COURT: Thank you. You can be seated. All right, anything before I bring

the jury in, gentlemen -- from the State?

MR. MOSES: Nothing from the State, Your Honor.

THE COURT: The defense?

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

THE COURT: All right. I understand --

MR. MOSES: Your Honor, there is one thing.

THE COURT: Okay.

MR. MOSES: We received the evidence back.

THE COURT: Did you find the evidence?

MR. MOSES: The evidence is locked up.

THE COURT: Did we find it?

MR. MOSES: We did.

THE COURT: The drug report?

MR. MOSES: We did.

THE COURT: Did the chemist have it?

MR. MOSES: She did.

THE COURT: Okay.

MR. MOSES: We need the evidence back out of the lock-up.

THE COURT: Well, if we had to lose something, I'd rather lose the piece of paper than the drug.

MR. MOSES: That our Court Reporter so judiciously locked up and she's responsible for. Any objection to us having this in the box?

COURT REPORTER: For now.

MR. MOSES: For now. I think we're ready now. Thank you.

THE COURT: If you'll bring us the jury, please, sir.

BAILIFF: All right.

(The jury returned to the courtroom at 2:33 p.m., after which the following proceedings were had:)

THE COURT: Thank you, ladies and gentlemen. We will resume with the State's case.

Mr. Solicitor?

MR. MOSES: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. MOSES:

Q Agent Hamilton, I think before lunch we were kind of talking about the process of methamphetamine, how it's manufactured and what precursors to manufacturing meth were found at this lab. Could you please explain to this jury what all was found by using these pictures that are already in evidence, what you found at this meth lab and how

they all correlate in the process of manufacturing methamphetamine.

MR. MOSES: Your Honor, I'd ask that the witness could step down.

THE COURT: Okay.

Q And as you go through it, would you please talk about what State's exhibit it is.

A The first picture is going to be State's Exhibit Three. These are decongestant cold pills. They contain a substance that is pseudoephedrine hydrochloride. These boxes, as you can see, states on right towards the right-hand side on top 120 milligrams. That's how much pseudoephedrine is in each pill.

This is the start of the process. The whole thing in making meth is you take one substance, and you convert into a second substance. Pseudoephedrine, the chemical molecule is similar in nature to the methamphetamine molecule.

All you are doing in this process is changing the molecule. That converts pseudoephedrine into methamphetamine. As I talked about a little bit earlier, if you were to use the whole pills, you would have a problem with your reaction. You wouldn't get good results.

So what normally is done is you crush those pills -- take a grinder, crush the pills, make them into a powder. Once they're in powder form, you have more surface area for your reaction. Once they take this powder, they will oftentimes reduce it down using solvents. What you have is a residue left over in the container that they use.

Now, at that point in time, you have to take something to create a reaction. There are three basic recipes for making meth, one of them being the ammonia method. This method takes a substance known as anhydrous ammonia, which just means pure ammonia, ammonia without water. You can produce it

-- anhydrous ammonia -- or try and get it through other means.

The way to produce is you take your ammonium sulfate -- fertilizer -- mix it with sodium hydroxide -- Red Devil lye -- put it in a paste form. When that occurs, at normal temperatures -- you don't want to add any external heat -- you will receive a reaction. Those are incompatible chemicals. They are reacting together, and they're actually producing their own heat.

Off of that reaction comes the gas,

ammonia plus a little bit of water vapor. Now, you see from this setup, as we talked about earlier, this setup had a production area for pulling water vapor out of the reaction.

And it's important to get the ammonia clean without water, because if we just talk about something, watering this ammonia can cause you a violent explosion if not done properly. You take that reaction --

Q Agent Hamilton, let me interrupt you for a second. Could you go back to picture three? In which container in that picture did you find this chemical process going on that you just explained?

A The actual process, this is the reaction vessel where you're going to find your ammonium sulfate and Red Devil lye. In this container -- this appeared to be a five-gallon gas container -- you're actually forcing the gases off of this hose into the container.

Q And, again, for clarification, this picture was taken outside. It didn't -- it wasn't outside when you got there.

MR. WILLIAMS: Objection, leading, Your Honor, and testifying.

MR. MOSES: I'm just clarifying what

was testified to earlier.

THE COURT: I understand. You just ask the questions and let him explain, if you will, and don't testify.

Q How was this -- how did this apparatus appear when you were inside this structure?

A The difference between this picture and when I first approached this lab, this Mountain Dew bottle was inside this container of ice water. And there was another container on top of it, holding it down.

It was set up exactly like this, running this way and back. At this point that this picture was taken, the only thing that's been done is it was moved out from inside through the second floor of the residence outside so they can be dismantled.

Q Thank you. If you'll proceed.

A Once again, during this reaction, the ammonia gas is moving through to this point. The dry ice is cold enough to where the ammonia gas will condense back into a liquid. During this process, you want that liquid ammonia to mix with the ingredients.

Gaseous ammonia will not create the

reaction and change the pseudoephedrine into meth. If you have just gas, it will not work. We now have our pseudoephedrine, our ammonia. The next thing we need is a catalyst to react with the ammonia -- lithium, which is a Class B metal, phosphorus metal.

In other words, if you take lithium and you put water on it, the water in the lithium reacts to cause a fire. You cannot put lithium out with water, or you will make a bigger fire. Enough water on lithium, and then you have a contained explosion, what we refer to as a bloody, boiling, liquid explosive agent.

If the ammonia is not pure and there is water in the ammonia, when the ammonia is put through lithium, it will start a fire. That's why they condense out any kind of water vapor out of the ammonia during the process.

These are the lithium strips that come out of batteries. Like I said before, normally, when you first pull out lithium, it is a gray metal. In batteries, it's a thin sheet of gray metal. Come into contact with the air, and the air has water in it -- I mean, we've got a humidity factor of whatever it is today. So just upon

contact with air, it will often change colors, going from gray to black, just showing oxidation.

Most of the time with lithium, it is not bad enough that just contact with plain air, unless it is a day when we have 99-percent humidity, is it that big of a concern of it starting on fire if it's sitting out in your living room. It is in ether. Ether is a solvent.

The lithium is placed in a solvent to keep water away from it. If you put water on top of this, water would float right there on top of the ether -- actually, the ether would soak up the water and go to the bottom. Ether is lighter than water, but it would still form a barrier between any water and the lithium strips, which is we often find anything that's been stripped out encased in some kind of solvent.

Q What's the solvent in this jar?

A From the smell and the texture, it appeared to be ethyl ether, starter fluid. Now, in this reaction, pseudoephedrine, the ammonia, and the lithium is put in ether. All these things are mixed together and placed in ether.

Now, reactions are one of two ways, either exothermic or endothermic. Exothermic

produces heat. Endothermic takes it away. Most reactions and this one are exothermic. They produce heat.

This reaction of the ammonia and lithium produced heat and bubbled. It will sit there and boil, which caused a lot of great concern for us as we responded to it, because ether has an extremely wide range of explosion, and it is very, very flammable. That's why it's starter fluid.

Many of y'all have any experience in using it. It's much more volatile than gasoline. That's why you spray it in your carburetor or on spark plugs. You put all that together. You let it get -- approximately four hours later or so, the process is done.

Once you get past that point, you need to filter out the solids. The methamphetamine, or the greatest part of the methamphetamine, is suspended in the liquid. It's in the ether. It's not in the solids that are down at the bottom. It is now suspended in that ether.

So what they will do is they will run it through coffee filters, some other kind of medium like that, coffee filters being the most prevalent one I have seen. That catches all the solids out,

all the trash.

All you will reduce it down to is ether that contains methamphetamine suspended in the liquid. You've got to get it out of the ether. What they do is another reaction. This reaction, you take Liquid Fire we talked about earlier, which is concentrated sulfuric acid, mix it with salt, and you produce hydrochloric acid.

You pump that across the top of the ether. The ether then releases the methamphetamine. The meth after that point is no longer soluble in ether. It goes straight to the bottom in a process they call snowing. And most of my interviewees have told me that it's snowing whenever you do that.

And having done that, it looks like just flakes coming out of the liquid and just falling to the bottom. And then you get a white strip at the bottom, which is your finished meth. That's it.

They will then go with that liquid, go back to another set of coffee filters, and filter this through. In those coffee filters at this time, you have methamphetamine. If you've done all your steps correct, you have nearly pure methamphetamine. There should be little or no adultery in that

methamphetamine at that time.

To speed up the process of gassing, what you will see, because that gas in that hydrochloric is heavier than air, in that container till it gets up pressure enough to force the gas out, they have time wasting away. You're busy people, I'm sure. I'm busy people. So are they.

Oftentimes, I have found people taking small compressors, either things like this that are designed for giving medicine or fish pumps or other type compressors, putting a compressor into the top of that acid container to go about forcing the gas out during the reaction, therefore speeding up the process.

As I testified to earlier and just explained to y'all, these are chemical reactions that are occurring. Many by-products are produced. This is the type protective wear we are mandated to wear in the investigation and cleanup of meth.

Q Thank you. Where can you find most of those items that are used in a meth lab?

A Wal-Mart is a big place for them to shop. Any of your hardware stores will have most of the ingredients, minus the pseudoephedrine. Those can be picked up at any of your Rite-Aid or things of

that nature.

Q And what happens to these typically safe products when they're mixed together in the cooking of a lab?

A Once again, you are mixing chemicals that are incompatible. You are causing a reaction that changes what you have there. You're taking two different products, producing a third product that are oftentimes very dangerous.

Q Is it illegal to have the ammonium sulfide? Is it illegal to have that?

A No, sir, not at all.

Q Is it illegal to have Liquid Fire?

A No, sir.

Q The lye?

A No, sir, it is not.

Q However, are these chemicals inherently dangerous when mixed together?

A Yes, sir.

Q And when cooked together, does it then become an illegal product?

A Yes, sir.

Q Going back to State's One, where, again, was this meth lab located?

A This was located up here, sir, basically

between about this point and over here and then back towards a stud wall, I guess you would call it.

Q Based on your expertise, if someone were standing on that second floor where that meth lab was, why would they have that window open right there?

MR. WILLIAMS: Objection, calls for speculation.

MR. MOSES: Your Honor, it calls for an answer based on his expertise, knowledge in meth production.

THE COURT: I'll allow the question. Go ahead.

A You have a problem with fumes building up in any enclosed space. Ventilation is a big problem. You attempt to open -- and as I have seen, some places use different means. But in this case, if you at least open a window, you'll get some air in, and some of the contaminants, fumes, out.

Q Do you wish that you could fingerprint all these hazardous items?

A Sure.

Q Can you physically and safely fingerprint these hazardous items?

A No, sir.

Q Whether you do or whether you don't have fingerprints, is that conclusive as to who was cooking this meth lab?

A No, sir. It would only show that at some point in time a person or persons touched these items. I cannot say when without witnesses or officer testimony at the scene, sir.

Q What stage of the meth production would you categorize this meth lab?

A Personally, I break down meth production into three categories. The first category is, of course, just dealing with the pills. The second is the first reaction. The third is the finished product. This would be between stage one and stage two.

Q Did you find any finished product in this meth lab part of the area?

A A small amount, sir.

Q Are these the type of pills in State's Exhibit Number Twenty-Two that would be crushed to start phase one?

A Yes, sir, they are.

Q And where were these found?

A In the vehicle of the defendant, Mr. Ashe.

Q Is this the type of scale that would be

used to weigh finished product?

A Yes, sir, it is.

Q And where was this found?

A In the vehicle of Mr. Ashe.

Q Looking at State's Twenty-Four, under article three and four, how much did it weigh -- how much did the finished, the crushed-up pills that you found in this meth lab on the second floor -- how much did State's Twenty-One C weigh?

A Twenty-One C weighed 94.5 grams.

Q And what was in that bag?

A Pseudoephedrine.

Q And how much does State's Twenty-One D weigh?

A Twenty-One D weighed 193.3 grams.

Q And what was in that bag?

A Pseudoephedrine.

Q In what state -- crushed?

A Crushed.

Q And is the precursor to get this whole process started?

A Yes, sir, it is.

Q And do you get this from this?

A That is correct, sir.

Q And do you do it by using this?

A Yes, sir.

Q I have no further questions.

THE COURT: Any cross-examination, Mr. Williams?

MR. WILLIAMS: Yes, sir.

THE COURT: All right.

MR. WILLIAMS: May it please the Court. It will be relatively short.

CROSS-EXAMINATION

BY MR. WILLIAMS:

Q Officer, as I understand it, if I can break all of this down into the short version of everything, everything, all the evidence that we're talking about, was found upstairs in the two-story building, with the exception of these boxes and this weighting scale, which was found when the tow truck driver -- as part of an inventory search by the tow truck driver.

A No, sir. The tow truck driver doesn't do the inventory. We do for the tow truck driver. But, yes, sir, it was in the truck.

Q Right. And before the tow truck driver could drive off, you have to do an inventory search?

A Yes, sir.

Q And that's where you list the items that

are found in the truck?

A Yes, sir.

Q Now, when you were going through the list of the items which you, I guess, found upstairs, and you were the HAZMAT person, and you've gone through all the stuff, did you find any boxes of pseudoephedrine at the house itself?

A The boxes?

Q Right.

A No, sir. All we found was the powder, sir, or the crush.

Q Did you find it unusual that you were in the middle of a meth lab cook, if you will, and whoever was doing it was so clean that somehow they had destroyed all of the boxes or hidden the boxes away in all this trash that you found there -- I mean, that you couldn't find any of them?

A No, sir, that wasn't out of the ordinary, sir.

Q All right. So they actually kind of clean up after themselves once they open up all these boxes, and they take the pills out, they throw away the little boxes so that there won't be any evidence around the meth lab that could tie them in to something?

A We have found that to be true, or what we've also found to be very commonplace is that they will do different steps at different places, different people's houses, and will transport processed stuff and go to a next place in the next step, and then go to a next place to do a third or fourth step. And you may find evidence at the first place of the beginning of it and at that last place of the end of it, sir.

Q But you can't testify that the items that you found in this plastic bag is the identical pseudoephedrine -- I can't even say the word -- pseudoephedrine.

A It's pseudoephedrine, sir.

Q Whatever. It's not the same one that was in these blue boxes, right?

A No, sir. Actually, those pills are still in there, sir.

Q Right. So you can't testify that the pseudoephedrine that you found in the little bags came from even this brand that we're talking about?

A No, sir. There's no way to distinguish between the brands, sir.

Q Because there's different kinds of brands. I've got Sudafed at home, and it's Sudafed Sudafed.

It's in a little red box, and I'm sure you've seen it -- red and white box. And it could have been that kind of Sudafed that was used in the stuff that you found, isn't that correct?

A Actually, sir, that would be the bag with the pink stuff. Those pills are red.

Q Oh, so that would be different Sudafed than what we found here supposedly in the truck?

A That would be identical to the white stuff, sir. The larger bag is the one with the pink and the red, which is the 30 milligrams.

Q Right. And the reason --

A The white bag is the one that has some of that, sir.

Q So the reason why you say that the bag which has the pinkish-looking colors would not be from this type of box is because that particular pill has a red coating around it, which would give the color to the bag of Sudafed, right?

A Yes, sir. It remains until the anhydrous and lithium is imparted to it, the time it turns a blue color, sir.

Q So let me look at those two bags again. What did you do with those bags? Have you got them back there with you?

A No, sir. The attorney has got them.

Q I'm not going to get sick from touching these bags, am I? This bag right here, we'll call it State's Exhibit Twenty-One B. That's what you're talking about when you say that it's Sudafed with little red speckles in it. That comes from a particular brand with the little red coating on the outside of it?

A Not necessarily, sir.

Q Okay. What is the red?

A Other manufacturers use the same coating, the red coating.

Q Uh-huh.

A But it is generally found in the 30-milligram tablets, sir.

Q Okay.

A It is generally multiwide.

Q Right. All right, so that would not be what's in these boxes here?

A No, sir.

Q Okay. And now, because this box is white -- now, this is still just Sudafed, isn't it? It's just a different color?

A Yes, sir. That is Sudafed and hydrochloroxide.

Q And because it's white, you're saying that it tends to look like a type of pseudoephedrine that would be sold in these types of boxes?

A Yes, sir, the 120 milligrams.

Q All right, sir. Now, this is -- we don't really know what the weight is of the Sudafed in this because it's got a mixture of other items other than Sudafed in here, doesn't it?

MR. MOSES: Objection, Your Honor. He's not a chemist, and the chemist has already answered those questions.

THE COURT: His cross-examination. He can ask the question.

A If it's been rendered down, no, sir, it's got just pseudoephedrine in it.

Q What's the red stuff?

A The coloring from the dye remains with it, sir.

Q All right. So is that a coating, or is it mixed in with the Sudafed? Or is like when you eat an M and M, when you eat the outside, you've got chocolate on the inside?

A Actually, sir, it's a dye.

Q It's a dye?

A A dye.

Q So the whole pill is that color?

A Once you crush it up and put it in a solvent, sir --

Q Uh-huh.

A -- the solvent actually turns color also, sir. It becomes whatever color the pill was, the liquid. If it's red pills, the solvent turns red; white pills, it turns a white color, kind of opaque, sir.

Q And in terms of what was found at the scene and these pictures that we've looked at, we went through a litany of these pictures, the items that were shown here, they were staged. I mean, you set them up.

They weren't all like that because you brought them from upstairs and put them downstairs. And you put them together so that the jury could see how it works, isn't that correct?

A As far as that one you just had in your hand --

Q That's a good one.

A -- that one, sir, is in the process of dismantling, sir. I have already placed the fire extinguisher in the water, and the hose from the reaction vessel is bubbling ammonia into the water,

sir.

Q But it wasn't like that when you found it?

A No, sir. That's going into water, sir.

Q So you basically have taken and brought us pictures of what it looked like after you put it downstairs or put it on the ground. You put it together, and then you've taken it apart, because you couldn't carry it down the steps like that?

A Actually, yes, sir. The reaction vessel and all that stuff was taken down as a whole unit, sir. If I would have opened any of those -- any of those lines or anything, I would have then released ammonia gas, sir.

Q You didn't carry that down the steps like that, did you?

A Yes, sir, I did. It was quite a challenge, I might add.

Q Carried all those pieces together?

A Actually, I put the dry ice and the reaction vessel on the ledge, climbed down, picked those up from the bottom, and brought them outside, sir. The Mountain Dew bottle just kind of hung out there, sir.

Q And it's your testimony that you could not perform any fingerprint analysis on any of the items

here -- none of the items here?

A No, sir, that was not my testimony, sir.

Q Okay, what is your testimony?

A Many of the items that are commonly found in meth labs cannot be fingerprinted. When we take them, some of them possibly could if we aired them out properly and did everything to them.

Now, the success of taking fingerprints from inside a lab is very low. And when we have a known suspect, we do not do that.

Q But you could have?

A Could have tried, sir.

Q Could have tried to do these which were not in any harm's way from being poisoned or anything, right?

A With them coming out of the suspect's vehicle, we didn't think it was necessary, sir.

Q Well, the suspect may not have put them in the vehicle, couldn't he?

A That's --

Q Did you do a -- and you could have done a fingerprint analysis of this too, couldn't you?

A That's possible, sir.

Q This too, right?

A Actually, that was up in the lab, sir. We

generally do not. That's why it's in the bag now, sir, even though it's aired for over a year, sir.

Q Let's go back to your little exhibit that you got from Wal-Mart. Where was it from -- Wal-Mart?

A Yes, sir.

Q Well, when we showed it up on the screen, it was all blown-up, and it showed exactly what was purchased. It showed some cotton balls, and it showed the date that it was actually purchased, which would have been on the date that y'all were there, right, the 22nd?

A That is correct, sir.

Q Had the manager's name on the Wal-Mart, right, the store number?

A That's correct, sir, and the location also.

Q Had the time the purchase was made, didn't it?

A That is correct, sir.

Q Did any police officer go to that Wal-Mart, speak to that manager, or speak to the cash register person who would have recorded that, or look at any videotapes from the cash register on that date to see who would have purchased those

items on that date?

A If they did, I was not informed of it. I feel certain that if somebody had, I would have knowledge of it. But, no, sir.

Q And can you tell me why you couldn't have done that?

A Why we couldn't have, sir?

Q Right.

A There is no magical reason why we couldn't have, sir.

Q And what that would have done is it would have allotted you a video, a picture, of the person who was purchasing these items to use in the meth lab, wouldn't it?

A Yes, sir. But that would not have given us probable cause to make an arrest on that person.

Q Might have given you some evidence to show the jury, though, who purchased those items, wouldn't it?

A Yes, sir. But, unfortunately, that is not near enough evidence, sir.

Q Well, the -- and as I understand what you did in this case, essentially you were simply the HAZMAT person who went in and received the items, meaning you found the items. You didn't perform any

fingerprint analysis.

You didn't do any chemical testing. You searched the trailer. But did you pull anything out of the trailer?

A No, sir. We didn't find anything in the trailer reference to the production of anything illegal.

Q Did you continue watching the area to see if the person who left came back?

A Once again, I did as you said. I responded in a chemical nature to dismantle the lab.

Q I have one question, I guess, about coming down the steps. Did you come down the steps, or did you use the ladder coming down?

A There was a ladder inside, a folding ladder inside, a rather nice ladder, one of the kind that folds over to approximately this high, about four foot high. The bottom part of the stairs past the landing did not appear safe when I was doing my pre-plan. So we made -- we went up and down through the inside using only the top portion of the stairs, sir.

Q And, again, you never viewed my client anywhere around the methamphetamine lab, did you?

A I responded after he had already been

captured, sir.

Q And you never saw my client at the methamphetamine lab, did you?

A In the back of a patrol car, sir, not prior to.

Q And you never found any drugs on my client on that date?

A I never searched him, sir.

Q As a matter of fact, there were no drugs found on my client on that day, were there?

A Once again, I never saw him, never spoke to him, sir.

Q Are you the case manager of this file?

A Actually, the case agent was Mr. -- I've got to refresh my memory -- Mr. Gleaton. Agent Gleaton was the case.

Q You're familiar with what was testified to about the drugs. And there was no drugs that had been testified to that were found on my client, were there?

A Not to my knowledge, sir.

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

THE COURT: Anything else from the State?

REDIRECT EXAMINATION

BY MR. MOSES:

Q The only thing I'd like to ask you, if somebody was standing at this window, would they have dominion and control over the meth lab as well as the drugs that were found in the duffel bag?

A Yes, sir. They were within close proximity to that window, sir.

Q Thank you.

RECROSS EXAMINATION

BY MR. WILLIAMS:

Q And you never saw my client at that window, did you?

A No, sir.

THE COURT: Anything else for this witness?

MR. MOSES: No, sir.

THE COURT: Okay. You can come down. Thank you.

You can call your next witness.

MR. MOSES: Your Honor, at this time the State would rest their case.

THE COURT: Okay.

Ladies and gentlemen, I need to send you to the jury room for just a brief minute

where I can take up some issues with the lawyers. If you'd go to your room, please.

(The jury left the courtroom at 3:14 p.m.)

THE COURT: Anything from the defense?

MR. WILLIAMS: Yes, Your Honor. We would move, first, for a directed verdict of not guilty on the charge of PWID, methamphetamine and crank. My client was arrested pursuant to a warrant and pursuant to an indictment which you have before which alleges that he was pursued, detained, and that he was found to be in possession of four grams of methamphetamine on his person.

Your Honor, as the analysis has proven, he had no methamphetamine on his person. And we would move for a directed verdict of not guilty.

THE COURT: Now, I've got three -- I don't have PWID methamphetamine.

MR. MOSES: Your Honor, the indictment was straight indicted prior to trial. It's on the record that both Mr. Williams and the defendant were presented with a straight indictment true-billed by the Lexington County Grand Jury for possession of methamphetamine. And that's what he's being tried

for.

MR. WILLIAMS: It's the same thing, Your Honor, possession, I'm sorry.

THE COURT: Okay, okay.

MR. WILLIAMS: And the bottom line is there were no drugs on him.

MR. MOSES: Your Honor -- I'm sorry, go ahead.

THE COURT: But since we don't have a PWID, because that went to the weight of the methamphetamine.

MR. WILLIAMS: Right.

THE COURT: So -- okay.

MR. WILLIAMS: It doesn't change anything, Judge.

THE COURT: Right.

MR. WILLIAMS: There weren't any drugs on my client.

THE COURT: What says the State?

MR. MOSES: Judge, testimony has come out that his client was in the building. His client was on the second story. He was the only person found on the scene. He was the only person seen on the scene.

The only testimony that's come in

this case of anybody else being there is from Mr. Williams' own mouth. And there is only person charged with this crime. It's been testified that he was seen upstairs, and it's been testified that the drugs were within his dominion and control so under constructive possession, if anything else. We certainly think that's a jury question.

MR. WILLIAMS: Your Honor, they've got -- but they've got him indicted for manufacturing methamphetamine. I mean, I realize we're trying to go around our ankles here. But the manufacturing methamphetamine and the possession of methamphetamine would be grouped in the same situation.

What he really was arguing when he did the possession of methamphetamine was not what was found in the window up here. What he was arguing at the time that it was on his person.

MR. MOSES: Your Honor, there's been no testimony that the drugs were found in his pocket or on his person. The only testimony is that the drugs were found in the duffel bag, and it was within his dominion and control.

And that's separate and distinct from the manufacturing process. That was already

finished product, and it's been testified to that there wasn't any finished product in this meth lab. So that's separate and distinct.

THE COURT: Anything else, Mr. Williams?

MR. WILLIAMS: Oh, yes, Your Honor.

THE COURT: All right, go ahead.

MR. WILLIAMS: Your Honor, I would move for a directed verdict of not guilty on all the charges on the basis that the evidence taken in the light most favorable to the State would be insufficient as a matter of law for this jury to return a verdict of guilty against my client.

And I would also move, Your Honor, for a directed verdict of not guilty in reference to the unlawful possession of pseudoephedrine, 200 to 400 grams, on the basis that the statute actually says that it's unlawful for any person other than a manufacturer, practitioner, dispenser, distributor, or retailer to know and possess any product, etc.

They haven't established that my client is not a distributor, practitioner, manufacturer, or dispenser. It's an element that they must prove, that he doesn't hold any position of that.

THE COURT: What says the State?

MR. MOSES: Your Honor, if you'll give me one second, please. Your Honor, nowhere in this statute does it say we have the burden of proving that he's not a manufacturer, practitioner, or dispenser. There's been no evidence that he was a manufacturer, practitioner, or dispenser, and we don't -- it's not our burden to prove that he's not one.

He certainly had the crushed pseudoephedrine and capacity of a meth lab. I think, taking the totality of the circumstances, that the evidence has come out that he clearly wasn't trying to sell pseudoephedrine out of the Eckerd Drugs. It was all within the confines of this meth lab. And I don't think the statute -- I don't think that's how the statute is interpreted or meant to be written at all.

MR. WILLIAMS: Your Honor, that statute is kind of like -- it's like strict instructions. If you're talking about somebody who it's unlawful for anyone who is not over the 18 years to drink liquor or whatever, it's the same idea. When you try an unlawful alcohol case, you have to prove the age because of how the statute puts it.

In this particular case, it's an

element they have to prove, that he's not one of these things. If you read it, it says, "It is unlawful for any person other than." So they have to prove that he's not one of these things.

THE COURT: Okay. Anything else?

MR. MOSES: No, sir.

THE COURT: Any motions from the defense?

MR. WILLIAMS: Your Honor, I would move for a directed verdict on all the charges on the basis that, even though there was testimony that this occurred in Lexington County, I wasn't sure I heard South Carolina mentioned, and therefore a lack of jurisdiction.

THE COURT: All right, sir.

MR. WILLIAMS: And we know there is a Lexington, Pennsylvania.

MR. MOSES: And Kentucky.

MR. WILLIAMS: And Kentucky.

THE COURT: All right, any other -- anything else?

MR. MOSES: No, sir.

THE COURT: Anything else from the defense?

MR. WILLIAMS: No, sir.

THE COURT: As far as your motion for

directed verdict on the possession, you know, it's not the weight of the evidence that I need to consider but the mere existence of the evidence. And I think there's a sufficient amount or there is an existence of evidence in this record that he may or may not have been in constructive possession of these items, and even though there was no actual possession, that that substance found in his pocket was in fact not a controlled substance.

But I think there's the existence of evidence, and the jury may determine that he may have constructive possession of these items. So your motion for a directed verdict on that charge is denied, as well as the directed verdict on all the other charges.

It's an interesting argument that you make as far as that they have not proven that he was not a manufacturer or dispenser under that statute. And I'm going to reserve my ruling on that till the end of the case.

MR. WILLIAMS: Your Honor, I hope if somehow he pulls it out of my client on -- if my client testifies -- that you're not going to hold --

THE COURT: Well, I don't know if -- and this may the end of the case. I don't know if the

case is going any further than this or not. You have absolutely -- you do not have to prove anything. The State has the burden of proof. It's your call as to whether you're going to put up any evidence or not.

MR. WILLIAMS: I'm just hoping that you'll remember at what stage that this motion was made, that you're reserving it.

THE COURT: It's well noted.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Okay. Anything else?

MR. WILLIAMS: No, sir.

THE COURT: Okay. Are we ready to proceed as far as -- I'm just trying -- it's 20 minutes after three now. Do you intend to put up evidence and call witnesses?

MR. WILLIAMS: Yes, sir.

THE COURT: Okay.

MR. WILLIAMS: It will only be one witness, though, Your Honor. It will be the defendant.

THE COURT: How long do you think he will take?

MR. WILLIAMS: We should finish up right at five. I would think that we would do closing in

the morning.

THE COURT: Okay. So you don't think, based on your testimony on him, we will do closing argument tonight? And I'm not advocating that. I don't necessarily -- how long -- well, let me ask you this.

How long do you, State, intend to close? How long do you think it will take you to present closing argument?

MR. MOSES: Twenty minutes, thirty minutes.

THE COURT: Are you going to open and close?

MR. MOSES: We'll probably open on the law and close on the facts.

THE COURT: Okay. So how long do you anticipate that taking?

MR. MOSES: Well, Your Honor, kind of we'll gauge it when we see what the defendant has to say.

THE COURT: Okay. And I'm not necessarily holding you to that. Well, it doesn't appear, then --

MR. MOSES: It shouldn't --

THE COURT: It's probably going to take 45

minutes to an hour for you all to do your closing arguments.

MR. MOSES: I would think so.

THE COURT: It will take me 20 to 30 minutes to do the charge, at least. It depends on what you tell us. So that's an hour and a half.

MR. WILLIAMS: Unless you throw out that charge, Judge, and that would shorten it a little bit.

THE COURT: We're probably better off just taking all the evidence today and then coming back in the morning and do closing arguments, than charge where we want, give it to the jury late at night, and be here too late.

MR. WILLIAMS: All right.

THE COURT: Okay. Anything else before I bring the jury in, then?

MR. WILLIAMS: Could I have two seconds to get a little water?

THE COURT: Absolutely. We'll take a five-minute break and give everybody a chance -- maybe my Court Reporter or somebody else may need a break. Anybody need one?

MR. MOSES: I do, Your Honor.

THE COURT: Okay.

COURT REPORTER: This is the afternoon break. Yes, I need one if this is going to be the only one we're going to have, which I assume it will be.

THE COURT: This will be the only one we have, so we might better take ten minutes --

MR. MOSES: All right.

THE COURT: -- Court personnel. Put that sticker back on that drugs tight that's about to come off.

COURT REPORTER: I did, Your Honor. I put another one right by it to hold it on, because I didn't have any tape.

THE COURT: Okay.

COURT REPORTER: But I did.

THE COURT: That's good. Thank you. With them laying around, I'm scared we're going to lose another one.

COURT REPORTER: Me, too. Yes, I've got it on there.

(Court in recess.)

THE COURT: Anything before I bring in the jury?

MR. MOSES: Yes, sir.

THE COURT: All right.

MR. MOSES: You had ruled earlier, Your Honor, during the Denno hearing that certain statements that were made to law enforcement couldn't come in.

THE COURT: Right.

MR. MOSES: If the defendant takes the stand, my understanding under cross, cross-examination is wide open. And I just wanted to clear that with Your Honor to make sure that that's appropriate, that I don't do something that would be contrary to your ruling.

MR. WILLIAMS: And, Your Honor, I don't know if it's a violation of Rule 5 if they're allowed to benefit from that by the defendant taking the stand, because if that were true, then it would water down the effects of any sanctions under Rule 5.

THE COURT: Right.

MR. WILLIAMS: And it would be an infringement on the right of the defendant to take the stand. I mean, that may be the crucial fact as to whether or not he's going to take the stand, is whether or not the Solicitor would be allowed to bring that up.

MR. MOSES: Your Honor, when he takes the

stand, he's given up this right, his constitutional right to silence or anything else.

THE COURT: Well, we didn't have a Jackson v. Denno hearing in my recollection, you know, because the statement was not excluded under Jackson v. Denno in that it was, you know, not voluntarily, you know, given.

The statement was excluded because of the Rule 5 violation, because it wasn't given to the defense, and which would prohibit the State from putting it in its case in chief. Now, you know, so they couldn't put it in. And at the time they started their case, they didn't know whether the defendant was going to take the stand or not.

Now, if the defendant takes the stand, I think they can ask him about any prior inconsistent statement. And, you know, if he admits to the statement, they can't necessarily go into it. But I think once he takes the stand, based -- the Rule 5 situation wouldn't apply, because he's opening himself up at that point for anything under cross-examination.

When in the rules, because it wasn't, you know -- if it was a statement taken in an in-custodial interrogation and through duress or

something, I wouldn't let it in. But that wasn't the situation in this case. I didn't rule it out under Jackson v. Denno. I ruled it out under Rule 5 because the State had not given it to the defense in a timely fashion.

MR. WILLIAMS: So by that, Your Honor, would there -- would we have a Jackson v. Denno hearing at some subsequent time to see whether or not that could come in after my client testifies?

THE COURT: Well, no, I mean, it's a situation -- if the motion is made -- I mean, it's a situation that it would have come in the case in chief by the State. And they -- and for them to be able to put it in through the testimony of investigative officers or whatever, they'd have to either -- they'd have to get it by Jackson v. Denno.

MR. WILLIAMS: That's correct.

THE COURT: Well, that was not the scenario in this case, so it wasn't a voluntary issue made. So I think if you put him on the stand, they've got a right to ask him if he made a comment. And, obviously, at this point, before he gets on the stand, you have the benefit of knowing that that's a potential problem.

MR. WILLIAMS: Yes, sir.

THE COURT: Because, you know, they at least -- even they didn't comply with Rule 5 in a timely enough fashion, you knew at the beginning of this case that that potential statement was hanging out there. So I think if he takes the stand, they can at least ask him if he -- and he can deny it or admit it, that he in fact made that statement. And what was the statement?

MR. WILLIAMS: Cooking ether or something like that.

MR. MOSES: Your Honor, that he was only cooking the ammonia. The comment was made from the officer, "Is there anything that's dangerous up there for our officers when we go do our protective sweep?" And it was either that or "for our officers to dismantle it," the meth lab. And he said, "No, the only thing I was cooking was the ammonia."

MR. WILLIAMS: Who did he say that to?

MR. MOSES: He said that to Officer Chris Bailey.

THE COURT: Okay, well -- and I think, you know, if you set up and you go through the process and ask him, with prior inconsistent statements you're faced with that possibility.

MR. WILLIAMS: Yes, sir. That doesn't

change things. He's still going to testify.

THE COURT: Okay.

MR. MOSES: Your Honor, just so we've covered the defendant was notified of his rights and what are the consequences of testifying.

MR. WILLIAMS: Your Honor, I've explained to my client about testifying. He knows --

THE COURT: Okay.

MR. WILLIAMS: -- he has a right not to testify.

THE COURT: So does defense counsel want the Court to inquire as to his rights?

MR. WILLIAMS: No, sir.

THE COURT: So you're satisfied he understands his constitutional rights to remain silent, and he's willing to give up those rights and testify, and that by giving up those rights, he can be subject to cross-examination?

MR. WILLIAMS: Absolutely, Your Honor.

THE COURT: And you're comfortable that he understands those rights?

MR. WILLIAMS: He certainly understands those, Your Honor.

THE COURT: Okay. And you don't need me to --

MR. WILLIAMS: No, sir.

THE COURT: Okay.

Anything else from the State?

MR. MOSES: Nothing further from the State, Your Honor.

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

THE COURT: Okay. Then give us the jury, please.

(The jury returned to the courtroom at 3:55 p.m., after which the following proceedings were had:)

THE COURT: Okay, ladies and gentlemen, the State has rested their case. Now is the defense's turn. The burden of proof lies on the State of South Carolina. The defendant in this case does not have to prove his innocence. He does not have to prove anything. However, he has the right to offer testimony if he wants to do so.

Mr. Williams?

MR. WILLIAMS: May it please the Court. Your Honor, we would call the defendant, Chris Ashe, to the stand.

THE COURT: All right, Mr. Ashe. You can come around and let the Clerk swear you in.

(The witness was sworn.)

CLERK OF COURT: Have a seat and state your full name on the record. Speak up loud and clear, and spell your last, please.

MR. ASHE: Christopher W. Ashe -- A-S-H-E.

CHRISTOPHER W. ASHE, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILLIAMS:

Q Chris, how old are you?

A Thirty-one.

Q And are you married?

A Yes, sir.

Q Do you have any children?

A I have three children.

Q And what are their ages?

A Four, six, and twelve.

Q Are they in school?

A Yes, sir, they go to a Christian academy.

Q All right. Is that your wife over here on the front bench?

A Yes, sir.

Q And your mom and your dad?

A Yes, sir.

Q What do you do for a living, Chris?

A I run a construction crew. I own my own business.

Q All right. How many people work with you at your construction crew?

A Twelve people.

Q On the date which the police have testified -- I think it was the 22nd of December -- do you recall being at this location that we've talked about on -- is it Daralynn Drive or Daralynn Road or Daralynn Lane?

A Yes, sir, I do.

Q Were you there by yourself, or did you go with somebody else?

A I went with somebody else, sir.

Q And did you drive your truck?

A Yes, sir.

Q All right. Who did you ride with?

A Brian Jenkins.

Q Brian Jenkins?

A Yes, sir. He was riding with me.

Q All right. And who lives at that location?

A Brian Jenkins.

Q Where does Brian Jenkins live at that location?

A In that trailer.

Q All right. And why were you driving Brian Jenkins to that house?

A Well, he had been kicked out of a house in Pelion, and we was moving stuff back in. He had been living there for about two weeks.

Q All right. When you say you were moving something back in, what were you and Brian Jenkins bringing to that location?

A He had a couple of buckets of miscellaneous tools, a tanning bed, and that's about all that could fit in my truck at that time.

Q All right. And when you pulled up, you've seen the picture of how the truck looks like in relationship to this house. Is that how it looked on that particular date?

A Yes, sir.

Q All right, sir. And at what point in time did the two police officers show up from the time at which you and Mr. Jenkins first get there? Meaning, had you already unloaded that? How long had you been there?

A We had just put the tanning bed inside the door right there, and we had just pushed it in. And when I turned around, they had pulled up.

Q Now, had you gone upstairs to the second floor?

A No, sir. I never went in the house at all. All we did was push the tanning bed into the front door right there, and my phone rang. And when I turned around, the police had pulled up there.

Q When you say your phone rang, who was calling you on the cell phone?

A A guy that runs my crew for me.

Q All right. When you said you turned around and the police were pulling up, did you know it was police when they came up?

A Not until they got out of their truck. And when they got out of their truck, they both had badges around their necks.

Q When you say "badges," you're talking about little chains that have the little emblem with the little --

A Yes, sir.

Q All right. What happened from that point in time when they came up?

A They come walking over to me.

Q And what did they say?

A They asked me for my -- they asked me my name, and then they asked me for my ID.

Q All right. What did you do?
A I reached in my pocket and pulled my wallet out and gave them my ID.
Q When you say you gave your ID, what did you physically hand them?
A My driver's license.
Q All right. And then what happened after you handed your driver's license to them?
A They said they were going to put me in investigative detention for a meth lab, and I wouldn't let them put me in investigative detention, and I fled from them.
Q You fled from them. How did you flee from them?
A I run.
Q Did you know anything about a meth lab being at that location?
A No, sir, I did not.
Q When you were -- when you pulled your truck up there, could you smell anything from a meth lab when you first pulled up there?
A No, sir, I could not.
Q And you never went upstairs?
A Never went upstairs, never went in the house, period.

Q Did you ever wave at two officers?

A No, sir, I did not.

Q Describe, if you will, what Brian Jenkins looks like.

A He's probably -- he's a little bit bigger than me, about the same color hair, a little beard, maybe 170 pounds, white male.

Q All right. Now, when you fled from this officer when they said that they were going to put you in custodial detention, why did you flee? Why did you run away from this police officer?

A Actually, I run because I had some marijuana in my pocket.

Q How long -- where did you run to?

A Straight up the driveway, into the woods across the street.

Q And did anyone follow you into the woods?

A No, sir.

Q How long were you gone into the woods until the next time you saw a police officer?

A Probably an hour, maybe a little more.

Q All right. When you say it was a hour or a little more, when was the first time you saw a police officer?

A When I was coming down the edge of the

road. I was walking down the edge of the road when I seen him.

Q All right. What did you see?

A A bluish/purplish Camaro with the emblem on the side of it and with lights on top of it.

Q All right. Now, at that point in time, did you have on a camouflage coat?

A No, sir, I did not.

Q Did you have a hat on your head?

A Yes, sir, I did.

Q All right. When you took off running, did you have a camouflage coat on?

A Yes, sir, I did.

Q And what happened to your camouflage coat?

A I just took it up. It was hot.

Q When you were running through the woods, you got hot and you threw it down?

A Yes, sir.

Q What happened to the marijuana that you said that was on you?

A I threw it out too, sir.

Q All right. You were gone a little over an hour, is that right?

A Yes, sir.

Q All right. What happened when you saw

this police vehicle pull up?

A I stepped off into the edge of the woods.

Q And then what happened?

A Because I didn't think anybody had already seen me. And then I noticed that there was about three more Lexington County Police cars in front of me, and I stopped right there, because I knew they had done seen me.

Q All right. And then what was the next thing you recall happening?

A Them tackling me to the ground, and putting me in the police car, and taking me back around to the scene.

Q What happened to Mr. Jenkins?

A He disappeared. When my phone rang and they pulled up, he was gone.

Q Have you since learned where Mr. Jenkins went to?

A Since then, yes, I have.

Q Where did he go?

A To his mama's house.

Q And how far is that from this location?

A Three hundred yards.

Q Three hundred yards?

A If that.

Q His mama lives on the same road that he lived on?

A Same property. You can see her house.

Q You can see her house from that location?

A Yes, sir.

Q What about your truck? Did you -- obviously, you were arrested and you were taken to jail. Did you ever get your truck back?

A Yes, sir.

Q All right. How was your truck taken away from the scene?

A It was towed.

Q Who was it towed by?

A Extreme Recovery.

Q And did you have to go to Extreme Recovery to get your truck?

A Yes, sir.

Q Do you know who towed your truck?

A A Mr. Jenkins.

Q Now, how do you know that a Mr. Jenkins towed your truck?

A It's on the invoice sheet.

Q I'm going to ask you to look at this Lexington County Sheriff's Department inventory of towed vehicle.

A Yes, sir.

Q Tell me if you reccgnize that.

A Yes, sir. This is the same one I had, that I had to get my truck back with.

MR. WILLIAMS: Your Honor, we would move to introduce this as Defendant's Exhibit Number One.

THE COURT: Any objection?

MR. MOSES: Nothing, Your Honor.

THE COURT: Okay. Exhibit Number One is entered into evidence without objection.

(Defendant's Exhibit Number One, Inventory of Tow Truck, was entered into evidence.)

Q Now, tell me again, if you will, who the driver of the tow truck was that towed your vehicle away from Brian Jenkins' home.

A A Mr. James Jenkins.

Q Do you know what relationship he was to Brian Jenkins?

A No, sir, I do not.

Q Let me ask you about the items that we've talked about today. And you've been in here the whole time, right?

A Yes, sir.

Q You heard the police officer say that all these items, with the exception of two items, were found upstairs in that house?
A Yes, sir.
Q Were any of those items yours?
A No, sir.
Q Had you messed with any of those items?
A No, sir.
A Had you been inside that house?
A No, sir.
Q And where was Brian Jenkins living during that time span before the police came up there?
A In that trailer right there beside that house.
Q Let me ask you about two other items. This Sudafed and this scales which supposedly was picked up when they did the inventory, the two truck inventory --
A Yes, sir.
Q -- do you know where these came from?
A No, sir, I don't.
Q As far as you know, you pulled what for Mr. Jenkins? What did you bring for him?
A What did you say, now?
Q What did you bring to that house for Mr.

Jenkins?

A It was a tanning bed, a couple of five-gallon buckets full of tools, and that's really about all that could fit in the back of my truck.

Q Now, you heard them say something about some duffel bags which were found upstairs?

A Yes, sir.

Q This towing report says something about two green duffel bags with miscellaneous items in the rear passenger area.

A Yes, sir.

Q What would be in those green duffel bags in the rear passenger area?

A There was --

Q Do you know what they're talking about on that?

A No, sir, I really don't.

Q All right. Did you have anything in your truck?

A No, sir, I did not.

Q All right. What items -- well, you had something in your truck, didn't you, obviously?

A Obviously.

Q Did you have a driver's license in your truck?

A Yes, sir -- well, I had those in my pocket.

Q Well, did you have a Coca-Cola bottle in your truck?

A I probably had a fountain drink or two in there.

Q Well, can you recall any personal items that you had in your truck?

A No, sir, just my radio in my truck, maybe my tool belt from work.

Q Okay.

A And, actually, my high-power rifle was in my truck too.

Q Well, if you look at what's in State's Exhibit Number One, can you see anything in that exhibit that shows that anything is in your truck?

A No, sir.

Q I know you didn't make the pictures. Now, think hard on this. As far as you know, was there anything at all in that truck that might have been yours other than what you've talked about so far? The green duffel bag, you don't recall there being a green duffel bag in there?

A No, sir.

Q Were there any papers in there, as far as

you know?

A I'd bet it was probably full of papers.

Q And the guy that actually towed that, his name was -- you never tried to find Mr. Jenkins to see what relationship the two Jenkins guys were?

A No, sir.

Q Did you buy any cotton balls or any starter fluid from Wal-Mart?

A No, sir.

Q And why did you run?

A Because I had marijuana in my pocket, sir.

Q Did you know that Brian Jenkins was a -- made meth?

A I have heard he has, yes, sir.

Q Have you ever helped him make meth?

A No, sir, I have not.

Q Do you know where he is today?

A Yes, sir, I do.

Q And where is he?

A Staying in that same house.

Q Which house is he in?

A He lives in that trailer, sir.

Q The trailer at the scene where the -- he's there even as we speak?

A Well, I know the last time I would have

seen him, he was at Kent's Corner, and he was still living there. And that's been in the last three months.

Q Answer any questions the Solicitor may have for you.

THE COURT: Okay, Solicitor?

CROSS-EXAMINATION

BY MR. MOSES:

Q Where had you and Brian been that morning?

A We had left his girlfriend's house, which he had been kicked out of, in Pelion.

Q Where was Brian in this whole thing?

A He was right there at that house.

Q Why were you upstairs?

A I was never upstairs, sir. I was never in the house, sir.

Q You just said you had a camouflage jacket on. Did you have a camouflage jacket on?

A Yes, I had a camouflage jacket on.

Q What color shirt did you have on?

A I had a black sweatshirt on, sir.

Q You had a camouflage jacket on top of a black sweatshirt?

A Yes, sir -- in December.

Q Well, what did you do with the black

sweatshirt?

A Threw it off too, sir.

Q All right. Where is it now?

A In the woods, sir.

Q And you were driving your truck, right?

A I'm not now.

Q You were driving your truck on December 22, 2005, correct?

A Yes, sir, I was.

Q Nobody else's truck was in that area?

A No, sir.

Q And there was nobody else in that area, was there?

A Brian Jenkins, sir.

Q Why did wave to the police when they came up?

A Sir, I never did.

Q Do you think that they were just two more people coming up to help cook?

A No, sir.

Q It's your testimony that you were out in the yard when the police came up?

A Yes, sir, it is.

Q And throughout this whole trial, you've had the opportunity to sit right there in that chair

and listen to what everybody said on that witness stand, didn't you?

A Yes, sir.

Q Where on your truck bed was your license?

A Sir, my license was in my pocket.

Q And why did you go in your truck?

A I didn't go in my truck. I gave them my license out of my pocket, sir.

Q Why did you run on foot?

A Because I had marijuana in my pocket.

Q How much marijuana?

A Not a lot.

Q How much?

A A bag. I don't know exactly what amount.

Q Did you have one bag, two bags?

A A bag of it.

Q And you were apprehended 30 minutes later, weren't you?

A About a little over an hour.

Q And you were keeping time?

A No, not exactly.

Q Well, how are you so sure it was over an hour?

A About three or four miles from the scene.

Q Three or four miles? You got three or

four miles in 30 minutes?

A I would say it was about an hour, sir.

Q You've got to run pretty fast to get three or four miles in 30 minutes. What kind of shoes did you have on?

A Tennis shoes.

Q Tennis shoes? What kind of pants did you have on?

A Jeans.

Q And you ran three or four miles in 30 minutes?

A Sir, that would be hard to do.

MR. WILLIAMS: Your Honor, objection, asked and answered. He's answered that it was over 30 minutes, it was an hour. He said it like four times.

THE COURT: Okay. This is cross, but how about move on?

Q State's Exhibit One, take a good look at it.

A Yes, sir.

Q Where's your truck?

A Parked behind the mobile home.

Q Did you park it there when you pulled up?

A Yes, sir, I did.

Q And then you unloaded what you call a tanning bed --

A Tanning bed.

Q -- and five-gallon buckets?

A A couple of five-gallon buckets of tools.

Q How did you get that tanning bed out the front door when your truck was pulled right up to the front door?

A It's not pulled right up to the front door.

Q Oh, it's not?

A No, sir. It's a good 25, 30 foot from that door.

Q Are we looking at the same exhibit?

A The same one -- yes, sir, the same one.

Q Twenty-five or thirty feet?

A Yes, sir.

Q Well, let's just see what 25 or 30 feet is. Thirty feet would be --

A From here to --

Q -- ten yards.

MR. WILLIAMS: Your Honor, I object to the question. That's what his witnesses are saying. His witnesses said the 25 to 30 feet also.

MR. MOSES: Your Honor, he just said

30 feet from the front of the --

THE COURT: I understand. This is cross-examination, and you can ask him that question.

Q It's 30 feet right here.

A Approximately.

Q What you're saying is that your truck was parked this far away from the building?

A Approximately.

Q How did you get the tanning bed inside the house when you say you never went in?

A Pushed it into the door. It was still sitting in the door when the officers pulled up, sir.

Q A tanning bed -- a tanning bed is pretty big, isn't it?

A Probably about five foot long.

Q And probably about four feet wide too, right?

A No, sir, probably about two foot -- two and a half foot wide, about as wide as your body is, just big enough to get a body --

Q Part of the body and arms have to fit in it, don't they?

A You actually lay down and put your arms

beside your sides, sir.

Q We're talking about three feet wide, at least, on the inside, which is -- is that right?

A No, about two and a half foot or so. It's big enough to go through that door.

Q Regardless, how do you -- at least one, two, three, four, five -- at least five different officers from Lexington County Sheriff's Department and West Columbia Police Department, how do they enter this building and none of them seem to have seen it?

A They had to move it out of the way.

Q You had an opportunity to talk to Agent Chris Bailey that day, didn't you?

A I talked to a few officers that day.

Q You would agree with me that one of the officers asked you who else was there, and you told them nobody?

A No, sir. I told them exactly who was there.

Q You would agree with me also that, when one of the officers asked you, "Is there anything that's dangerous up there for our people to encounter," you said, "No, I was only cooking ammonia"?

A No, sir, I never made that statement to them.

Q It's pretty convenient for you to blame it on somebody else, isn't it?

A It's really not a problem when it was their fault, not mine.

Q But you're the one that was caught, right?

A At their convenience.

Q Whose convenience?

A Lexington County Police Department.

Q And that's an inconvenience to you, isn't it?

A Oh, yes, sir, it is.

Q So your contention is you were just at the wrong place at the wrong time?

A Yes, sir.

Q And you didn't smell any of that ether, did you?

A No, sir.

Q Everybody else smelled it about 50 feet away from the building. But you didn't smell it, and you say you were right there at the door, is that right? Is that what you're trying to tell this jury?

A Yes, sir, I am.

Q You didn't smell any ether or ammonia?
A Not while I was there.
Q And you didn't even enter that building?
A Not one time.
Q You're not disagreeing that you were apprehended about -- let's give you 45 minutes, 45 minutes even to an hour. You're not disputing the fact that you were apprehended right down the road in the woods, running through the woods?
A No, sir, I'm not.
Q Had marijuana in your pocket?
A I didn't have it in my pocket at that time.
Q You had marijuana in your pocket, and that's why you ran?
A That's why I ran -- not when I was apprehended.
Q How do you know where Brian Jenkins is?
A I seen him about three months ago. He was still living in that trailer.
Q You just testified that you knew where he was right here as we're speaking.
A Well, I said the last time I seen him was at Kent's Corner, and he was still staying there.
Q Three months ago. You would agree with me

that's 90 days at least. Look at the defense exhibit that was put in there. At the top right, there is a circle and a check mark. What does it say to the left of that check mark?

A James Jenkins.

Q To the left.

A To the left -- Extreme Recovery.

Q I'm talking about right next to it. It says "rotation," doesn't it?

A Rotation.

Q What does it say right above that? It says "owner's request," doesn't it?

A Yes, sir.

Q So you would agree with me that because "rotation" is circled and checked, that the next person with this truck and this towing company was just on the rotation, wasn't he?

A I guess so, sir.

Q And you don't know who James Jenkins is?

A No, really I don't know.

Q It's just somebody that happens to have the same last name as the guy that you're trying to pin this all on.

A I'm not trying to pin this on anybody.

Q Do you agree with me or not?

A I agree with you.

Q You have no clue or proof. It's just like somebody having the same last name Jones or Smith. Out there in Red Bank, that's a pretty common name, Jenkins. You agree with me?

A I've really never heard it too much, no, sir.

Q But you're trying to tell this jury -- or insinuate -- that this guy is somehow related to somebody that you're trying to pin this on.

A He's got the same last name, sir.

Q Did you go in the mobile home?

A No, sir, I never went in the mobile home.

Q So you don't know that the inside of that mobile home, there was no way somebody was living inside there?

A Yes, sir. He'd been living there for about two weeks.

Q You've been in there?

A I had been there before, yes, sir.

Q When?

A A week and a half, two weeks prior.

Q What kind of condition was it in?

A A couple of couches, some clothes, stuff laying around everywhere. He's a pretty junky kind

of guy.

Q You'd agree with me that they never found Brian, did they?

A No, sir, they didn't.

Q After all their searching, you're the only one they found.

A Yes, I'm the only one.

Q You're the only one that ran.

A No, sir, he run too. He disappeared.

Q You gave them your driver's license, didn't you?

A Yes, sir, I did.

Q You came out of that front door, and you greeted them, didn't you?

A No, sir, I never come out the door. I was already outside when they pulled up.

Q How long does it take for ammonia to cook?

A I have no idea, sir.

Q And it's your contention, you would agree with me, that instead of parking, backing up to the door where you were going to pick up a heavy tanning bed, you'd rather park it face first, 25 or 30 feet -- what you said -- 30 feet away from that front door and carry it all the way around to put in that house, wouldn't you?

A No, sir. There was a lot of trash around that house. That's about the only way you could pull up in there.

Q I have no further questions.

MR. WILLIAMS: Just a couple of questions, Your Honor.

THE COURT: All right, sir.

REDIRECT EXAMINATION

BY MR. WILLIAMS:

Q Now, as I understand it, you were gone for a little over an hour, right --

A Yes, sir.

Q -- from running off?

A Yes, sir.

Q Can you tell me how you would have told the HAZMAT guy that there was nothing hazardous up there if you were gone for an hour before he went in and checked the place?

A No, sir.

Q You couldn't have done that, could you?

A No, sir.

Q For him to ask you before he went in to check the place, he would have to be around you at that time, wouldn't he?

A Yes, sir.

Q And you were gone for an hour?

A Yes, sir.

Q Okay. Now, let's do the 25 feet and use our feet as feet. If you'll count with me -- two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five. So that's what 25 feet looks like, is that right?

A Approximately, yes, sir.

Q Back over here?

A That's more like about 40, sir.

Q Thirty feet would be what you'd have to run for when you're trying to get a first down on a football field, right? That would be ten yards, 30 feet.

A Yes, sir.

Q When they put you in the back of the police car and drove you back to the scene, did you get out of that car to talk to anybody?

A No, sir, I never did.

Q Who transported you from -- did you get out -- you never got out of that car at all?

A No, sir.

Q And then you went straight to the Sheriff's Department?

A Yes, sir. They pulled down in the yard, pulled up probably a hundred yards from the house, stopped the car, and then I went back to the police office with them.

Q And they didn't stop down there for you to talk to anybody, is that correct?

A No, sir.

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

THE COURT: Anything else from the State?

MR. MOSES: Nothing from the State, Your Honor.

THE COURT: All right, sir.

Thank you, sir. You can come down.

MR. WILLIAMS: That would be the defense's case, Your Honor.

THE COURT: All right, sir.

Any reply or testimony from the State?

MR. MOSES: No, sir.

THE COURT: Ladies and gentlemen, you

have heard all of the testimony you're going to hear in this case. But it's 4:30. What yet has to happen is closing arguments from the State and the defense and for me to charge you on the law.

And that may take an hour and a half or so to accomplish that. And since it's so late, that means you wouldn't get this case till 5:30 or 6:00. So what I'm going to do is stop for this evening, come back in the morning. And we'll do closing arguments and charge where you'll be fresh and won't be here late at night deliberating.

So if you can be back at 9:30 in the morning, we will finish this case with closing arguments and charge. And then hopefully you will get the case in the jury room at 10:30 or 11:00 tomorrow for your deliberation.

I also tell you, be sure not to discuss this case with anyone. Don't read anything -- I don't know whether there's been any press coverage in this case or not.

But please don't read anything or talk to anyone about this case, because you have to -- you're the only ones that have heard all the evidence in this case. And you have to decide this case with the evidence you've heard from this

witness stand and the exhibits that have been presented to you.

I want you to have a clear and open mind when you go into that jury room after you hear the closing arguments and the law that I charge you, where you can give both the State and the defense in this case a fair and impartial trial. Thank you for your attention. I'll see you at 9:30 in the morning.

(The jury left the courtroom at 4:29 p.m., dismissed for the day.)

THE COURT: Okay. Anything further?

MR. WILLIAMS: Judge, we would renew all those motions that we made for a directed verdict, and particularly that one motion.

THE COURT: Okay.

MR. WILLIAMS: When the Solicitor had him on the stand, Judge, he didn't ask him.

THE COURT: I understand that. And --

MR. WILLIAMS: Your Honor, he asked him himself.

THE COURT: Well, I think, based on State v. Solomon and a number of other cases, basically the Supreme Court said that the State is not required to negate everything that's in the statute

in meeting its burden of proof.

And they talk about in that scenario the carrying a pistol statute, which deals with members of the military, etc., etc. And the Supreme Court said basically in that case that those things are a potential defense for the defendant, and the defendant can raise those potential defenses.

But the State doesn't have the burden of negating those to meet its burden of proof. It's similar in a rape case where the definition of sexual battery is the slightest intrusion, except for medical exams, etc. And, therefore, in a rape case, the State doesn't have the burden to prove that the rapist was in fact not a doctor or someone giving a medical exam.

So in light of the rationale of the Supreme Court, I don't think in this case that the State had the burden to negate the allegations of being a dispenser or a manufacturer. And certainly it is a potential defense that the defendant could have raised if in fact he was a licensed pharmaceutical dealer.

MR. WILLIAMS: Or a distributor, Your Honor.

THE COURT: Right. Well -- and if you had

raised that he had a license to distribute these things, it certainly would have been a defense in this case.

But I don't think the law in this state requires -- even though the State has the burden of proof, it doesn't have to negate everything in the statute. And so in light of that, I do not grant your motion for a directed verdict on that issue.

MR. WILLIAMS: Thank you, Your Honor.

THE COURT: Anything else pending that I haven't ruled on that we need to deal with tonight? Can you all give me -- just from a scheduling standpoint for the other Solicitors in the next trial, how long do you think you're going to argue?

And you can argue as long as you want to. An adult's attention span is 19 minutes, and if you want to go -- my preacher can't keep my attention any longer than that. I just throw that out for whatever you want to use it for.

MR. MOSES: Your Honor, the State will go the full 19.

THE COURT: And you can go 30 if you want to. You're just going to lose them after 19.

MR. WILLIAMS: I won't be longer than 20

minutes, Judge.

THE COURT: Okay. So any particular charges that you want me to charge, you need to give to me. If not, I'm going to do --

MR. MOSES: The only thing I'm interested in, Judge, is the mere presence.

THE COURT: And I am going to charge mere presence. I think it's required when you have a constructive possession case, and I will charge the mere presence charge.

MR. MOSES: Judge, if you're going to charge mere presence, we'd ask that you charge joint possession, and we'd ask that you charge the hand of one is the hand of all, the accomplice liability theory.

MR. WILLIAMS: Of course, the thing here, Judge, is their whole case was that he was the only one.

THE COURT: I know. Is this --

MR. WILLIAMS: Kind of like Tigger.

MR. MOSES: Judge, the only -- this is just basically the defense brought it up. They've raised the issue to the jury, and it ought to be charged if you're going to charge mere presence. I don't feel like it's really detrimental to my case.

I think it should be charged if you're going to charge mere presence.

THE COURT: Well, mere presence I think is required under South Carolina Law when you have a constructive possession case. And this is at best a constructive possession case in that the substance in his pocket was not a controlled substance, so you don't have any actual possession, that I am aware of.

And I think I've got to charge mere presence. Now, the hand of one -- what does the defense say about the hand of one is the hand of all?

MR. WILLIAMS: Your Honor, we would object to it because the whole theory of the State is that he was the person who was doing it, that there was nobody else. They even had the police officers say, "Well, we were just mistaken."

MR. MOSES: Your Honor, the whole theory of the defense has been that it's somebody else. And if that's what the defense is going to try to prove, then the jury ought to know that the hand of one is the hand of all, and that, if the defense is trying to convince them somebody else was there, well, both of them were there. He's already

admitted -- the defendant has admitted he was there.

MR. WILLIAMS: But not upstairs, Your Honor.

MR. MOSES: We also request that 44-53-392 be charged.

THE COURT: Which is what?

MR. MOSES: It goes to the weight of a controlled substance. Any mixture or component thereof, if it tests positive for the controlled substance, then the whole weight is considered to be that controlled substance.

That was brought up by the defense with our chemist in trying to say that there was -- only part of that substance in the bag was actually pseudoephedrine or methamphetamine. It was, again, brought up by the defense, and we'd like that to be charged so we can also clarify that.

THE COURT: Okay. I think there was at least some mention about potentially another person being there, at least the defense kept asking officers about Brian Jenkins being present on the scene, and they brought dogs in to track him.

So I'm leaning towards charging the one of hand is the hand of all. But I won't make my final decision till in the morning in case you all

have got any other law or anything else you want to give that you don't think that's in fact proper. But at least there's been some mention in this record of that.

MR. MOSES: Judge, that was also brought up in the defense's case in chief. That was directly brought out by the defense, saying that he was with somebody else.

THE COURT: And you want me to charge 44-53-290 --

MR. MOSES: Three ninety-two.

THE COURT: -- 392?

MR. MOSES: As well as joint possession.

THE COURT: All right. Now, where do you get this joint possession from?

MR. MOSES: There are several cases that make references to joint possession. State v. Brown, 267-SC-311, says in South Carolina, "Two or more persons may jointly possess the same contraband."

State v. Hudson, 277-SC-200 states that "The Supreme Court has upheld the possession with the intent to distribute convictions of a husband and wife regarding the same heroin."

State v. Brown, 319-SC-400 -- it's a

different Brown -- "The Appellate Courts has also affirmed possession related convictions regarding jointly shared controlled substances where the defendants had no special relationship but where all the defendants knowingly had the power and the intent to control the drugs."

THE COURT: Is 44-53-390 a new section, because it's not in this code book?

MR. COLLINS: Three ninety-two, Your Honor.

MR. MOSES: Three ninety-two.

THE COURT: Three ninety-two -- it's not in this code book.

MR. MOSES: It's not going to be in that code book because it's after that code book was printed.

MR. WILLIAMS: Then, Your Honor, we would object. It might be old.

MR. MOSES: I can pull it up. I've got a copy --

THE COURT: It's not in the 2005 supplement, and it's not in the --

MR. MOSES: I had a problem finding it before too. I've got it in my book. I'll bring it to you.

THE COURT: Okay. Well, we'll see if it's on this -- anything on the computer at Court Administration here. Anything else? You want the hand of one is the hand of all, mere presence from the defense, which I'm going to charge. And I think that's the law.

MR. WILLIAMS: What will the charge be?

THE COURT: The hand of one is the hand of all, this 44-53-292.

MR. MOSES: Three ninety-two.

THE COURT: Three ninety-two. I've got three written down. I keep saying two. And joint possession.

MR. MOSES: Yes, sir.

THE COURT: Okay. Anything else?

MR. MOSES: Of course, constructive possession.

THE COURT: And I was going to charge constructive possession.

MR. WILLIAMS: Are you going to give a charge on expert testimony?

THE COURT: I will if you want to. There is some expert testimony --

MR. WILLIAMS: Judge, it's necessary.

THE COURT: -- in here. What does the

State say?

MR. MOSES: Charge on expert testimony? We'll leave that up to Your Honor.

MR. WILLIAMS: Because basically, you know, when you end up charging it, you say, "Well, you can believe it or not believe it." So --

THE COURT: I know.

MR. WILLIAMS: -- I don't even know why we ever charge it.

THE COURT: Well, let me ask you something. Do you all not want it?

MR. WILLIAMS: I don't particularly want it, Judge.

THE COURT: All right. What's the State's position?

MR. MOSES: Judge, I think to cover our bases, it was in there, but it's up to you. We use experts, and we typically have that charge when we use experts. But it's up to your discretion.

THE COURT: Okay. Any other things you think?

MR. WILLIAMS: The defense is good with whatever your basic charge is.

THE COURT: Okay. All right, I'll go over these and let you all know in the morning, then.

MR. WILLIAMS: What time do you want us here, Judge?

THE COURT: We're going to start -- I want to start at 9:30 since I've got the jury here. So you all might at least be here by 9:15.

MR. MOSES: All right, sir.

THE COURT: And I assume -- if you all are going to have any legal issues, if we need to, we need to deal with them tonight, because if my Court Reporter doesn't show up till 9:30, you know, we've got to start running. So I hate to leave the jury shut up back there in the room.

MR. WILLIAMS: I don't think we're going to have any legal issues, Judge.

MR. MOSES: I don't think so either.

THE COURT: Okay. We'll talk about the charges -- I should be here by 9:15 if the traffic allows -- and be sure we're covered on this. And we'll get started right at 9:30 and try to get through. Okay, Court is adjourned till 9:30 in the morning.

MR. MOSES: Thank you, sir.

MR. WILLIAMS: Thank you, Your Honor.

MR. MOSES: Your Honor, are we going to get a copy of this charge beforehand?

THE COURT: It depends on whether you can talk my law clerk into letting you have one. We'll see. I'll try to get you all one.

(Court adjourned for the day.)

Wednesday, October 25, 2006

THE COURT: Thank you. You can be seated. Okay, I was going to bring the jury out and deal with those two issues that we discussed at the bench.

It's Monterey's Restaurant where?

MR. MOSES: Here in Lexington, Your Honor.

THE COURT: And what time frame?

MR. MOSES: Six-thirty to seven-fifteen, approximately.

THE COURT: Okay.

Okay, bring us the jury, please, sir.

(The jury returned to the courtroom at at 9:37 a.m., after which the following proceedings were had:)

THE COURT: Good morning, ladies and gentlemen. Before we get started, I need to ask you a couple of questions. Did any member of the jury panel eat dinner last night at Monterey's Restaurant here in Lexington between 6:30 and 7:00? Okay. And

I need the rest of you all to go back to the jury room.

And if you'll stay with me, please, sir, I need to ask you a couple of questions.

If you all will go back in the jury room just for a minute and let me run over some things, I'll be right back with you.

(The jury left the courtroom at 9:43 a.m.)

THE COURT: Tell me your name, please, sir.

MR. MORRIS: Mike Morris.

THE COURT: I'm sorry, the door was closing.

MR. MORRIS: Mike Morris.

THE COURT: Mike Morris, all right. Mr. Morris, last night during dinner, did you hear anything about this case?

MR. MORRIS: No, sir.

THE COURT: Okay. So you heard no conversations at all with the facts of this case?

MR. MORRIS: No, sir.

THE COURT: And no one discussed anything with you?

MR. MORRIS: No, sir.

THE COURT: Great.

Any additional questions from the defense or the State?

MR. WILLIAMS: None by the defendant, Your Honor.

MR. MOSES: None by the State, Your Honor.

THE COURT: Okay.

Now, if you'd go back to the jury room, please, sir, and I need the alternate. You can go back to the jury room now, and I'll send for the rest of the panel in a few minutes. Thank you, sir.

MR. MORRIS: Okay. Thank you.

THE COURT: Was Mr. Morris the gentleman you thought you saw?

MR. MOSES: Yes, sir.

THE COURT: Okay.

Tell me your name, please, ma'am.

MS. DAVIS: Linda Davis.

THE COURT: All right. Ms. Davis, I was informed by the Bailiff that after the testimony yesterday of the defendant in this case, you thought you may know him?

MS. DAVIS: Not actually know him but know of him, and he may know who I am.

THE COURT: Okay. The fact that you may know him or he may know who you are, would that in any way affect your ability to give both the State and the defendant a fair and impartial trial of this case?

MS. DAVIS: No, sir.

THE COURT: Okay.

Any additional questions from the State?

MR. MOSES: No, Your Honor.

THE COURT: Any from the defense?

MR. WILLIAMS: No, Your Honor.

THE COURT: Thank you, ma'am. I appreciate you bringing this to the Court's attention. If you'll go back to the jury room, I'll get the rest of you all out in just a minute, and we'll start the trial.

MS. DAVIS: Thank you.

THE COURT: Anything from the State? Anything further from the State before we start closing arguments?

MR. MOSES: No, Your Honor.

THE COURT: From the defense?

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

THE COURT: Okay. Give me about two minutes to find my law clerk, and I'll be right back. And we'll start --

MR. MOSES: Judge, yesterday when we -- and there is one thing I'd like to just say -- when we ended the day, you were going to consider some charges to the jury.

THE COURT: Right.

MR. MOSES: Have you made your decision?

THE COURT: Yes. As far as I'm going to charge -- I'm not going to charge the hand of one is the hand of all. I don't think that in this case we have an issue of the hand. The State's theory is that this defendant acted alone.

There was no evidence in the record from the State's side that two or more people conspired together to run this lab or whatever. There was some comment that they may have heard somebody else, but it may have been something falling in the house. The defense brought the fact up that someone else was there.

But the State has the burden of proof. I don't think that there's been sufficient proof in this record -- and even if you take the defendant's version of the facts, there was no

conspiracy, there was no aiding and abetting on his part. He just simply -- he's claiming that someone else was running the lab.

And the evidence from the State was that it's your contention that he's the one that was running the lab. So I don't think the hand of one is the hand of all is an appropriate charge under these facts in this case. I am going to charge the weight statute, 44-53-392; joint possession. I'm going to charge constructive possession.

I was going to charge expert testimony. I was going to charge mere presence. Anything else? The only thing I was not going to charge is the hand of one is the hand of all, because I don't think that fits the facts in this case, because the State didn't present any evidence that two or more people were in fact running this lab. Anything else?

MR. MOSES: None from the State, Your Honor.

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

THE COURT: Okay.

(Recess taken.)

BAILIFF: Court is now in session.

THE COURT: Okay. My understanding, Mr. Moses, is you all are going to open the law and close on the facts? Are you going to waive opening and just do one time?

MR. MOSES: Judge, we'll waive opening and just close on the facts and the law at one time.

THE COURT: And only one of you is going to argue?

MR. MOSES: Yes, sir.

THE COURT: Okay. So, Mr. Williams, you're going to go first.

MR. WILLIAMS: Yes, sir.

THE COURT: Anything before I bring the jury in?

MR. MOSES: Nothing from the State, Your Honor.

MR. WILLIAMS: Not from the defendant, Your Honor.

THE COURT: Okay.

If you would get us the jury, please, sir.

(The jury returned to the courtroom at 9:51 a.m., after which the following proceedings were had:)

THE COURT: Good morning, ladies and

gentlemen. I appreciate you being patient with us this morning. What's going to happen now in the trial is the defense is going to give his closing argument, and then the State is going to give their closing argument.

We're going to take about a 15-minute break, because it will probably take them about an hour to get through their closing arguments. We'll take about a 15-minute break and let you go back to the jury room for that 15 minutes, bring you back out. And I will charge you on the law in this case, which will probably take about 30 minutes.

And then, at that point, you'll get to go in your jury room, and I may deal with a couple of issues with the attorneys. And at that point, they will deliver you the evidence as well as the verdict form, and you begin your deliberations.

But that's kind of a road map of where we're going today. So we'll start now with the closing arguments of the attorneys.

Mr. Williams?

CLOSING ARGUMENT

BY MR. WILLIAMS

MR. WILLIAMS: May it please the Court.

Mr. Foreman, ladies and gentlemen of

the jury, I want to thank you for your kind attention. You've gotten to do something which I've never been able to do. I don't know if it's because everybody dislikes me, but I've never actually been close to being on a jury.

And I'd like to be on a jury sometime, to find out what goes on behind the walls and stuff like that. But then I'm not sure I'd want the responsibility at the end of it. So I guess it's a two-edged sword.

When you came in Monday, I don't know if you've ever been on a jury before, a civil jury or a criminal jury. But if you've been on a civil jury, it's a little bit different when you deal with a criminal case, because you've got a different standard. And when you hear it on TV -- and I feel like I would be remiss if I didn't say something about it -- it tends to become trite when you hear about it on TV so much.

But there is a genuine difference between a civil case and a criminal case. Many times, if you had a civil case up here, you'd have both attorneys putting up as much evidence as they could, because that's how you run a civil case. You just weigh the evidence. And whichever side puts up

more convincing evidence, you rule with that side. You know, it's a preponderance of the evidence.

In a criminal case, very often you don't see the defendant ever take the stand. And the reason for that is not because the attorneys are stupid, but it's because they understand there is a standard in the criminal case where the State has to prove the defendant guilty beyond reasonable doubt.

And so if the attorney for some reason doesn't want to, he wouldn't even put the defendant up. But you have to remember that you're in a criminal case. You have to focus on that everything has to be proven over here by the State. We don't have to prove it. They have to prove it.

Now, having said that, I thought I'd talk a little bit about the types of evidence that you would hear. You have obviously witness testimony which you've heard for at least two days. And essentially what you do with that is you use your common sense. You look at the guy on the stand.

You say, "Well, you know, I believe what he's saying because he's consistent, it kind of matches what the other witnesses are saying. It makes sense to me. He's recalling well," meaning

he's recalling the facts well.

The witnesses you tend to discredit or maybe not believe would be ones who have trouble answering questions. They can't remember the answer to the question, or they're hesitant in answering the question. But there's always that underlying thing which is in all of us that we just judge somebody by a little bit of gut reaction in terms of whether you believe them or not.

Now, when you determine what the witness is saying, then you have to start using that logical part of your brain which simply gets those facts. And you remember what the Judge will tell you later on, because, you see, the Judge is going to give you the law on the three charges, as well as some guiding law on how you make decisions.

So you apply the facts that you have to that law. Now, the law in this case is -- essentially there are like three charges. You've got one which is the possession of crank charge, which means that if someone has got crank on them, then they're guilty.

You've got the manufacturing methamphetamine, which is putting together elements to make methamphetamine. And then you've got this

other charge which is illegal possession of pseudoephedrine which -- and don't go home and throw out your Sudafed, because it's not illegal. We all have Sudafed, probably some of us in our pocket for a cold, you know.

It's only when you have too much, and it's the federal law and the state laws which are cracking down on the production of methamphetamine. So they said if you have between 200 and 400, which is a lot, then that's illegal.

So part of what your decision-making is going to be is going to be weighing the evidence in terms of how much pseudoephedrine was found, who possessed the pseudoephedrine, whether or not you're convinced beyond a reasonable doubt that the State has proven who has possessed the Sudafed. So, even though it sounds like a lot, when you break it down, it's just the steps that you have to go through.

Now, when we talk about how we approach things, sometimes -- I've lived in Lexington County since 1962. I wasn't born here, but that's a long time, I guess. That's 40-some years. And I think I know Lexington jurors pretty good, because it's a group of jurors that analyze things. You don't rush. You all think about

things.

So when you analyze things, you're not going to be swayed by like the State fair, magic, things of that nature. You're going to sit back, and you're going to listen, and you're going to figure out what's going on.

And I don't think you're going to be swayed by things that are focused upon, that are orchestrated for you. You see, to a certain extent, what we saw -- and it's not a criticism, because, you know, it's done all the time. An attorney or someone who is trying to prove a point will try to put the evidence out there so that it will convince you in a certain way.

He may have a slide show. He may -- in his presentation, he may have a real good witness who teaches in school, teaches in churches, I guess. I don't know where else you can teach. And he let them come down here, and he'll talk to you like I am, which is, you know, that's how you get a point across, is how you present the evidence.

And then he may put pictures, you know, on a screen and show it, even when they're not talking about the pictures. Now, let me tell you why they do that -- because you have in your brain

or in your minds the picture of a truck sitting at a house.

Regardless of who you're talking to, regardless what witness you're talking to, regardless of what you're saying, because that's supposed to impress upon you that throughout the entire trial, whose truck was at this house -- whose truck was at this house -- because, you see, that's how the Solicitor wants to prove his case, is that Chris Ashe's truck was at the house -- throughout this entire trial.

I don't think you're swayed by that, because it doesn't mean he's guilty of a thing. You know, one of the important things that we have -- and thank goodness that we have this protection in this world -- is that our laws through the years have come up with different things that protect the individual. And one of them is that the mere presence at a scene where something criminal has happened doesn't mean you're guilty of it.

And you probably heard me a couple of days ago when I made some comment to one of the witnesses. I said something about, you know, something could be at my house. I could have too much pseudoephedrine at my house. Or, you know, you

could go visit a friend, and that friend could be cooking methamphetamine and he not be there. And the police show up, and there you're stung with it.

But that's why the Judge will charge you. One of the charges he will give you is that mere presence at the scene is not sufficient to convict somebody of anything, because in real life, people are in positions where things are incriminating, and they just happen that way.

You can be with a group of people, and somebody else causes the problem. I remember in grade school I got spanked one time. I had nothing to do with it. I mean, what do you mean? Where do you take that to? What court of law do you take that to? It's just sometimes things happen in life.

And in this case, you've got an individual, you've got Chris Ashe, who -- well, he's a construction guy. He's got -- he told you about himself. He's got a wife. He's got three children. They go to school at a Christian academy.

He's got 12 employees, and he does construction work. There's a given, to a certain extent, when you do construction work, you don't find -- and I hope it's not a slam to anybody. But most of the time, you don't find guys who are

bankers or guys who are doctors.

I've got painters who come to my house all the time and paint. I've got one or two of them who have had a beer in their lifetime. So when you deal with construction people, sometimes you make friends with people who you may not want to bring home to your mother, or your father, as far as that goes.

So he was friends with this Jenkins guy. He was doing him a favor. The Jenkins guy had gotten booted out of his girlfriend's house, so he's hauling some of the stuff other into the two-story broken-down house, if you will. But one thing you learn when you hear a case and you have a bunch of witnesses, there's always a string or strand of truth which will come through.

And what's interesting to note is that when he took the stand, he testified he never went in the house. And he said that he brought some tools in downstairs, or they delivered some tools, if you will, and then he pushed the -- I think he said a waterbed or something like that, into the first floor.

What's interesting is that, indeed, when Hamilton testified and he was testifying -- and

I use the word "Hamilton" because you know how many Chrises we have in this case? We've got a boatload of them. We've got Chris Stout. We've got Chris Ashe. We've got Chris Bailey. It's the case of the Chrises, so I'm going to use last names.

When he was testifying, the things that Hamilton testified to that were downstairs were some old tools, and he said a black tub and some trash -- nothing of any consequence. There were no drugs or anything like that. But the reason why that is important is because it is consistent with what Chris Ashe said.

I tell you what else -- something else that's kind of interesting. And you'll note that when you do a trial, there are a lot of rules and regulations on how you present a trial. The State always goes first. The State has the opening argument, and they go first. The defendant goes second. It's just the way it is. You know, you've got a program, you've got to play by the rules.

You've got the Judge, and you got out of order, he'll sanction us for going out of order, because that's the way the system is. Well, they do it for a reason that way, because since the burden of proof is on the State, they get the first bite of

the apple. Since the burden of proof is on the State, they get the last bite of the apple, because they've got more to prove than we do.

So they're going to give you two shots, at the beginning and at the end. What else is interesting is that in the trial of a case, there is the State's case, there is the defense case, and then there is the State can put more witnesses up in redirect, if you will, or reply, if you will. They get one more bite.

So meaning yesterday when we retired, when the defendant got through testifying, the State could have put up more witnesses. I mean, you probably didn't want to hear more at that point in time, but it's interesting to note that they could have done that. And you say, "Why is that lawyer telling me that? Why is that important?" I'll tell you why it's important, is because there were some questions that were asked about Chris Ashe up on the stand yesterday, on cross-examination.

He asked him about, "Well, isn't it true that you made some statement to some police officer about" -- I think it was Bailey -- "that you were just cooking ether or some kind of comment like that?" And, of course, Chris Ashe said, "No."

Well, it's interesting because of two things. Number one, it couldn't have happened that way, because Chris Ashe was on the run for an hour; and, number two, if it happened, if that is the State's perception, why didn't they put the officer up there to say that?

Well, when you don't put someone up to prove a question that you're asking, it normally means that it didn't happen. So you can ask yourselves, why didn't the State put up some other witnesses yesterday? Why didn't they recall Mr. Hamilton to testify that he didn't have to go through a waterbed -- because, remember, Chris testified that all he did was push the waterbed in there.

Why didn't they put him back up to say, "Well, there was no waterbed down there at the front door that we had to move out of the way." They didn't put him up because maybe the waterbed was there at the front door. You don't put up witnesses if it's not going to help you. So that's one of the little things you can keep in your mind, is why didn't they put up any other evidence?

Once they heard the defendant's case, that was it. They didn't put anybody else up,

because they couldn't prove any different. Now, there are -- to give you my view of what the State has said, and here's the deal. You remember what you remember. You've got 12, 13 people back there. You've got different memories, I'm sure.

But when I say something up here in argument, I may not remember it correctly either. So you go by what you remember, because we're all human. The first witness testified there were two of them came up on the scene. It was Bailey, and I believe it was Gleaton.

They come up on the scene. Gleaton testifies he comes up, and some guy is in the window waving at him. Well, that's just kind of crazy to begin with, but that's what he says. He says some guy is waving at him, and he says that when the door opens up, that he smells the ether or ammonia.

He also says that the guy who was waving at him looked like Chris Ashe. And he said that he heard a noise, thought somebody was in there. Now, I don't know if you noticed it, but there was a lot of dancing around by the police yesterday and the day before when we were talking about who was in the house.

And they thought enough of it to put

it in the incident report about they were concerned about somebody else being in the house, they heard somebody in the house. But when we got to trial, just a mistake, must have been hearing ghosts, don't know what I'm talking about -- "I don't know why I said that."

They don't want you to know that there was somebody else in the house because that may indicate that Chris Ashe is not guilty. If you were really searching for the truth -- if you were really searching for the truth -- wouldn't you be concerned about checking out who was living at that property?

Here's a given. You know that Brian Jenkins is a drug dealer. He's a drug manufacturer. Everybody, all the drug people know that. The drug officers know that. Why wouldn't you go talk to him? Why wouldn't you look for him? You know he's got to have some kind of address.

Lo and behold, we learn yesterday, Chris Ashe said, he was up there 300 yards staying with his mama on the same property. Don't you think the police should check into something like that, when they know that he is a drug person?

Did you get a clear answer on whether

or not he had ever been arrested for manufacturing methamphetamine or not? Why wouldn't you go into the house and find out if the power was working or not? The reason everybody's dancing around is because he was living there. Brian Jenkins was living there. He's a meth manufacturer, and he was living there.

But they get the guy who's running away from the scene, so there you go. The job is done. Why wouldn't you take pictures? Well, there's a good reason, and I understand that. And that is if you're using a camera in this highly volatile situation, you could set a spark off, and you could blow everybody up. You don't want to do that.

You bring it all outside, and you put it all out on the lawn, and you take pictures of it. Well, that's good. But why wouldn't you take pictures of the two items that supposedly were found in the truck -- in the truck? You know, you've got to look again -- when you watch TV -- and I keep going back to TV, because we get a lot of our common sense from TV, I guess.

And, you know, the first thing you do is you take pictures of the scene. And I'm sure

back in the early fifties, Dragnet and all that stuff, you even saw the chalk where the dead body was. But you have to preserve a scene. If you saw a picture of the items in the truck, wouldn't that create a little inference to you that it was actually found in the truck?

Did you hear any of the officers testify where they found it in the truck? Well, you see, the reason they've got to get these two pieces of evidence in there is because it's pseudoephedrine, which is the same stuff that they found, and it's a scale. The clear implication is that somehow Chris Ashe had these things in his truck, and he was using them for the manufacturing of methamphetamine.

Well, why wouldn't you take a picture of it in there? Why wouldn't you say where you found it in there? And more important than any of it, why wouldn't you take a fingerprint of these items, to show whose fingerprints were on them? Because you don't want to know the answer to that question, because if you know the answer to the question, it may complicate your case.

I know it sounds stupid, but it's not really. If you think so much of a Wal-Mart receipt

where it says the purchase of items that could be used for methamphetamine that you actually see who the manager of the store is, you know the date that it's purchased, you know the cash register that is used, why wouldn't you just go up to Wal-Mart and say, "Can I see the tape for such and such a time on that register?"

Do you believe it can't be done? You know, if it were a murder case and they go to the -- what do you call those things where you get your money out? Anyway, they go to the little things where the guy steals the lady's credit cards and gets the money out of the machine. Sure enough, there's a picture of the guy most of the time, unless he's got something over his face.

This is nothing -- this is not new technology. It's not a new way of thinking. Everybody knows that we've got cameras everywhere. You can't get away from cameras unless you're out in the middle of a field somewhere. So why not do that, unless you don't want to know the answer?

Well, what's really interesting also is the subliminal stuff. There may have been some guy waving in the second floor. Now, Gleaton said the guy had a hat on. But what's really important

about this is not that the guy had a hat on but that when we got to Chris Bailey talking about my client, he said my client had a red hat on.

Well, that's interesting in two perspectives. Number one, if it's a red hat, everybody and their brother should have remembered it, because you don't see red hats much. Maybe it was a hunting hat. If it was a hunting hat, it probably wasn't red either. It was probably whatever that color is -- orange-ish maybe. But it's a red hat. Why wouldn't everybody remember that?

Well, sometimes you want to make sure you remember things right by saying things that are distinctive. And, you see, that's how you would remember a red hat. But nobody else remembers a red hat. Well, after Mr. Gleaton basically testifies, we had Lt. Crawford testify.

Now, Lt. Crawford was the guy who -- I don't know if he ran him down, or if it's the guy who -- Burroughs may have tackled him. Crawford or Burroughs, one of them tackled my client, and they should have. I mean, they should have tackled him. He was running away from the scene. If you commit a crime, you know, you ought to be thrown down.

But the crime he committed they couldn't prove. You know what the crime he committed was? Marijuana, marijuana. But he throws him down, and then he searches him. And he finds in his front pocket something, and, lo and behold, when we get through with this whole case, then we say, "Well, that's not even a drug. Whatever you found on him is not even a drug."

So what's the point in all that? The point in that is to indicate to you that he must be guilty of something. They don't want you to remember that what was in his front pocket was not methamphetamine, because they want you to get confused and think, "Well, remember, there was that little bag, and it was tested positive for methamphetamine. And they took the little bag off of Chris Ashe. So he's guilty of possession of crank."

Well, no, he's not, because that little bag was negative for any kind of drugs. But the drug which was positive for methamphetamine was the little bag which was in the green duffel bag, which was upstairs at the house. And I'm sure you picked up on it.

Now, after Crawford tackles him --

and remember Crawford -- there was a lot of argument on cross-examination about it being 30 minutes. Well, you know, nobody else said it was 30 minutes except the Solicitor, and he wasn't even there. Every other witness that testified said it was 45 minutes to an hour. Even Crawford said it was 45 minutes to an hour.

What's important about the time involved here also, when you talk about this possession of crank, you've got a guy running in the woods for an hour. He's running because he's got marijuana in his pocket. He doesn't want to be arrested for that.

He gets rid of his jacket, and that's important because you've got Bailey who said he had his jacket on when he came back. And he throws out the marijuana. Is he so stupid that after he throws out the marijuana, he's going to leave something on him? No.

The other part of that is why would you admit to it? What idiot would take the stand, when they don't have any proof of the marijuana, and comes up here and tells you that that's why he ran and that's what he had on him? Because he's telling you what happened. And if he gets convicted of

that, he gets convicted of that.

Now, Chris Bailey -- and I'm trying to keep all the Chrises separate. But the important thing about Chris Bailey is he is the person who kind of ran after. If you'll remember he's the -- and I get the Chrises confused. But he's the nice-looking young man from West Columbia, got a young-looking face, not gray like mine.

And he -- the guy comes over and puts him in custodial detention. And somehow this track star over here outruns Chris Bailey. And that's kind of about it. He testified that some guy waved, but he didn't wave back. And I'm trying to break it down who saw what.

And then I think the only other thing he said that was of any importance was he talked about the red hat. But he said he didn't find anything. He didn't do any of the searching. But he talked about the dogs.

Remember the dogs? Everybody forgot about the dogs. Well, that's important, because, remember, the first witness testified the dogs never got there, that they were called off. Chris Bailey says there were two officers out there, and they had a bunch of dogs out there.

Which way did the dogs go? Why wouldn't you bring the dog handlers in here? And wouldn't it be interesting to find out that the dogs didn't go out towards the woods where Chris Ashe was? But maybe they ran in the other direction where this unknown person -- can we call him Mr. Jenkins just to give him a name -- ran.

Why wouldn't you bring those people? Remember, Bailey remembered them being there. Well, you don't bring them because you don't want to know the answer. It doesn't fit in our little theory. I keep going back to that red hat. I don't know why it bothers me so much. It was red, a red hat. It's important, something that sticks in your head -- red hat, red hat.

You know, when you arrest him, he comes back and he's got his hat on, and you take him to the jail, and you take a picture of him, I assume you take his clothing away. You write down the description on whatever items that you're not allowed to take back into the jail, unless they let you take your red hat back into the jail. Surely, if it was a red hat, when they looked at the description of the items on the booking sheet, they could just hand the booking sheet that says he had a

red hat on.

Well, maybe he didn't. See, it's that simple. It's that simple. They arrest him, they take him to the jail, they take his picture. They've got a list of everything that he had on that could show -- could show you. All right, after he testified, Chris Stout was the next meth tech who came.

He was the first guy there, and he said he saw some ammonia. So he backed out and called Hamilton to do all the work. He's the one who received the items from Hamilton and received the Wal-Mart receipt. The reason I say it like that is because Hamilton is the guy who finds everything. Hamilton is the guy with the HAZMAT Team who's kind of in charge.

He's the guy who goes into the trailer and finds the old clothing and the plates with the food on it, which means somebody is living there. Hamilton is the guy who finds all the stuff upstairs. I want you to remember everything is found upstairs, with the question about the Sudafed and this item. Everything is upstairs.

And why is that important? Because one of the things that I'm sure the Solicitor is

going to harp on you about is that this smell was so strong -- and they keep pointing about the guy waving in the window and about how the stuff was found on a wall. Well, there's a reason they're doing that, and that is so that they can stand up here and tell you the guy who was waving at the window obviously was right next to where the meth lab was.

But, you know what? My guy never went inside the house -- never went inside the house. The first witness testified he didn't smell anything until the door opened. You know something else that's kind of interesting, we've got the pictures of the guys with HAZMAT suit on, and you know how porous -- we spent a long time talking about we couldn't do fingerprints because it's porous material, and you get all those chemicals, and they get into the stuff, the cardboard -- gets on everything. And you wear this HAZMAT suit.

And I'm not belittling that, because nobody should be messing with that kind of stuff. It is dangerous. It could blow up. And how bad the smell is. It's just everywhere. You've got the fans to blow the fumes somewhere else. Remember the fans to control the fumes? Well, I'll bet you

probably smell -- you know, I don't smoke. I have. I've chewed a little tobacco in my lifetime too.

But one of the reasons people complain about people who smoke and non-smokers can smell it on smokers is because they say, well, they smell the smoke on them. "You smell like you've been in a bar. You smell like you've got smoke on you." How many times has your wife said, "Where you been? I smell the smoke on you."

You think if you were in a meth lab with ether and ammonia that is so strong that you have to wear plastic suits and have fans, that when you catch the guy, you think he ought to smell like it? Well, nobody said they smelled anything unusual about Chris Ashe. See, it's the little stuff -- it's the little stuff -- that doesn't fit the plan. But everybody else smelled like that.

Let's see. Hamilton, again, we've talked about him. You had Beth Harmon, nice person, Candy Kyzer, nice person, testified about the evidence. Then you've got Ms. Homer, who is the chemist, who testifies that the stuff that was supposedly found on my guy was not drugs. You've got Hamilton back up on the stand. He talks about how the truck was 25 feet from the house.

Well, why would you ask my client, "Twenty-five feet?" when your own guy is saying twenty-five feet. What is the point? Well, I don't know how you prove someone's innocence. I don't know where Brian Jenkins is. The only thing Chris Ashe could do for you was to tell you what happened. That's all he could do.

He went to the wrong place, shouldn't have been there, should have been at home with his wife and his three children. That's what he should have been doing. Shouldn't have been dealing with somebody like Brian Jenkins, jeopardize his family and jeopardize his future.

But I want to make sure that when you make this decision, you do it based on the facts and your common sense, and that you're not going to be influenced -- because I'm going to be sitting down, and I'm not going to have a chance to say anything else.

And the Solicitor is going to come up here, and he's going to talk about the poison -- sometimes you get dramatic and raise your voice when you talk about the poison -- and how bad it is for everybody, going to raise the flag, talk about how we need to get it off the streets, and "If that's

the kind of person you want living in Lexington County, then find him not guilty."

You're too smart. You're not going to be influenced by a show, by pictures, by an orchestration. I want you to use your common sense and do what you're sworn to do. And that is to seek the truth, make the State prove its case. And I thank you.

THE COURT: Mr. Moses?

CLOSING ARGUMENT

BY MR. MOSES

MR. MOSES: Thank you, Your Honor. May it please the Court.

One thing Mr. Williams said certainly is true. Y'all aren't going to be influenced by a show. This case is about methamphetamine production. It's about somebody possessing meth, and it's about somebody possessing an unlawful quantity of pseudoephedrine -- crushed pills, ladies and gentlemen.

You don't go to the grocery store or the drugstore and get crushed pills that look like this. These have to be done in a pill grinder that looks like this. That's what this case is about.

It's about taking Sudafed that you

buy over the counter now at drugstores, crushing those pills, having all the precursors to manufacture this stuff -- poison, as Mr. Williams just took the words right out of my mouth -- and cooking it in a method that is highly caustic, and highly toxic, and illegal.

Now, everything else has been just a show. Mr. Williams is a fine attorney. We've tried many cases together. He is a great attorney. However, it's a good thing he went to law school because he's a lousy magician. And this whole time, he's been holding up all the stuff over here he wants you to focus your attention on -- "Look over here, ladies and gentlemen."

We've got Brian Jenkins. Who's Brian Jenkins? He's a puff. We don't even know him. We know he owned this residence, but there was nobody living there. There was no electricity on. He's a -- who is he?

He was never found on the scene. He's never been arrested in this crime, never been charged for manufacturing this meth lab, never charged for possessing this Sudafed, never been charged for possessing the meth that was found in the duffel bag. So what, it's his residence.

They were friends. They knew each other. They hung out. We don't know where Brian Jenkins was. For all we know, he was in Mexico. Who knows? He was never found, and he's never been charged. And this case is the State versus Christopher Ashe, who is the man sitting in the blue shirt, who is the defendant in this case.

That is all we are here to consider today. That's it. Brian Jenkins isn't on trial. So while you're looking up here, focus your attention up here, where did the evidence go? Where is Christopher Ashe?

Well, unfortunately for Mr. Williams, he can't make the evidence disappear, and he can't make the defendant disappear. And the reason for that is he was caught on the scene. He was seen at the scene and caught 45 minutes, an hour -- I don't care if it was three hours later.

He was caught right down the road. He was seen right there at the scene. He fled, and he comes up with a story that he had marijuana. He wants you to sympathize with him because he's trying to come clean and say that he is a criminal. He's trying to say, "I'm a criminal. I had marijuana. Please sympathize with me."

But, no, marijuana is not the crime he's charged with. Marijuana -- there was no marijuana ever found, and he wants you to look over here, "Sympathize with me because I'm a criminal. I admitted it on the stand." But that's not what he's charged with, and that's not the crime that he committed this day.

For all we know, there was no marijuana whatsoever. So he wants you to look over here. What else? He wants you to look at this trailer, the trailer beside the house -- "Look up here, ladies and gentlemen, at the trailer." What in the world does the trailer have to do with this case?

What in the world does the trailer have to do with the meth lab that the defendant was seen standing right next to while he was cooking? He had the window open. And I will go back to this picture that we've been seeing the whole week.

We've got the window open up here. Why is that? Why is he standing in the window? Because the caustic fumes are so strong he can't breathe in there. He's got to stick his head out the window to get fresh air. That's why he's standing in the window while that stuff's up there

cooking.

And when the police officers show up, they both testified -- Mr. Gleaton and Mr. Bailey both testified they were first on the scene, they were undercover, they had no badges around their necks -- he had to pull his badge out of his wallet to identify himself -- and that as soon as they got out of their truck, they smelled ether. Both of them testified to that.

They smelled ether from the second they got out there. Agent Hamilton smelled ether from the second he got out there, 50 feet from the house, from what he testified to. Agent Stout smelled ether from the time he got there. How is it that all these people smelled ether, but the defendant didn't?

He couldn't smell it because it's convenient for him not to smell it. It's convenient for him to make up this cockamamie story and tell you that it's Brian Jenkins, somebody else. "Look at the trailer beside the house. There's some old corn flakes and some plates with some crusted-up food on it. Somebody must have been living there."

Fingerprinting, why didn't we fingerprint? "Look over here, ladies and gentlemen.

I'm trying to hide the evidence -- the relevant evidence -- because I want you looking over here. Why didn't they fingerprint?" You heard from Agent Hamilton. He is a highly qualified expert, highly qualified. He is the meth expert in this region.

He trained Chris Stout. He trained numerous other officers. And when they have questions, they come to him. He is the expert -- countless hours of training, of certifications. He was qualified by the Judge as an expert to testify to the effects of this stuff, and he's trained as a fingerprint analyst.

And he's the one that told you you can't fingerprint this stuff. One, it's too dangerous. Two, because of the porous materials, it is physically impossible to get fingerprints off of it. So Mr. Williams wants you looking over here. Why didn't we fingerprint? That's what TV -- this isn't TV, ladies and gentlemen. This is real, live stuff, as you are well aware.

This is not CSI. TV is drama. You can make up TV, and you can make all the facts fit just how you want them on TV. But that does not happen in real life. This is real life. Fingerprint analysis, we don't need it. We couldn't

get it if we wanted it.

The dogs, let's talk about the dogs. How many people did Agent Hamilton testify to were at this scene? We had fire trucks. We had HAZMAT Teams. We had three HAZMAT Teams, one extra than normal. There's always one backup team. We had two backup teams in this one.

HAZMAT people, fire trucks, people -- law enforcement -- all over looking for this man they had just apprehended and brought back to the scene by the time Agent Hamilton got there. There was people all over the place. Mr. Gleaton is not in charge of the dog team here in Lexington County. Bailey is not in charge of the dog team. Bailey went out in the woods looking for him.

Bailey testified that he saw the dogs. Gleaton testified that he didn't. How possible is it that he didn't see the dogs? He's not in charge of the dogs. "Look over here, ladies and gentlemen, because he said he didn't see dogs, and Bailey said he did. There's a discrepancy."

Where is the real evidence? It's right here. It hasn't gone anywhere. But he wants you to think that it disappeared under this hand. Look at the relevant evidence.

Then he goes on. He wants to talk about the brands of Sudafed. Does it matter? Does it matter whether you've got Sudafed or whether you've got Walgreen's brand or Eckerd's brand? It's all pseudoephedrine. What in the world does it matter? "Look over here, ladies and gentlemen."

Remember when Agent Hamilton was on the stand? And he says -- he pulls this picture out. Remember the picture that had all the instruments set up out in the yard, this picture here? Remember when Agent Hamilton was up on the stand? Mr. Williams pulls this picture out. He doesn't want you to believe that there is even a meth lab up there in the building.

He says, "This thing wasn't assembled like this up there. You had to disassemble it up in the building and bring it out in the yard and reassemble it. This is how you assembled it, isn't it? You had to detach all that stuff and bring it back out in the yard and assemble it again, just so you could take a picture and put it in the jury's face."

Remember what Agent Hamilton's response to that was? "Well, actually, sir, we did bring it out like this. And it was quite a

challenge, I might add." He's an expert. They know what they're doing. He's trying to make you look over here, ladies and gentlemen. It blew up in his face when he asked the question of Mr. Hamilton, because, see, it was set up exactly like this.

Agent Hamilton didn't disassemble any of it. That's how this thing was up there in that building. Then he wants you to believe that we've done shoddy police work. We could have brought in this person. We could have brought in this person. We could have brought in this. Why didn't we do it?

Ladies and gentlemen, we didn't need to do it. We've got all the evidence we need. The relevant evidence is right here. It's not up here. Don't focus up here. That's what he wants you to do.

I'll tell you a little story. There's a local man who hears about the local beauty pageant in town, and he wants to try to get his hands on that prize money because he heard it's real nice. But he's got a problem. He doesn't have any daughters, he doesn't have a wife.

But he wants that prize money. So he goes down to a local farmer, and he goes and buys himself a pig. On the way to that beauty pageant,

he stops at the clothing store, and he buys a dress for that pig. He goes to the makeup counter. He gets some makeup, some lipstick, some earrings, and he dresses this pig up, puts the makeup all over it and the lipstick all over it.

He goes down to that beauty pageant and tries to enter the pig as a contestant. And the guy says, "Sir, you can't enter her." He's like, "What not?" And the guy takes out his handkerchief, wipes off all the makeup off the face of the pig, wipes the lipstick off, looks at him, and says, "Because you've got a pig."

You see, ladies and gentlemen, you could make it up, you could put lipstick all over it, you can put a dress on it, but at the end of it, all you've got is just a pig. And that is exactly what his story is. His story is a pig. And pigs don't fly, ladies and gentlemen, and neither does his story. It does not fly. It does not fly in the scheme of common sense.

And that, ladies and gentlemen, is the basic tool, that is the simplicity of this whole process. It is not difficult. You came in here today with your common sense, and that's all it takes to figure out what happened here.

And what did happen? If you believe the defendant, if you want to believe the defendant, then it is a fact that you must believe that every witness the State put on the stand was lying. If you want to believe him, then every witness that we put up had to be lying.

Now, I ask you, what reason do these law enforcement officers have to lie? They're only out there doing their job. They have no friends to reward, no enemies to punish. They didn't even know this guy before this happened. They're just investigating a crime scene and doing their job.

What reason does the defendant have to lie? He's got every reason in the world to lie. And he did lie. He got on the stand, and he's trying to tell you that he was riding up there with Brian Jenkins, this imaginary guy who I'm sure exists. We're not denying that. Brian Jenkins exists.

But on this day, on December 22, 2005, he is a figment of the imagination that they're trying to get you to look at, because he wasn't there. He did not exist on this crime scheme or in this crime lab. He was not there.

And he wants you to believe that he

rode up here in his truck. The only truth that came out of his mouth was that he was there. He admits he was there, that it was his truck. He admits that it was his truck, and that there was Sudafed and there was scales in his truck.

Ladies and gentlemen, there's no contradiction to that story, the only truth that came out of his mouth. Why is it? These officers were all outside the courtroom. They didn't hear any of the testimony of each other. He sat there the whole week and listened to everything everybody said.

These guys didn't know what they were saying, what one was saying from the other, because they were speaking the truth. All they came up here to do was tell you the truth. And that's what they did. They didn't have any idea what each other said.

He sat there and listened to everything. He says, "I drove up. I was moving my buddy back into his place, and we were carrying a tanning bed." Where's the tanning bed, ladies and gentlemen? Agent Hamilton said there was a tub, a black tub, and some tools off in a corner -- well away off in the corner, a black tub and some tools.

Where's the tanning bed?

The tanning bed doesn't exist, just like Brian Jenkins doesn't exist this day. He didn't exist on this scene. The tanning bed doesn't exist. Use your common sense, ladies and gentlemen. If you're going to move a tanning bed -- and I asked him, "How big was this tanning bed?" And he was like, "Well, it was probably about six feet, got to be long enough for your body to fit in."

And then he wanted to argue with me about how wide it is. It's irrelevant. I don't care how wide it was. A tanning bed is heavy. I don't have any personal experience with it, obviously. But if you're going to move a tanning bed into a building, do you really think that you're going to drive a truck straight up to the front door, or do you think you're going to back in so you can haul it off of the truck and put it in the building?

But, no, he wants you to believe he never entered the building. "I took the tanning bed inside the building. I helped my buddy carry the tanning bed inside the building, but I didn't enter the building." Well, how do you put the tanning bed in a building you don't enter? That's impossible.

If he didn't enter the building and help his buddy carry it in, it would have been sitting right there in the doorway. Nobody would have been able to get by. Not one officer testified that there was a tanning bed in their way, obstructing their way into the house. Not one officer testified that they even saw a tanning bed there, because there wasn't one.

So another fact I'd like to point out with this picture, the truck right there in front of the front door. How about the tailgate? Look at the tailgate. It's up. If you've got a six-foot-long tanning bed and you've got a toolbox in the back of this truck, this isn't an extended cab, extended bed truck. This is a regular bed truck. You've got to have that tailgate down to fit a tanning bed in it, a six-foot-long tanning bed. How are you going to fit it in there with the tailgate up?

He testified -- you heard him testify -- "I had just helped my buddy carry the tanning bed in when I saw somebody" -- "my cell phone rang." He said, "My cell phone rang, so I dropped" -- "I put the tanning bed down, and I walked outside. And as soon as I turned around with my cell phone, I saw

two officers walking up, right there." He testified to that.

Well, if he's helping his buddy carry a tanning bed in, if they were -- if they weren't smart enough to back the truck in and just load it off and slide it into the door, well, why isn't the tailgate down? There isn't any tanning bed, ladies and gentlemen.

His story stinks. It is a pig, and it does not fly. Pigs don't fly, and his story does not fly. You heard from the drug chemist. She's an expert in her field. She's a chemist. She's a forensic chemist. She takes samples of unknown substances, and she tests them. And she explained to you the tests. All that stuff is well over my head.

But they have a process that they do as chemists that tests these drugs to a reasonable degree of certainty within the chemical, forensic chemistry field. Thank goodness for people like her, because I cannot even stand dealing with chemistry stuff. But she tested this stuff. We completed the chain. It was taken from the scene. It was given to each officer. They all testified who they got it from and who they gave it to.

Nobody tampered with it. It was locked in a secure place. And here we go. They have a bag of Sudafed, and they have another bag of Sudafed. One of these bags was found in this bucket, the pink one. There's the bucket, and you can still see residue in the bottom of it.

The other bag was found in the green duffel bag that was sitting upstairs -- the green duffel bag that was sitting upstairs within the dominion and control of the defendant, who was sitting in this window trying to breathe fresh air and waving as somebody walked up. The drugs were found -- everything is on this floor, the duffel bag, the drugs, the defendant.

Dominion and control, what is that? That's just readily accessible to the defendant. He had access to it, and he had knowledge of it. He's the only one there. We know he had knowledge of it. He had a green duffel bag. Guess what? He had another one in his truck. Look at the inventory.

The inventory of the truck says there was another green duffel bag found in the back of that -- constructive possession, ladies and gentlemen, if anything else. He was right there where he had control of the meth lab, he had control

of the drugs, and he had control of this Sudafed.

Now, what does this Sudafed weigh? We've got the chemist's lab report, this report of this right here. Zip-loc bag containing powder substance, which she testified was item three, was 21C, weighs 94.5 grams, Sudafed. It's not even Sudafed. It's pseudoephedrine. It's the drug that Sudafed is made up of. Item four was State's 21D, weighed 193.3 grams. It's right here in her report.

You'll have that in evidence. If you want to, take a look at it. It's the last two lines on the bottom -- 94.5 grams and 193.3 grams. Ninety-four point five grams right here plus 193.3 grams right here equals 287.8 grams of pseudoephedrine -- 287.8 grams of pseudoephedrine.

One more magic trick up here. Mr. Williams asked our chemist right at the end of his line of questioning, "Out of this bag of drugs, some of that" -- "not all of that can possibly be Sudafed, pseudoephedrine. Some of it's got to be some other kind of material, maybe coating like an M and M or whatever, to turn it red. Not all of it is Sudafed." And she said, "It's a homogeneous structure we test. If any part of it tests positive, then the whole thing is considered for the

weight."

The Judge will charge you on the law. There is a code section, 44-53-392, in the Code of Laws of South Carolina, the weight of a controlled substance, and the Judge will charge this to you later. Notwithstanding any other provisions of this article, the weight of any controlled substance -- the reference in this article is the weight of that substance in pure form or -- or -- any compound or mixture thereof -- any compound or mixture of the drug thereof.

Now, this certainly is a mixture, mostly pseudoephedrine, maybe some other materials to help keep it together, to mark it and sell it. And when it's crushed like this, it's a mixture, and it is considered as a whole for the weight. And that weight is 287.8 grams of pseudoephedrine.

The Judge will also charge you on the law on what one of the counts of this -- one of the three charges the defendant is charged with. That is unlawful possession of pseudoephedrine, 44-53-375(E)(1)(b).

It is unlawful for any person other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any

product that contains 200 grams or more but less than 400 grams of ephedrine, pseudoephedrine, or phenylpropanolamine -- I can't even pronounce it -- that are salts, isomers, or salts of isomers or a combination of any of these substances.

This is the law. You'll be charged on that by the Judge. He'll tell you that in a little while. This is what he's charged with. This is what he had -- 287. It's more than 200, less than 400.

He'll also charge you on manufacturing methamphetamine. A person is guilty of manufacturing methamphetamine if he knowingly and intentionally, willfully and unlawfully cultivates, manufactures, or otherwise aid, abet, attempt, or conspire to manufacture, cultivate, or bring into the State of South Carolina a quantity of methamphetamine, also known as crank, ice, crystal meth, all slang terms, which is a controlled substance in this state.

The Judge will charge you with that -- manufacturing methamphetamine. Agent Thomas Hamilton spent a long time yesterday with explaining the manufacturing process of methamphetamine. I will not attempt to go through that again with you

today. You learned enough about that yesterday. Just as you were promised at the beginning of this trial, you would learn something about methamphetamine this week.

And Agent Hamilton is the man to inform you. However, what Agent Hamilton did not do is merely sit here and lecture you about a generalized production of methamphetamine. He teaches that course about four or five times a year to other people on generalized production of methamphetamine.

What he did teach you yesterday was the production of methamphetamine as it was found in a cooking process in between stages of being cooked at this location on December 22, 2005. He wasn't there to see who was doing what. That's not the purpose of him testifying.

He was there to teach you that on this day and at this location, this meth lab was in operation, it was cooking, it was hazardous, and he responded to it. And he came in here and used the very pictures that are in evidence and explained to you the process of this lab, not a generalized meth production like he teaches classes to -- this place, this lab, where this defendant was found to be

cooking it -- this defendant, not somebody else.

And that's all I'll say about the meth production. The suits they wear, this isn't for show. They're not trying to show you a rendition of the Ghost Busters movie. This isn't for show. This is for protection and safety. And it was important enough to them to have three -- to have two backup teams, three teams there, in case something went wrong, because this stuff is highly caustic, it's highly flammable, and it's a highly potent poison.

He's exactly right. It is a highly potent poison. And that man right there was in charge, and he was cooking it. Mr. Williams wanted to hit on the topic of mere presence. Ladies and gentlemen, if you think that the defendant was just merely present at this scene, that he's an innocent person that got caught up by being at the wrong place at the wrong time, I want you go to go back to your jury room, and I want to check the box "not guilty" on all counts. I do.

If you believe that, and your common sense brings you to believe that he was merely present at the scene, he didn't have any involvement with this, cut him loose. And I mean that. But I

don't believe, and I submit to you, that the evidence that you heard points to that.

You've heard that defendants are cloaked with the robe of innocence until the State proves them guilty beyond a reasonable doubt. That robe of innocence has been stripped from this defendant by the evidence that was on this -- that came off of this stand and by the testimony from these witnesses.

The evidence is overwhelming against him, and he is guilty of manufacturing meth, he is guilty of possessing meth, and he is guilty of possessing an unlawful quantity of pseudoephedrine. Reasonable doubt, ladies and gentlemen, is doubt that leaves you firmly convinced of your decision -- some people say a decision that makes your mind at ease.

It does not mean beyond all doubt. There are very few things in this world that we can prove beyond all doubt. There's always going to be some doubt to something. But if you are firmly convinced of his guilt, you must as your duty find him guilty.

Even if you raise an eyebrow at the story that he gave and say, "Maybe there's some

truth to that. Maybe, just maybe, I just don't know. It's cast a little bit of doubt," if you are still firmly convinced that he's guilty or firmly convinced of his involvement with this meth lab, his involvement with this Sudafed -- if you are firmly convinced of that, even with a little bit of a doubt, you must come back with a guilty verdict. And, ladies and gentlemen, that's what I ask you to do. Thank you.

THE COURT: Ladies and gentlemen, we will now take a 15-minute break to give you all a break. This will be our midmorning break. When we come back, I'll charge you on the law.

That should take about 30 minutes. And then you should have the case for your deliberation. If you'll go to your jury room now for about 15 minutes, I'll get you back out and charge you on the law. Thank you.

(The jury left the courtroom at 10:56 a.m.)

THE COURT: We'll be in recess for 15 minutes.

(Court in recess.)

THE COURT: Gentlemen, I've got a copy of the verdict form, if you all want to look at it and

be sure it meets your satisfaction.

MR. MOSES: Yes, Your Honor.

MR. WILLIAMS: Well, you have to put it there, because the jury's not going to do it.

We don't up till the end, Judge.

THE COURT: That's the way it goes. You've both done a good job throughout this trial representing your respective clients, and I appreciate it. It's always easy on the Judge when you have two good lawyers.

MR. WILLIAMS: That's good, Judge.

THE COURT: Anything before I bring the jury in?

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

MR. MOSES: Nothing from the State, Your Honor.

THE COURT: Okay.

You need to get us the jury, please, sir.

(The jury enetered the courtroom at 11:14 a.m., after which the following proceedings were had:)

CHARGE OF THE COURT

THE COURT: Now, Mr. Foreman and ladies

and gentlemen of the jury, please give me your attention for a few minutes. You have followed patiently and listened very attentively to the presentation of evidence in this case, and I thank you for that.

You have also paid close attention to the arguments of Mr. Moses on behalf of the State and Mr. Williams on behalf of his client. Now it becomes the duty of the Trial Judge under the Constitution of this state to charge you and instruct you in the law applicable to this case.

It is your duty as jurors to accept and apply the law as the Court will now state to you. And as jurors, it is your exclusive duty to decide all the issues of facts in this case, and for that purpose, to determine the effect, the value, the weight, and the truth of the evidence.

Both the State and defendant have a right to expect that you will conscientiously consider and evaluate the evidence and apply the law to this case thereto and to the end that both the State of South Carolina and the defendant will receive a fair and impartial trial of this case. When I use the word "defendant," I'm referring to Mr. Ashe. The State of South Carolina by bill of

indictment has charged the defendant, Mr. Ashe, with the offense that's known as possession of crack.

And in their indictment, they have alleged that on December 22, 2005, Christopher Ashe did in Lexington County knowingly, intentionally possess a controlled substance under the provisions of Section 44-53-110, to wit, crank, in violation of 44-53-375(A). They have also indicted him for manufacturing methamphetamine, in that Christopher W. Ashe did in Lexington County on or about December 22, 2005, knowingly and intentionally, willfully and unlawfully cultivate, manufacture, or otherwise aided, abetted, attempt or conspire to manufacture, cultivate, or bring to this state a quantity of crank, a controlled substance, in violation of the law.

And he's also indicted for possession of pseudoephedrine, 200 grams or more but less than 400 grams, that Christopher W. Ashe did in Lexington County on or about December 22, 2005, knowingly and unlawfully possess 200 grams or more but less than 400 grams of pseudoephedrine, a controlled substance as defined by the laws of South Carolina. To these charges and to these indictments, the defendant has entered a plea of not guilty.

The plea of not guilty by the defendant places the burden of proof on the State to prove the evidence of the defendant's guilt beyond a reasonable doubt. And before the jury can find the defendant guilty, the defendant, Mr. Ashe, is presumed in the law to be innocent of the charges contained in the indictment. This is a cardinal and fundamental law rule of law of evidence.

The defendant, irrespective of the seriousness of the charges against him, will always be presumed to be innocent of the crime for which he indicted unless and until the guilt of the defendant has been proven by the evidence that satisfies you, the jury, of his guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory.

It is not just a legal phrase. The presumption of innocence is like a robe of righteousness placed around the shoulders of this defendant. And it remains with him and assigns to him that class, the innocent, until the presumptive robe of righteousness has been stripped from him by the evidence satisfying you, the jury, of the guilt of this defendant beyond a reasonable doubt.

Presumption of innocence accompanies

the defendant from the time he was arraigned and his appearance in this Court and continues with the defendant, even after you retire to the jury room to begin your deliberation. The presumption of innocence continues to exist to the benefit of the defendant until you, the jury, reach the conclusion that the State has proven the guilt of the defendant beyond a reasonable doubt.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. And some of you may have served in civil cases where you were told that it's only necessary to prove the fact that it's more likely true or not. In a criminal case, the State's burden must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is *proof that leaves you firmly convinced of the* defendant's guilt. There are very few things in the world that we know with absolute certainty. And in a criminal case, the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crimes charged, you must find him guilty. On the other hand, if you think

there's a real possibility that he's not guilty, you must give him the benefit of the doubt and find him not guilty.

Reasonable doubt may arise from the evidence which is in the case or from the lack of evidence in this case. The jury must determine whether or not reasonable doubt exists as to the guilt of the defendant. I charge you the defendant is entitled to every reasonable doubt arising in the whole case.

If, upon any issue of fact essential to the conviction and a verdict of guilty, you have a reasonable doubt as to how that issue should be decided, it would be your duty to resolve the reasonable doubt in favor of the defendant. A defendant, ladies and gentlemen, is not required to prove his innocence. But the State is required to prove every essential element of the crime charged against him by evidence that satisfies you, the jury, of his guilt beyond a reasonable doubt.

Before you can in fact convict the defendant, you must find this proof beyond a reasonable doubt. If then upon the whole case you have a reasonable doubt as to the guilt or innocence of the defendant, he is entitled to the reasonable

doubt and would be entitled to an acquittal, and your verdict would be not guilty.

But on the other hand, if upon the whole case you find the State has proven the evidence which satisfies you, the jury, of the guilt of the defendant beyond a reasonable doubt, then it would equally be your duty to convict the defendant and find him guilty. I instruct you that the indictment in this case is not evidence, and you cannot consider it at all as evidence in this case -- that indictment I read you when I first started charging you.

It is simply a charging paper. It's simply instruction as to what he's charged with, and you cannot consider that as evidence in this case. During the trial, each of us, you and I, have certain duties to perform. As a Trial Judge, it is my responsibility to preside over the trial of this case. And I also have the duty to rule upon or pass upon the admissibility of evidence offered during the process of this trial.

You are to consider only the competent evidence before you. You are to disregard and abuse from your mind any testimony ordered stricken from the record of this case during the

progress of the trial, if there be any. And you are to consider only the testimony which has been presented from the witness stand, together with the exhibits admitted into the record of this case, and any stipulations of counsel made into the record.

I have the additional duty to charge you with the applicable law of this case. As the presiding Judge, I am the sole Judge of the law of this case, and it is your duty to accept the law as I now state it to you. If you have a preconceived idea as to what the law is or what the law ought to be in this case, or you should not agree with what I tell you the law is, it is your obligation under your oath to abandon these preconceived ideas on your part and accept the law precisely as I now state it to you.

In every case tried in this Court before a jury, the jury becomes the sole and exclusive judges of the facts of this case. You are the jury, and you are the judge of these facts. The Court is the judge of the law. The Constitution of this state has declared that the Trial Judge shall not intimate, state, comment upon, or make any statement whatsoever to a trial jury about the facts in this case.

Since you are the sole judges of the fact, you are not to interfere with anything that I have said during the progress -- you're not to infer anything I have said during the progress of the trial as that I might have an opinion as to the facts in this case, because I am not allowed to do so, and I do not. The law does not permit me to have such an opinion about the facts. That matter is solely up to you, the jury, to make this determination.

As a jury, then, it is your duty to determine what I have stated to you, the effect, the value, the weight, the truth of the evidence presented during the course of this trial. In determining what facts in this case, you must necessarily pass upon the credibility, which simply means the believability of a witness, the value or the weight to be given that testimony.

You alone must decide the force and effect, the truth of the testimony. In making this decision, there are many things that you can consider -- the appearance and the manner of the witness on the stand, sometimes referred to as demeanor of the witness. Was the witness forthright or hesitant? Was the witness' consistent, or did it

have certain discrepancies? What was the ability of the witness to know the facts which he or she was testifying to?

Did the witness have cause or reason to be biased or prejudiced in favor of the testimony he or she gave? Was the testimony of the witness corroborated or made strong by other testimony or evidence that was in the case, whether it was weak or was it impeached by other testimony or evidence in the case?

As the jurors, you have a right to believe a small portion of the witness' testimony and disregard the larger, or vice versa. You may believe all of a witness' testimony or none of a witness' testimony. You may believe the testimony of a single witness against that of many or the other way around.

The rules of evidence ordinarily do not permit a witness to testify to an opinion or a conclusion. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become an expert in some art, science, profession, or calling may state an opinion as to a relevant and material matter in which the witness claims to be an expert and may

also state the reasons for that opinion.

You should consider an expert opinion received into evidence in this case like any other evidence, give it the weight you think it deserves. You decide whether the opinion of the expert is based on sufficient education and experience. If you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion of the expert.

The expert's testimony is to be given no greater weight than any other witness. Simply because the witness is an expert, you are not required to expert's opinion, even though it is not contradictory. In exercising your mental processes in determining what you consider to be true, the law simply requires that you exercise your good judgment, your common sense, and your sense of logic and reasoning in your life's experiences.

When you apply these attributes to the evidence and determine what you consider the truthful evidence in this case and to these true facts, you determine and apply the law that I now state to you, you should arrive at a true verdict. The defendant in this case is indicted for the crime

of unlawful possession of pseudoephedrine, and I charge you now under South Carolina Law what that means.

It is unlawful for any person to knowingly possess any product that contains 200 grams or more but less than 400 grams of pseudoephedrine. He is also indicted for the crime of possession of crank. A person possessing or attempting to possess less than one gram of methamphetamine or cocaine base, i.e., crank, under the laws of South Carolina is guilty.

The defendant is charged with the unlawful possession of crank and an amount of pseudoephedrine between 200 and 400 grams. The State must prove beyond a reasonable doubt the defendant knowingly, intentionally possessed crank or pseudoephedrine more than 200 grams but less than 400 grams or both. Knowingly means knowledge, consciously, not accidental.

Intentionally means willful, intending, the results of which actually occur, not accidentally or involuntarily. Intent may be shown by acts and conducts of the defendant and other circumstances from which you may naturally and reasonably infer. To prove possession, the State

must prove beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or use of the crank or pseudoephedrine.

Possession may be either actual or constructive. Actual possession means that crank or pseudoephedrine or both was in the actual custody -- physical custody -- of the defendant. Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the crank or the pseudoephedrine or both.

The mere presence at the scene where the drugs were found is not enough to prove possession. Actual knowledge of the presence of the crank or pseudoephedrine or both is evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control.

However, this inference is simply an evidentiary fact and may be taken into consideration by you, along with all the other evidence in this case, to be given whatever weight you decide that's appropriate. Two or more persons may have joint

possession of a drug. Now, manufacturing meth, a person who manufactures methamphetamine is in violation of the law of South Carolina, Section 44-53-370.

Manufacturing means to produce, prepare, convert, process, plant, cultivate, grow, or harvest a drug naturally or chemically. Manufacturing includes any packaging or repackaging of the drug or labeling or relabeling of a drug container. Mere presence at the scene is insufficient to prove someone guilty of a crime.

The burden is upon the State to prove every element of a crime charged. If you find, after reviewing all of the evidence, that the State has proved the defendant was only present at the scene of the crime and that they have not proved beyond a reasonable doubt any other participation in the crime, then you must find the defendant not guilty. The law is that the proof of mere presence at the scene of a crime is not sufficient to find someone guilty.

The weight of any controlled substance referred to in this article is the weight of the substance in pure form or in any compound or mixture thereof. That deals with weight of

controlled substances under the laws of South Carolina.

Ladies and gentlemen, you are not participants or advocates for the State of South Carolina or this defendant. You do not serve as jurors to reward your friends or to punish your enemies. Obviously, this would be a perverted system of justice and would not be tolerated. You have been selected by both the State and the defendant as fair and impartial jurors.

It is your duty, then, by your joint deliberation to determine the truth in this case, giving to this defendant the benefit of every reasonable doubt on each and every issue, then to the facts which you determine to be the truth, then you take and apply the law which is given to you by this Court, and thus arrive at a verdict that speaks the truth.

The word "verdict" is from the Latin which means a true saying. When you have accomplished these responsibilities, you will have satisfied your oath as jurors, and you will have discharged your duty to this Court. I instruct you in the form of the verdict. If the State has failed to prove the defendant beyond a reasonable doubt of

the elements of the crime, your verdict should be not guilty.

If the State has proved the defendant beyond a reasonable doubt, your verdict should be guilty. Your verdict in this case must be the verdict of each and every juror. It must be a unanimous verdict. All 12 of you must agree, and by all 12 of you agreeing, you are authorizing the foreman to write the verdict.

Now, Mr. Foreman, I'm going to ask my law clerk to hand you down the form of this verdict where I can go over it with you. And I tell you that that's -- the form that I handed down to you, the order in which everything appears are not suggestive in any part about what the Court feels your verdict should be.

Obviously, I had to put them in some order, and I chose the easiest way to explain them. The verdict in this case is to be determined by the jury, not by the Court. I need you to sign both pages. It's a two-page verdict. There's a place on the back page for you sign. But when you sign it, I need you to sign in both places.

If you will see on this verdict form, it says, "We, the jury, unanimously find the

defendant, Christopher W. Ashe, guilty of possession of crank or not guilty of possession of crank." On the next form there on the verdict, "We, the jury, unanimously find the defendant, Christopher W. Ashe, guilty of possession of pseudoephedrine, 200 grams or more but less than 400 grams, or not guilty of unlawful possession of pseudoephedrine, 200 grams or more but less than 400 grams."

"We, the jury, unanimously find the defendant, Christopher Ashe, guilty of manufacturing methamphetamine or not guilty of manufacturing methamphetamine." There are three different indictments, and you can find the defendant -- each one stands alone.

So you address each one in each charge and make your determination of guilt or innocence on each charge. You can find him not guilty of one and guilty of another or not guilty on all of them. Each one stands alone.

You cannot sign the jury verdict as foreperson until you get a unanimous verdict. So when you go back to the jury room, you take each indictment or each count and make your determination on each one as to the guilt or innocence of the defendant.

What I'm going to ask you to do at this point is go to your jury, everyone except the alternate. The law requires me to discuss my charge with the attorneys to be sure that I have not left anything out. If I have, I will bring you back out and instruct you on that portion of the law.

If I have not, then I will send the exhibits in to the jury room with the Bailiff. Once you receive those exhibits that are into evidence in the jury room, that will be your signal to begin your deliberation. When you have reached a verdict, you will sign the verdict form that I have given you and knock on the door and let the Bailiff know that you in fact have reached a verdict. And I will bring you back out.

If for some reason there is some question for the Court, you would have to write that question down on a piece of paper and give it to the Bailiff, and then we would deal with that question, if that becomes necessary. And if you'll go to the jury room at this time, everyone but the alternate.

(The jury left the courtroom at 11:38 a.m. to deliberate their verdicts.)

THE COURT: Any exceptions from the State?

MR. MOSES: Judge, just a few things. It was inadvertent, but when you were describing possession of crank, you said possession of crack. And then you said some of the elements were cocaine base elements where in crank it's a Sudafed base. I don't think it's a --

THE COURT: Okay.

MR. MOSES: -- harmful situation, but it might be good to clear it up. Also, I have asked -- and I may have missed it -- but in the reasonable doubt explanation, I heard you talk about being firmly convinced and reasonable doubt. I didn't know if your charge includes the explanation that not everything can be done -- not all -- that there's very few things in this world that we can be a hundred percent certain of.

THE COURT: And I charged that.

MR. MOSES: Did you?

THE COURT: Yes.

MR. MOSES: Okay, that's why I was asking. I may have missed it. And obviously I did.

THE COURT: Okay.

MR. MOSES: One other thing. On the verdict form, I just caught this when we were going over it with the foreman. On the second charge,

"We, the jury, unanimously find the defendant, Christopher Ashe, of possession of pseudoephedrine," whereas it says "or not guilty of unlawful possession." If we could just -- I'd ask if we could just reprint that and add the word "unlawful" before "possession" on the guilty side of it, just so it's consistent, because the charge is actually unlawful possession of pseudoephedrine.

THE COURT: Okay. I will fix that verdict form. Now, in possession of -- I read the statute on possession of crank. "A person is possessing or attempting to possess less than one gram of methamphetamine or cocaine base, i.e. crank." That's what it says in the statute. And you wanted me to leave off "cocaine base." I just read the statute.

MR. MOSES: Well, the statute is --

THE COURT: Forty-four fifty-three three seventy-five A.

MR. MOSES: And the State kind of includes -- it's the same statute for crank and crack.

THE COURT: I understand that. And that's why I put "or cocaine base, i.e. crank." I just read what was in the statute. Now, you want possess less than one gram of methamphetamine, and you

wanted me to leave that out?

MR. MOSES: Crank isn't crack. It all kind of ties it in together.

THE COURT: I understand crack is methamphetamine versus crank. What does the defense say?

MR. WILLIAMS: Judge, we would object to the change because you read them the statute, and they're intelligent enough to figure it out.

THE COURT: Okay.

MR. WILLIAMS: That's what he's indicted for.

MR. MOSES: That's not how it's alleged in the indictment.

MR. WILLIAMS: Your Honor, it's --

THE COURT: I read the statute, because that's what the words were in the statute.

MR. WILLIAMS: Judge, if you read it again, you may overemphasize it. I'm concerned they may get some feeling that the Court is indicating a decision one way or the other. I'm okay with the way you read it --

MR. MOSES: Judge --

MR. WILLIAMS: -- because that's what the statute says.

MR. MOSES: Judge, the statute says a lot of things that's been cut out and cleaned up in the indictment. And we'd ask that it just be cleaned up in the jury charge. It says "cocaine base, i.e. crank," whereas cocaine base is i.e. crack. So it --

THE COURT: I understand. The words we have are "methamphetamine or cocaine base, i.e. crank." That's what the statute says. You wanted me to say --

MR. WILLIAMS: This is just --

THE COURT: -- "less than one gram of methamphetamine, i.e. crank" and leave out "or cocaine base"?

MR. MOSES: Yes, sir.

THE COURT: Okay, come look at this jury verdict form now and see if it -- and I didn't catch that "unlawful." So other than the indictment form, you want me to do crack. Is there anything else? Or do crank and take out the words "cocaine base."

MR. MOSES: Your Honor, we can let it go.

THE COURT: Okay. Any problem with me sending this verdict form with the Bailiff along with the evidence in this case and just have him retrieve the other one versus bringing them back out

and giving it to them then?

MR. WILLIAMS: Absolutely not.

THE COURT: Okay. All right, if you all will come check with the Court Reporter to be sure we have all the evidence ready to go back.

Ms. Davis, I know you've sat through this whole trial and paid close attention, and I appreciate it. But all 12 look like they're in good health and able to get us through the deliberation. So I don't need your services anymore.

The rest of the jury panel is coming back at what time?

BAILIFF: They're in the hallway, sir.

THE COURT: They're in the hallway?

BAILIFF: Yes, sir.

THE COURT: The whole panel? So you want me to send them back -- the other pool -- to get picked on the next case?

MR. MOSES: That might be good.

COURT REPORTER: It's up to you, Your Honor. It's up to you.

THE COURT: Have we got enough jurors on this next -- to get through the next case?

CLERK OF COURT: Well, hope is not here. You might ask her that question.

THE COURT: Okay.

COURT REPORTER: Your Honor, do they want to agree that the exhibits and all are ready to go the jury?

THE COURT: Is everybody satisfied? Okay.

COURT REPORTER: Yes.

THE COURT: If you'd take those back and be sure to bring me that other verdict form.

BAILIFF: Yes, sir.

THE COURT: And tell them they can start their deliberation.

Do you all have any objection to moving this jury before they start deliberation? They want to move them to the Grand Jury room and start over there where they can start this other trial.

MR. WILLIAMS: Your Honor, we don't care. It's whatever you want to do.

MS. MOSES: That's fine.

THE COURT: Okay.

MR. WILLIAMS: Okay.

THE COURT: Ms. Davis, I was trying to let you go, but it doesn't look like I'm going to let you. So I need you to go back and join the pool, and maybe you'll get lucky enough to get drawn

again.

MS. DAVIS: All right.

THE COURT: They need you back. Thank you, ma'am. I appreciate the attention you paid in this matter.

(Recess awaiting the verdicts of the jury.)

THE COURT: Thank you. You can be seated.

Mr. Williams, have you got a client?

MR. WILLIAMS: I understand they're getting him, Your Honor.

THE COURT: Okay.

MR. WILLIAMS: I understand he was on the floor below.

THE COURT: Okay. Anything from the State before I bring in the jury?

MR. MOSES: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

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

THE COURT: All right.

If you'll get us the jury, please sir.

What do you want me to do with this

jury after this verdict, send them home?

CLERK OF COURT: They're to call back after six tonight, Your Honor.

THE COURT: Okay.

CLERK OF COURT: And they will be in the balance of the panel.

THE COURT: Okay.

(The jury returned to the courtroom at 1:10 p.m., after which the following proceedings were had:)

THE COURT: Mr. Foreman, has the jury reached a verdict?

JURY FOREMAN: We did, Your Honor.

THE COURT: Was it a unanimous jury?

JURY FOREMAN: It was, Your Honor.

THE COURT: If you would pass up the form, please, sir.

You may publish the verdict.

VERDICTS OF THE JURY

CLERK OF COURT: Indictments #2006-GS-32-2156, 2155, 2157, the State versus Christopher W. Ashe, "We, the jury, unanimously find the defendant, Christopher W. Ashe, guilty of possession of crank.

"We, the jury, unanimously find the defendant Christopher W. Ashe guilty of unlawful

possession of pseudoephedrine, 200 grams or more but less than 400 grams. We, the jury, unanimously find the defendant, Christopher W. Ashe, guilty of manufacturing methamphetamine." And it is so signed by the foreman.

Mr. Foreman, ladies and gentlemen, if this so be your verdicts, please indicate each of you by raising your right hand.

All hands raised, Your Honor.

THE COURT: Okay. Anything from the State?

MR. MOSES: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

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

THE COURT: Okay.

Mr. Foreman, ladies and gentlemen, I appreciate your service throughout this case. I've got some good news and some bad news for you. The good news is you can go home for the day. The bad news is you're going to have to call back after 6:00 tonight to see if they need you for the rest of the week. But thank you, and you're excused.

CLERK OF COURT: Your Honor, could I get

the foreman to sign the verdict form and indictments?

THE COURT: Mr. Foreman, she needs you to sign the form on this indictment, if you don't mind, please, sir, before you leave.

(Whereupon, the jury was excused for the day.)

THE COURT: Anything before I pass sentence?

MR. MOSES: Your Honor, I'd like to read the defendant's record.

MR. WILLIAMS: Your Honor, I'd like to make my motions for this trial prior to the Solicitor reading his record.

THE COURT: All right, sir.

MR. WILLIAMS: Your Honor, I would move for a new trial on the basis the evidence as a whole would be insufficient as a matter of law for this jury to return a verdict of guilty.

THE COURT: All right. And I respectfully deny that motion. I think there was adequate evidence in this record that a jury could have reached the verdict that they did. And so your motion is respectfully denied.

MR. WILLIAMS: And, Your Honor, I would

renew the other motions, but I don't think I have to repeat it at this time.

THE COURT: That's correct.

MR. WILLIAMS: Thank you.

THE COURT: And they are noted for the record.

Okay, Mr. Solicitor, do you all want to come around and tell me? Go ahead.

MR. MOSES: Your Honor, the defendant has got some minor infractions on his rap sheet, none that are significant to read on the record, other than these two.

In warrant number -- Ticket #66832BN, the defendant had a trial date on 3/16/01 and was found guilty of possession of marijuana, 28 grams or less.

THE COURT: What date was that, again?

MR. MOSES: March 16, 2001.

THE COURT: Okay. It was a trial?

MR. MOSES: That's -- the certified true copy of his conviction reads -- it says -- it's listed beside the trial. I would assume that it was a trial. It's listed beside. It says "trial date."

MR. WILLIAMS: For the Court's information, he denies he had a trial on that date.

MR. MOSES: It says guilty from a bench trial.

MR. WILLIAMS: Oh, I thought you said it was a jury trial.

MR. MOSES: It say trial.

MR. WILLIAMS: Did you forfeit?

MR. ASHE: I just went and paid it at South Congaree.

MR. WILLIAMS: He paid it at South Congaree.

THE COURT: He pled guilty?

MR. WILLIAMS: You pled guilty?

MR. ASHE: I pled guilty.

THE COURT: To the March 14th --

MR. MOSES: Yes, sir.

THE COURT: 2001?

MR. MOSES: March 16th, Your Honor.

THE COURT: Sixteenth, I'm sorry -- pled guilty to simple possession of marijuana?

MR. WILLIAMS: That's correct.

THE COURT: Okay.

MR. MOSES: Again, Your Honor, on Ticket #60545CK, it's a ticket for simple possession of marijuana. The arrest date was 7/3/03. The date of trial was December 4, 2003, and the disposition was

guilty.

THE COURT: Was that in fact a trial?

MR. WILLIAMS: He pled guilty.

MR. MOSES: He pled.

THE COURT: Do you have the plea, as well?

MR. MOSES: It's a plea of guilty to simple possession of marijuana.

THE COURT: And he was present and pled guilty?

MR. MOSES: Yes, sir.

THE COURT: Okay. So it's my understanding the State doesn't -- I mean, the defense doesn't contest that this is in fact his third drug conviction?

MR. WILLIAMS: Is that correct?

MR. ASHE: Yes, it is.

MR. WILLIAMS: He agrees it is.

THE COURT: Okay.

MR. WILLIAMS: We may have a little problem here, Judge.

THE COURT: Okay.

MR. MOSES: Your Honor, my interpretation of the new law is, though, under the new law that was enacted I think July of last year, I think only would be counted as his first possession offense,

because the other previous were for possessions only.

So I think that would only be -- as far as counting purposes for subsequent offenses, I think it only counts as possession first. But the possession first would still count against the manufacturing as his third.

MR. WILLIAMS: For our purposes, Judge, it doesn't make a --

MR. MOSES: It doesn't matter. It really --

MR. WILLIAMS: Whether it's a first offense on all these, it probably doesn't matter, do you think, Solicitor?

THE COURT: Well -- so basically what you're -- okay. So based on the weight on Section D, it's the weight that puts us there. It doesn't matter. Unlike the third offense, it's a mandatory minimum sentence of 25 years, is my understanding.

MR. WILLIAMS: It doesn't matter if it's first or whatever.

MR. MOSES: That's on that charge. However, we would like to go forward with the manufacturing third offense. As to the possession, the State has no position on that, whether it's a

first or a third. As to the manufacturing, we feel that it's a third-offense drug offense.

THE COURT: What is the defense's position on that?

MR. WILLIAMS: Obviously, I don't want him to do it, Judge. Now, he didn't have the benefit of counsel at the time at which he entered the pleas on simple possession. It seems like too heinous an offense for him to catch when he didn't have the benefit of counsel when he pled guilty to these charges.

MR. MOSES: Judge --

MR. WILLIAMS: You know, it is the Town of South Congaree. I'm not sure --

THE COURT: My understanding of the manufacturing, if it is third offense, it's a minimum of 15 --

MR. MOSES: Yes, sir.

THE COURT: -- and not 15 to 30?

MR. MOSES: Fifteen to thirty.

THE COURT: So the manufacturing is 15 to 30, if it's in fact a third offense. The possession of pseudoephedrine is 25 mandatory, right?

MR. MOSES: Yes, sir.

THE COURT: And possession of the crank is

three --

MR. WILLIAMS: That's right.

THE COURT: -- is that right?

MR. MOSES: Possession first offense crank is three years, yes, sir.

THE COURT: And it's your position it's a --

MR. MOSES: We take no position as to the crank, if we can do it as a first. It'll solve any issues with that.

MR. WILLIAMS: Judge --

THE COURT: I don't know that it matters.

MR. WILLIAMS: -- I don't know that it matters if it's a first on all of them, Judge, once you catch at least 25 on the pseudoephedrine.

MR. MOSES: Judge --

THE COURT: It only is going to matter if I give him consecutive sentences.

MR. WILLIAMS: That's right.

THE COURT: Right.

MR. MOSES: And that's got a big --

MR. WILLIAMS: I hope you don't, Judge.

MR. MOSES: It's got a large impact, Your Honor. We would like for it to be a third manufacturing.

THE COURT: And tell me -- and I understand. And in fact, if it is a third, it is a third. And I don't know if I can get around that. I'd just like to know why you all feel like it makes a difference.

MR. MOSES: Your Honor, that's the new law. I think all these were within the ten-year period.

THE COURT: Uh-huh.

MR. MOSES: So I think it would here be counted.

THE COURT: And I don't disagree, because we've got a March 16, 2001, and a December, 2003. So it's clearly that these are in a ten-year period.

MR. MOSES: Yes, sir.

THE COURT: Well, what difference does that make on the manufacturing, unless I give him consecutive?

MR. MOSES: Because manufacturing first carries zero to fifteen.

THE COURT: Right. And the other one 15 to 30?

MR. MOSES: Your Honor --

THE COURT: But he's got a mandatory 25.

MR. MOSES: I don't know what the

defense's position is on appeals or anything like that. But we'd like for the charges that he's been charged with and found guilty on to stick.

THE COURT: Well, based on what I'm finding in the record, it is in fact his third drug offense.

MR. MOSES: Yes, sir.

THE COURT: I mean, I don't know that we can get around that. So he's looking at 25 mandatory on the possession of Sudafed and 15 to 30 on the manufacturing, right?

MR. MOSES: Yes, sir.

THE COURT: And the crank, what's your position on --

MR. MOSES: We can forward with it as a first offense, Your Honor -- or a third offense. Third offense is zero --

MR. COLLINS: Third offense is --

THE COURT: Zero to ten?

MR. COLLINS: -- ten.

MR. MOSES: Zero to ten.

MR. COLLINS: I think it is. And I just want to make sure that we were clear on the record, if those previous two drug offenses were within the ten-year statutory period. I thought that was --

THE COURT: It's my understanding -- I'm going by whatever, and you can make those a Court's exhibit if you have certified copies of his convictions, which I'd like for you to put in --

MR. MOSES: Yes, sir.

THE COURT: -- as a Court's exhibit, that he has a -- he pled guilty on March 16, 2001, to simple possession of marijuana, based on what he's telling me here in Court, and that on December 4, 2003, he pled guilty to possession of marijuana. And so this in fact would be his third drug offense within a ten-year period.

MR. MOSES: Judge, aside from the record, the State takes no position as to sentencing.

THE COURT: Okay.

MR. MOSES: Whatever Your Honor decides in his free discretion.

SENTENCE OF THE COURT

THE COURT: Okay. For Indictment 2006-GS-32-2155, possession of pseudoephedrine in excess of 200 grams but less than 400 grams, the sentence of the Court is that the defendant is committed to the State Department of Corrections for a determinate period of 25 years.

On Indictment 2006-GS-14-32-2157 for

manufacturing methamphetamine, the sentence of the Court is that the defendant is committed to the State Department of Corrections for a term of 15 years. This is to run concurrent with Indictment 2155.

On Indictment 2006-GS-32-2156, possession of crank, the defendant is committed to the Department of Corrections -- South Carolina Department of Corrections for a term of three years. This is also to run concurrent with 2006-GS-2155.

MR. WILLIAMS: Your Honor, could I ask the Court to check on the sentencing sheet and make sure that he gets credit for any time that he has spent in jail?

THE COURT: Yes, sir. How much time has he done in jail?

MR. WILLIAMS: He is currently being held on a bench warrant. He's been in jail for --

MR. ASHE: Three months.

MR. WILLIAMS: -- three months and how much?

MR. ASHE: About three months.

MR. WILLIAMS: About three months, Your Honor. He was in jail a total of three months and one week.

THE COURT: And you want me to actually put the date down, have them determine that he -- do you know the exact number of days?

MR. WILLIAMS: If Your Honor will check the spot where it has that --

THE COURT: I'll let them make that determination.

MR. WILLIAMS: Yes, sir, that's fine.

MR. MOSES: And, Your Honor, we will need the bench warrant vacated.

THE COURT: Yes, the pending bench warrant is vacated. Anything else, Your Honor?

MR. WILLIAMS: That's all, Your Honor. Thank you.

THE COURT: Thank you.

Good luck to you, Mr. Ashe.

MR. ASHE: Yes, sir.

MR. MOSES: Thank you, Your Honor.

MR. COLLINS: Thank you, Your Honor.

MR. MOSES: Thank you, Your Honor.

-- End of Transcript --

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON OCTOBER 23, 24, AND 25, 2006, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE THIRTY-FIRST DAY OF DECEMBER, 2006.

Rema K. Gantt Thomas

REMA K. GANTT THOMAS RPR
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 11/21/2013

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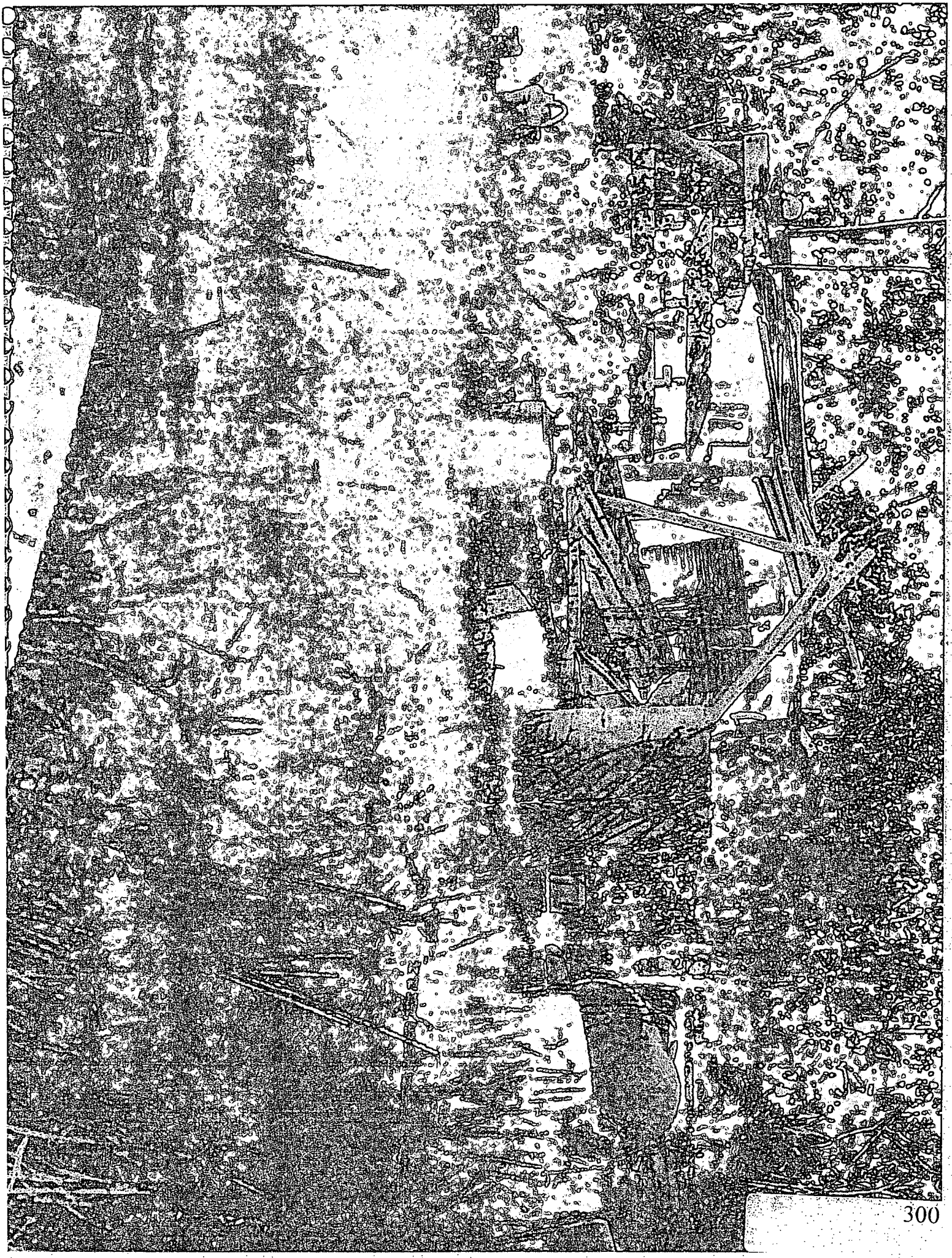

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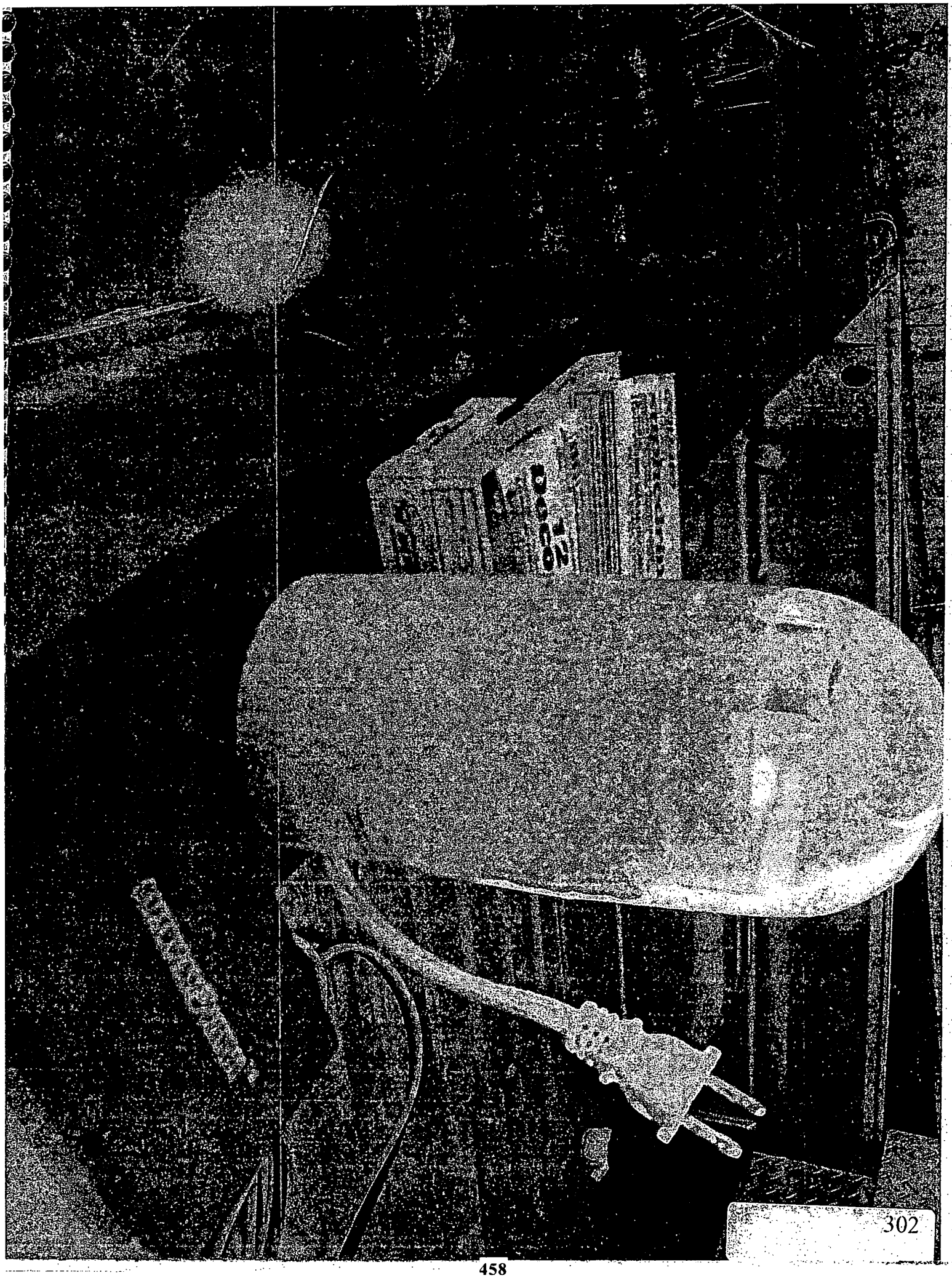
12 Hour
Decongestant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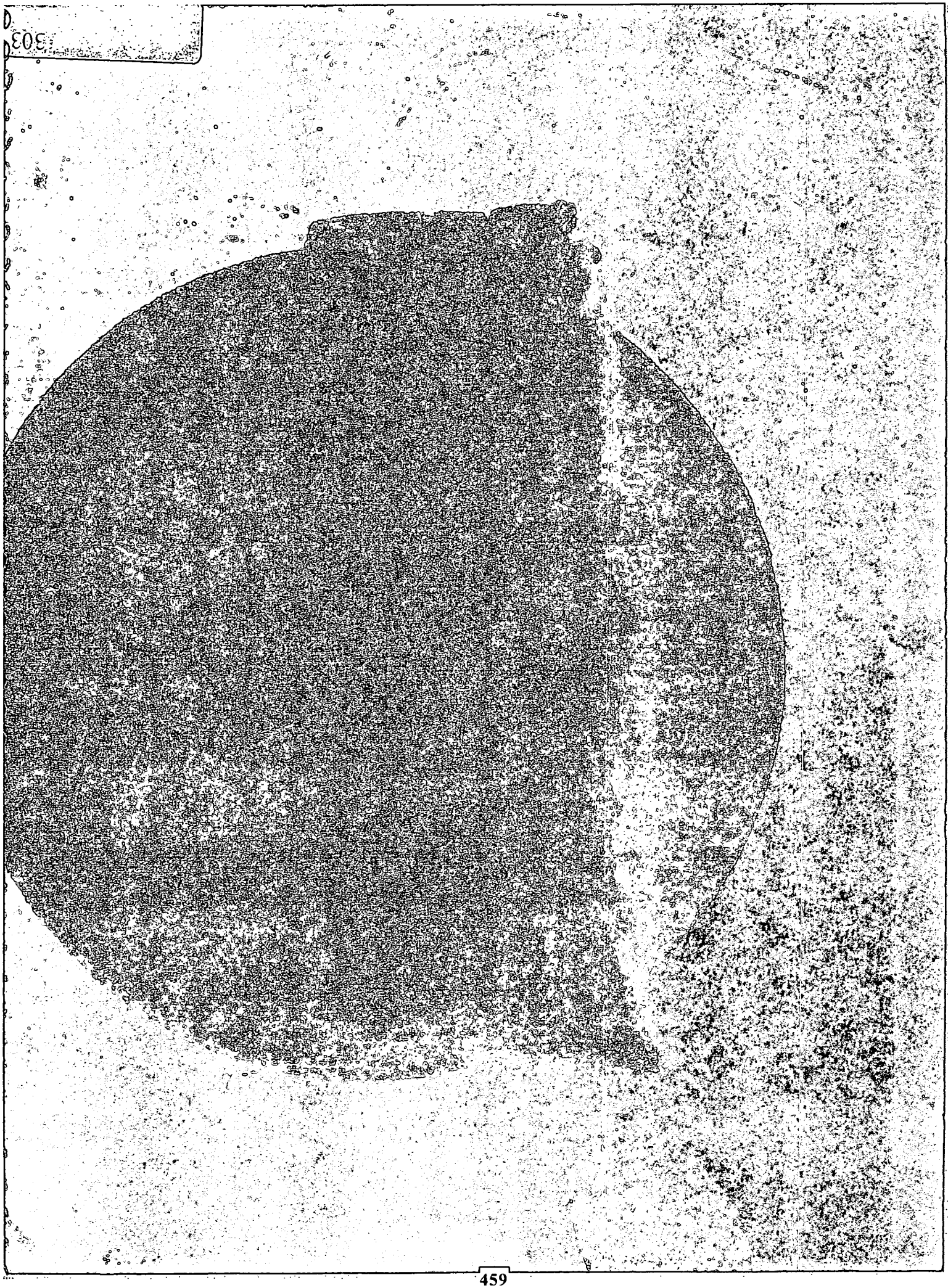

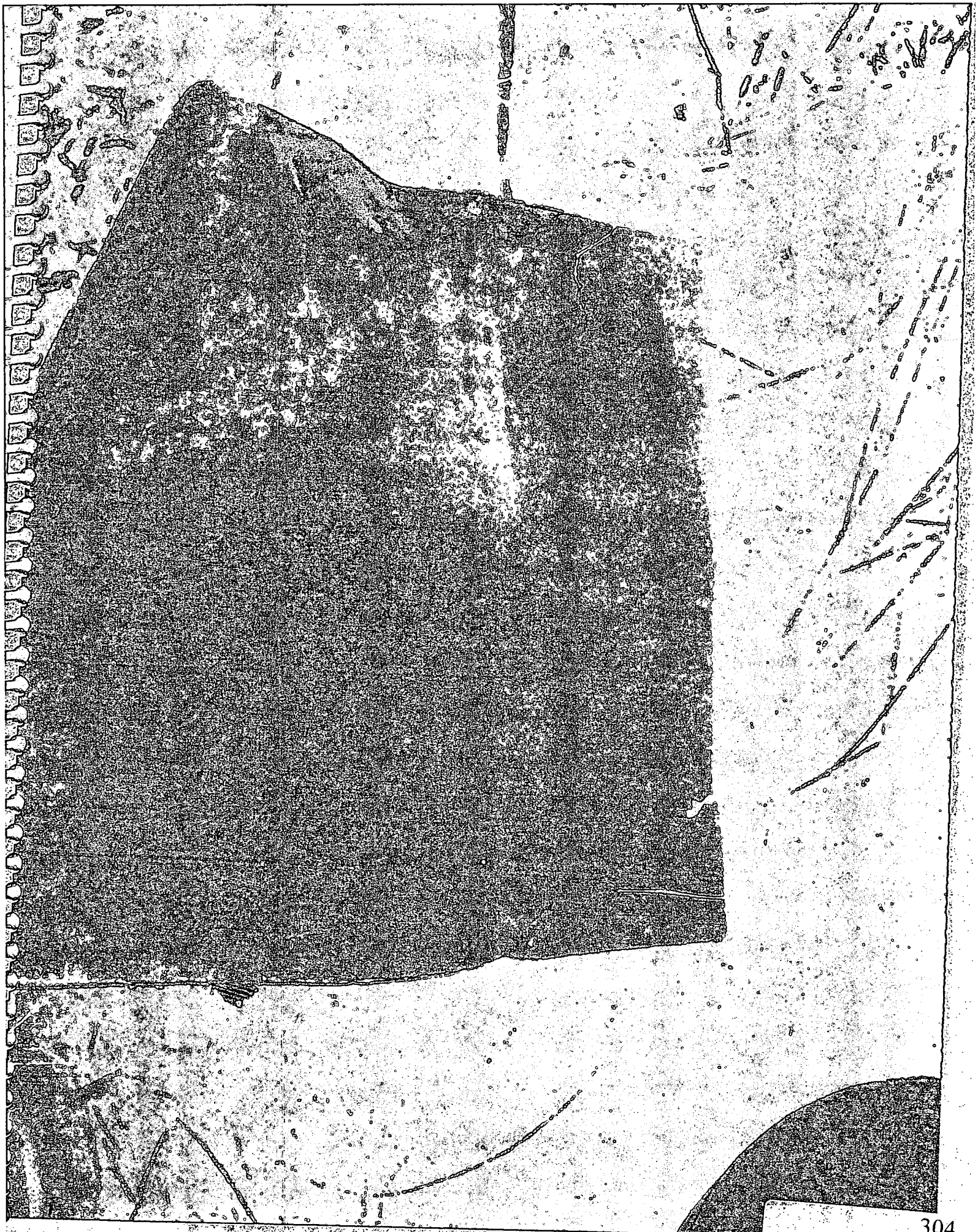

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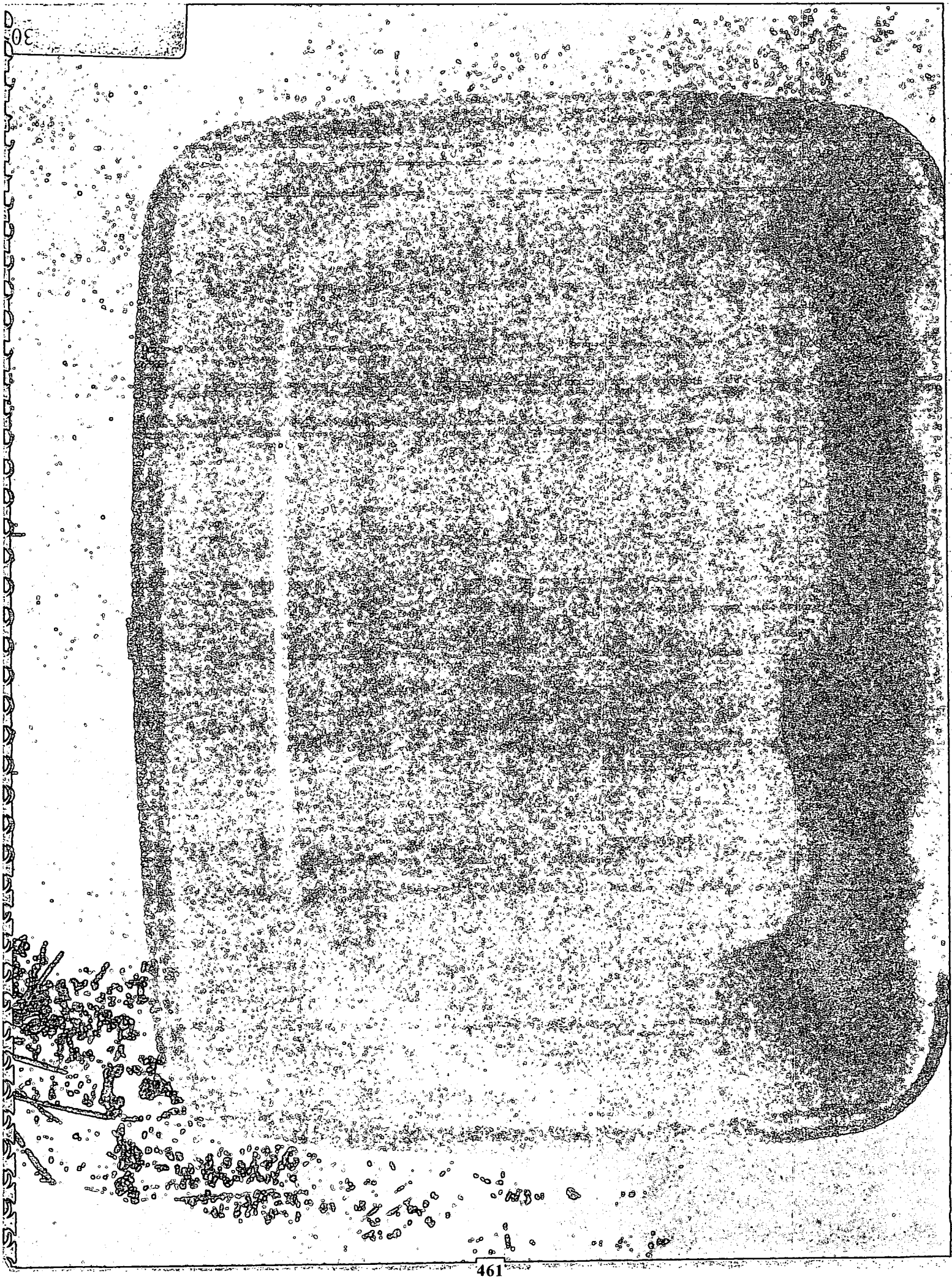

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307

Coors
Aluminum Sailing
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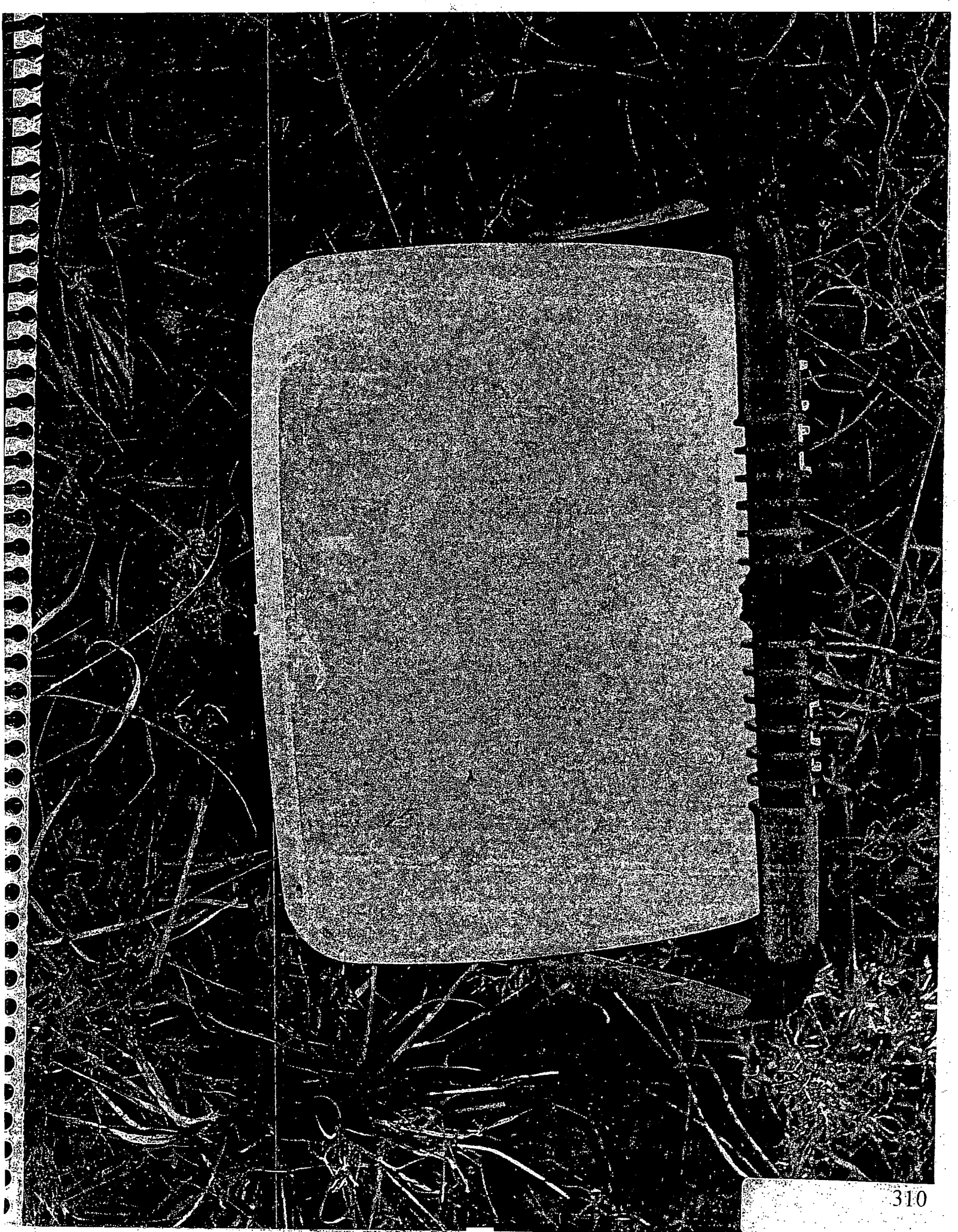

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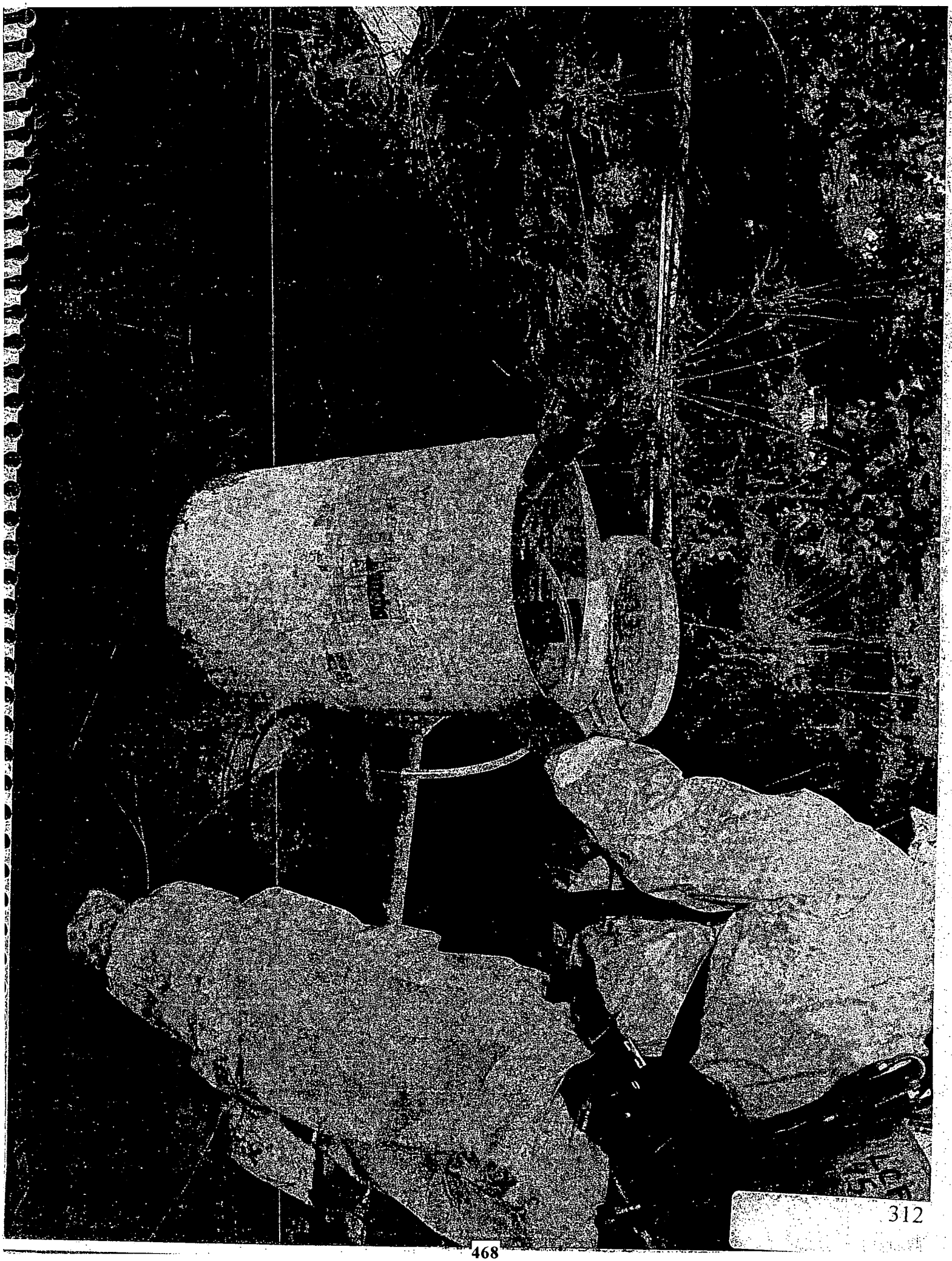

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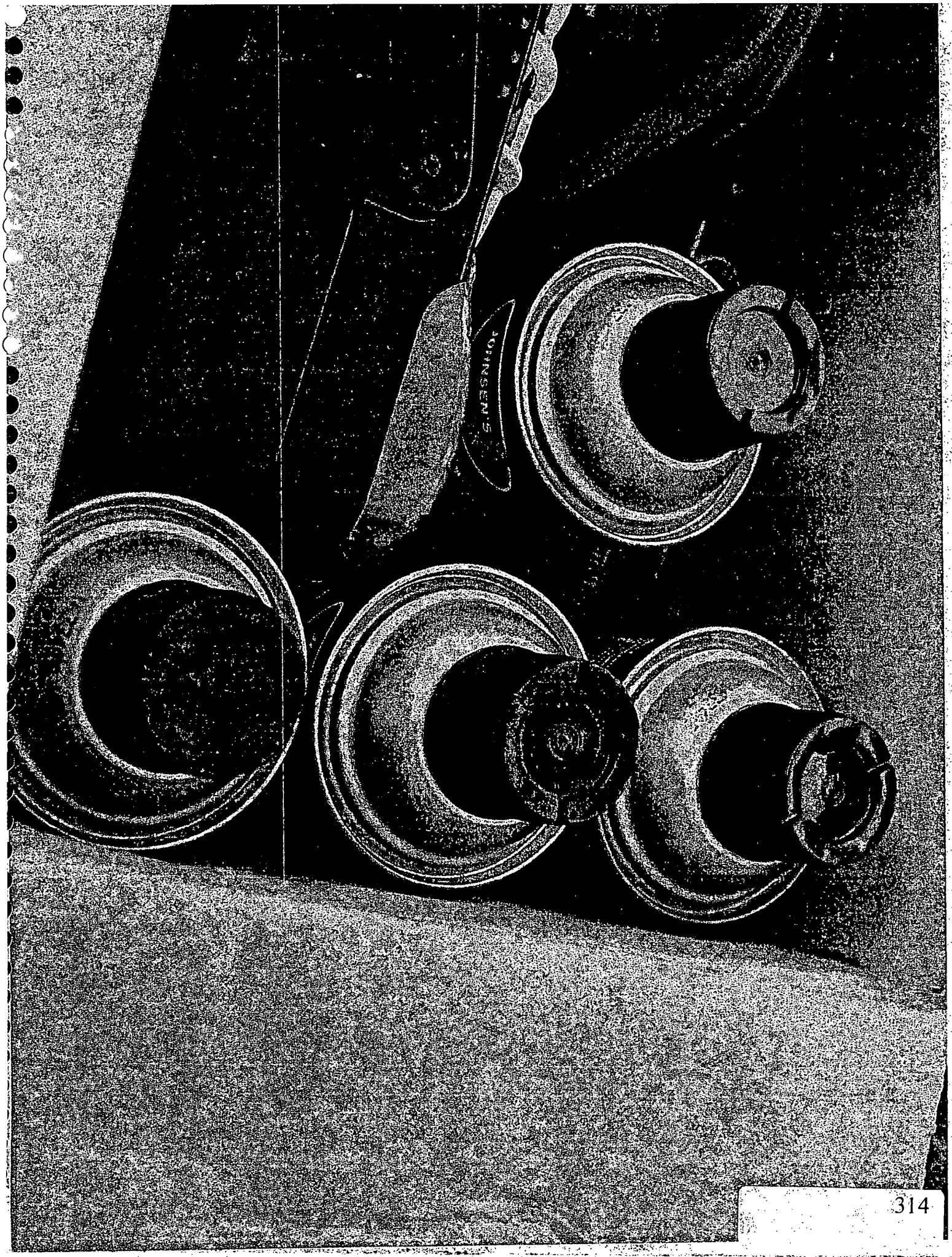

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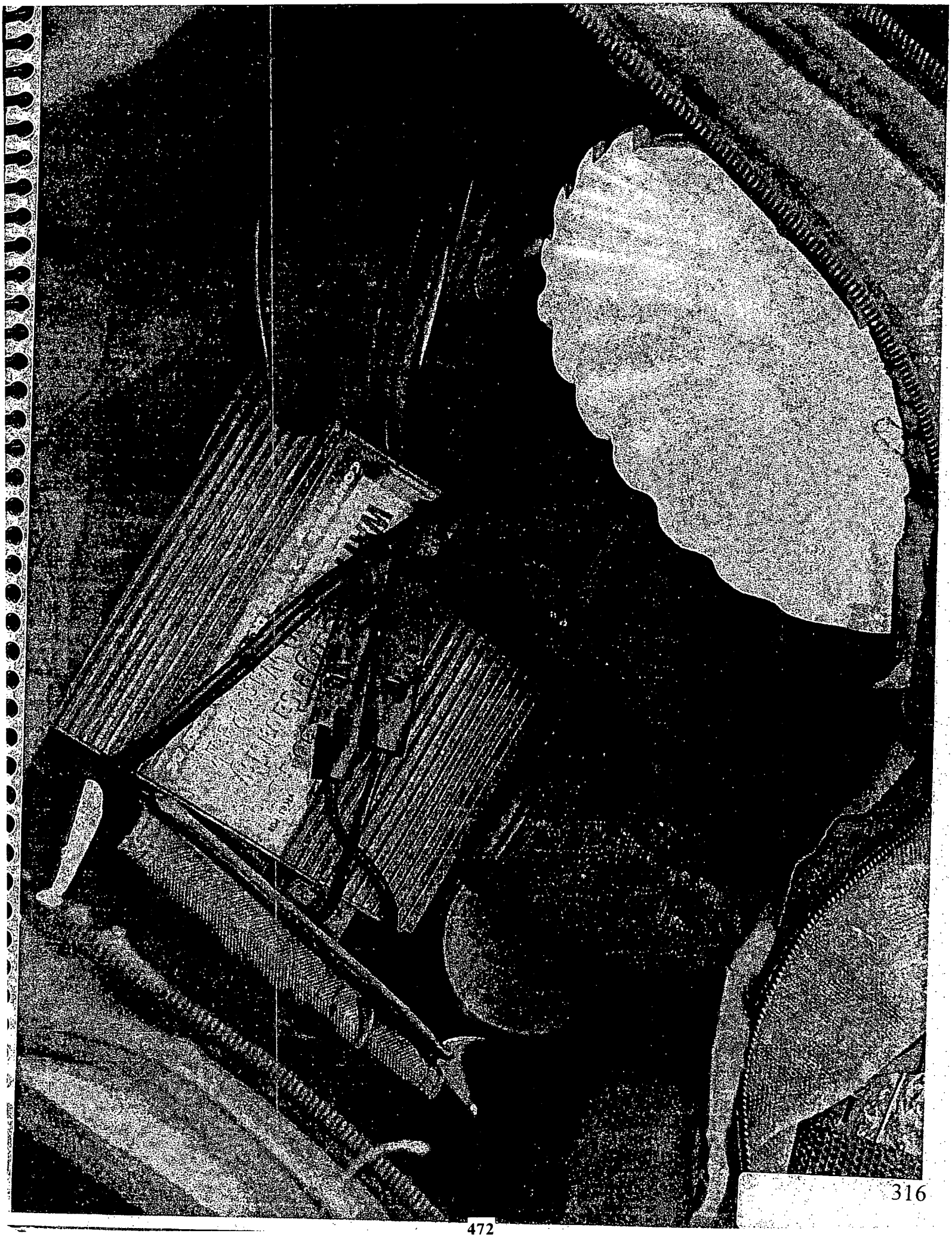
ITEMS SOLD



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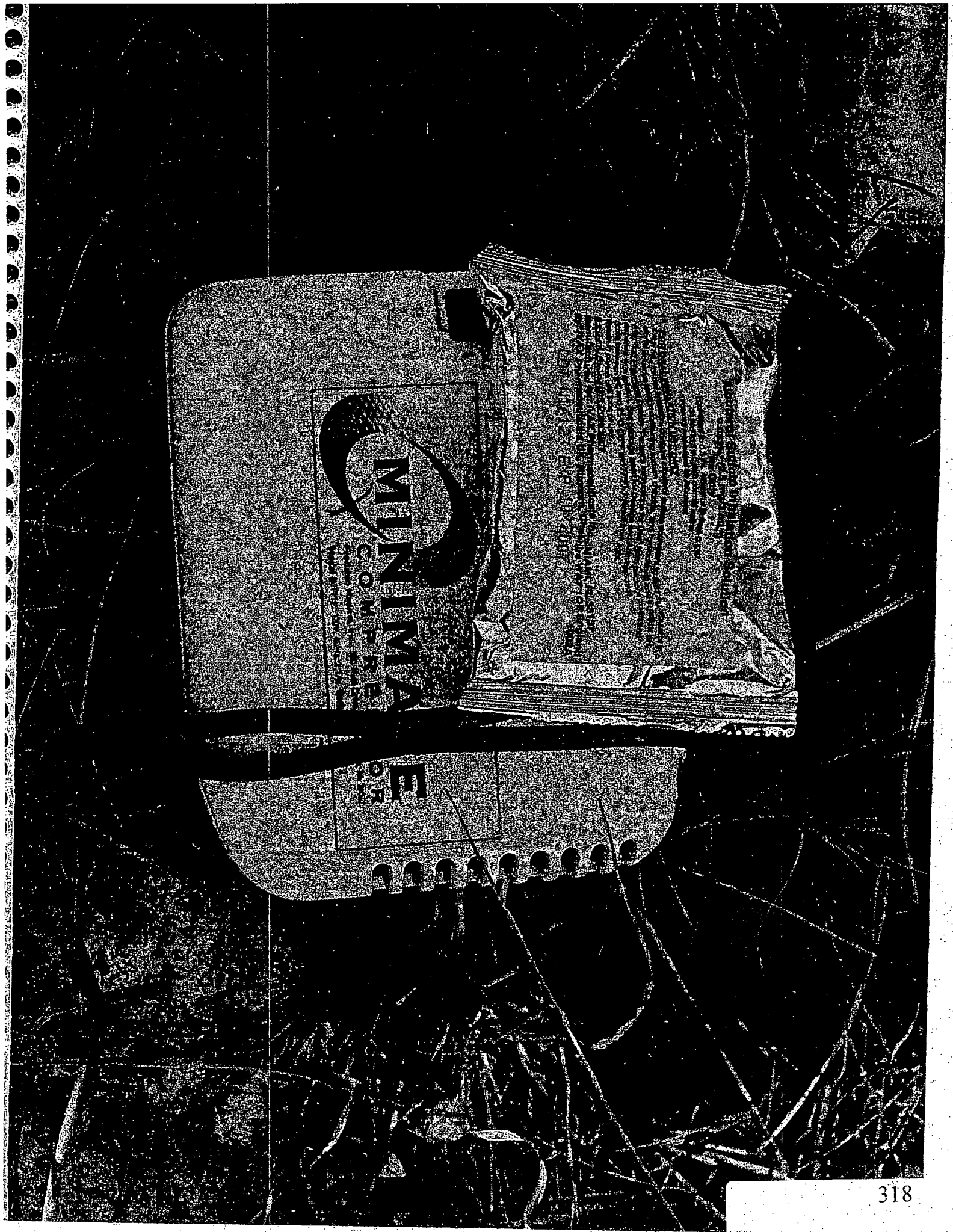
Amazing
DRAIN LINE OPENER
CAUTIONS
DANGER - POISON
MAY CAUSE SEVERE BURNS
MAY BE FATAL IF SWALLOWED
DRAIN OPENER
DRAIN OPENER
DRAIN OPENER



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Lexington County
Sheriff's Department Forensic Lab
Sheriff James R. Metts, Ed. D.

DRUG ANALYSIS DEPARTMENT

Date: 7/19/2006
Lab Number: LL06-0191
Incident Date: 12/22/2005
Your Case #: 05-0101671

(S): Ashe , Christopher

Chris Bailey
Lexington County Sheriff's Department
P.O. Box 639
521 Gibson Road
Lexington SC 29072

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE: **LL06-0191**

Item 1) Tied plastic bag containing viscous substance

Results:
Methamphetamine found 0.05 gram(s) C-II

Item 2) Tied plastic bag containing powder substance

Results:
No controlled or prescription substances detected Found on me

Item 3) Ziplock bag containing ziplock bag containing powder substance

Results:
Pseudoephedrine found 94.50 gram(s) OTC

Item 4) Ziplock bag containing powder substance

Results:
Pseudoephedrine found 193.30 gram(s) OTC

ITEMS OF EVIDENCE:

LL06-0191

I am a Chemical Analyst employed by the Lexington County Sheriff's Department, certified through the South Carolina State Law Enforcement Division as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this state by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environment Control.

I used the following legally reliable forensic laboratory procedures in this analysis:

- [x] Chemical Test
- [ ] Microscopic Test
- [x] Infrared Spectroscopy
- [ ] Ultraviolet Spectroscopy
- [x] Gas Chromatography
- [x] Mass Spectrometry
- [ ] Physical Test
- [x] Published Literature
- [ ] Other:

Signature:

Emily D Homer

Emily D. Homer

07-19-06

Date

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321

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COTTON 007874200100 0.88 X
START FLUID 0681131423?8 8.52 X
6 AT 1 FOR 1.42 10.28
SUBTOTAL 0.62
TAX 1 6.000 % TOTAL 10.90
CASH TEND 20.00
CHANGE DUE 9.10

ITEMS SOLD 8

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12/22/05 09:55:43

LEXINGTON COUNTY SHERIFFS DEPARTMENT
INVENTORY of TOWED VEHICLE

12/22/05 | Location 1208 Daralynn | Case Number 05101671

Deputy Name Chris Bailey | Badge Number 367

Owner Information

Same

State | Zip

Driver Information

Name Christopher W Ashe

Street 853 Crystal Springs Dr

City Pelion | State SC | Zip 29123

Vehicle Information

2005 | Make Chev | Model PK C-1500 | Color Beige

Number 192 TPA | State SC | Odometer

2GCEC19T851194997

Lien Holder Information

Name

Street

City | State | Zip

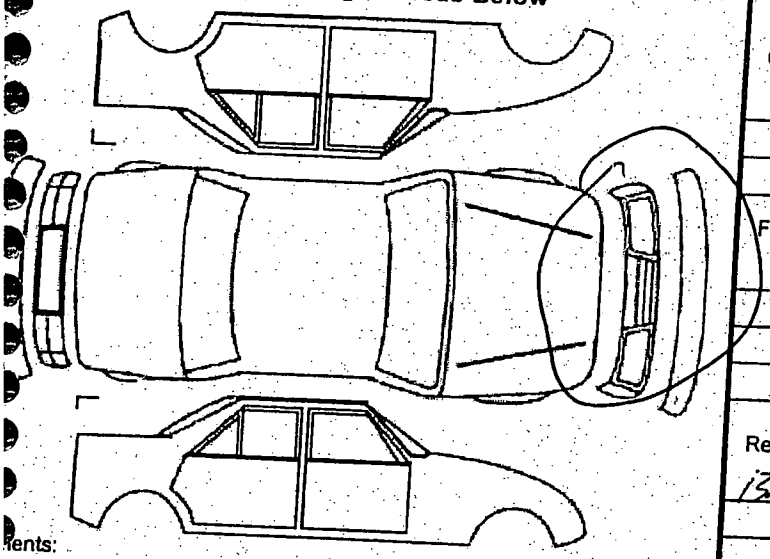
Company Name: Extreme Recovery

Tow Service Information: Time 1723

Address 1804 Two Notch Rd. Lex-29073

Owners Request ☐ Rotation ☑ Driver's Name James Jenkins Driver's Signature

Indicate Damaged Areas Below



Comments:

Heavy Frontend Damage, Scratches and Dents all over

VEHICLE INVENTORY: (Attach pages if necessary)

Glove Compartment: Nothing

Front Passenger Area: Mix Papers, Red Cloths

Rear Passenger Area: Two Green Duffle Bags with misc items

Rear Cargo Area:

Spare Tire? Yes ☑ No ☐ Unk ☐ Jack? Yes ☐ No ☑ Unk ☐

Check appropriate box:

SEIZED ☑ — Seized - vehicle is under investigation for permanent forfeiture

EVIDENCE ☐ — Evidence - vehicle *itself* is evidence in a criminal case.

IMPOUNDED ☑ — Impounded - vehicle is being held until it can be released back to the legal owner.

Check appropriate box:

VEHICLE IS AT LCSD ☐

VEHICLE IS AT TOW COMPANY ☐

OTHER ☐

White - Original
Green - Front Desk (file copy)
Yellow - Front Desk (release copy)
Pink - With Vehicle
Gold - Wrecker Service

Released for:

☐ Owner
☐ Lexington County Sheriffs Department
☐ Other

Released by:

Print Name

Signature

DEFENDANT'S EXHIBIT 1 rgt 10/24/06

Released to:

Name

Street Address

City FEB 04 2006 State Zip

Home Phone Work Phone

Signature

Revised 6/03

322

Form S-438
REV. 10-88

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OF S. Congaree COUNTY OF _____ VERSUS

FIRST NAME: Christopher MIDDLE NAME: Wayne LAST NAME: Ashe

STREET AND NO.: 853 Crystal Springs Dr CITY: Robion STATE: SC

STATE LICENSED: SC DRIVER'S LICENSE NO.: 004296688 DR. LIC. CLASS: D

VEH. LIC. NO.	STATE	MAKE OF VEH	YEAR	COMM'L	AUTO	TRUCK	COMB.
H-34502	SC	Chev	87		HAZ. MT.	MOPED	MTRCYCL	OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER: Trial Judge — STREET AND NO.: 114 Lorick Blvd

DATE OF TRIAL: 07 03 2003 — TIME OF TRIAL: 9:00AM — CITY: S. Congaree — STATE: SC — ZIP CODE: 29172

VIOLATION - COURT APPEARANCE REQUIRED (YES) NO — VIOLATION SECTION NO.: 56-5-3740

Sec 56 Pass Off Hwy

OWNER OF VEHICLE: Pete Williams — DATE OF ARREST: 07 05 2003

ADDRESS OF OWNER: C. Col A SC — DATE OF VIOLATION: 07 05 2003

BAIL DEPOSITED: Jail — NAME OF ARRESTING OFFICER: S. Jones — RANK: Cpl

DESCRIPTION OF ACCUSED: RACE W — SEX M — BIRTH DATE 11 3 15 65 — HGT 5'8" — WGT 130 — EYES BLU — HAIR BLK — COUNTY: Lexington — NUMBER: 32

DATE BAIL REC'D: 20 — BY: — BADGE: 881 — DISTRICT: 1

CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☒ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE:

DAY: S 1 | M 2 | T 3 | W 4 | T 5 | F 6 | S 7 — TIME OF VIOLATION: 1817 — A.M.-1 P.M.-2 — WEATHER: CLR

DEFENDANT DID NOT APPEAR ☐ APPEARED ☒

DISPOSITION: GUILTY ☒ FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐

DISTANCE IN FEET FROM INTERSECTION OF: 302 AND: Chapel Rd

TRIAL BY: TRIAL OFFICER ☒ JURY ☐

VERDICT OF TRIAL IF ANY: GUILTY ☒ NOT GUILTY ☐ — DATE OF TRIAL IF ANY: 12 4 2003

MILES: — N 1 ☐ S 3 ☐ E 2 ☐ W 4 ☒

JAIL	SUSPND	FINE	AMT COLLECTED	AMT SUSPENDED
		565	565	

HWY. NO.: 302 — CITY: S Cong

COMMITTED TO: — Arrest as Result of Accident: NO — OFFENSE CODE: 99 — B.A. LEVEL:

CERTIFIED CORRECT: [signature] — DATE: 12 4 2003

60545 CK

TRIAL OFFICER'S COPY

$110

11-1-1093

CERTIFIED TRUE COPY

Melinda Shumpert 8-8-06

CLERK OF COURT — DATE

TOWN OF SOUTH CONGAREE

COURT'S EXHIBIT 1 10/25/06 rt

gny-ORI #: 3200 L. C. S. D. Badge Nbr: 186 Status: D DISPOSED
rial Date: 03/16/2001 BENCH W..: no SNEAD
rial Time: 10 NRVC.....: no BENCH Date:
ssue-Date: 02/09/2001 STP.....: no NRVC Date.:

HISTORY DEFENDANT

me..: ASHE, CHRISTOPHER W
dr-1: 3942D GREENWOOD DRIVE Addr-2:
ty..: W. COLUMBIA State: SC Zip: 29170 Phone:

HISTORY DISPOSITION

ispo-Date: 03/16/2001 Dispo-Judge: 583 LEXINGTON CO
spo-Area: 0001 COUNTY OF LEXINGTON FINE GF100
spo-Code: 2 Guilty/Bench Trial
ntence..: 425
mments..:

ket-HST PMT-HST Df/Stat-HST Offense-HST Disposition-HST
-HST FFA-HST STP-HST Exit

ss space bar to continue.

Certified True Copy of Original Court Document
COURT REPRESENTATIVE

COURT'S EXHIBIT
2
10/25/06 sb

STATE OF SOUTH CAROLINA)
)
COUNTY OF Lexington)
STATE VS.)
Christopher Rake)
AKA:)
Race: W Sex: M Age: 31)
DOB: 3-15-75 SS#: 251-13-7093)
Address: 853 Crystal Springs Dr)
City, State, Zip Pelion SC 29123)
DL# 4496688 SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:
2006 -GS- 32 - 2155
A/W#: 1st Ind
Date of Offense: 12-22-05
S.C. Code §: 44-53-375
CDR Code #: 3 1 0 1 3 12
☐ **CASE RESTORED**
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Poss of Pseudoephedrine
in violation of §44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 3 1 0 1 3 1 2
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center,** for a determinate term of 25 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:_____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
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 cr
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$25 cr
§33.7, 1B TP (Drug Court Surcharge)	$100	$100 cr
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$225 cr

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning
$ _____ paid to Public Defender Fund
Other:

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Bill A Carrigg
Clerk of Court/Deputy Clerk
Court Reporter: K Hall

PRESIDING JUDGE K. Jerrell Cobb
Judge Code: 2 1 1 4 104
Sentence Date: Oct. 25, 2006

SCCA/217 (2/2006) *White* – Clerk *Green* – Corrections *Canary* – Probation *Pink* – Defendant

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Unlawful Possession of Pseudoephedrine- 200 g or
COUNTY OF LEXINGTON	)	more, but less than 400 g
		§44-53-375 (E)(1)(d)

At a Court of General Sessions, convened on July, 2006, the Grand Jurors of Lexington County present upon their oath:

That Christopher W. Ashe did in Lexington County on or about December 22, 2005, did knowingly and unlawfully possess two hundred (200) grams or more, but less than four hundred (400) grams of pseudoephedrine, a controlled substance as defined in §44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, and in violation of §44-53-375 (E)(1)(d) Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

DOCKET NO. 2006-GS-32-2155

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

July TERM 2006

THE STATE
vs.
Christopher W. Ashe
AKA Christopher Wayne Ashe

WITNESSES

LCSD Lexington County Multi-Agency
Narcotics Enforcement Team
Gleaton, Jimmy

A-2006-32-00082 7/21/2006 11:32 AM

ARREST WARRANT NUMBER

Straight Indictment

483

TRUE BILL

ACTION OF GRAND JURY

Darlene M. Addy

Foreperson of Grand Jury
Date: 7.31.06

VERDICT

Guilty

Donnie A. Cason 10-25-06

Foreperson of Petit Jury *Date:*

3032

Indictment for

Unlawful Possession of Pseudoephedrine-
200 g or more, but less than 400 g

§44-53-375 (E)(1)(d)

DONALD V. MYERS, SOLICITOR

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF Lexington)
STATE VS.)
Christopher Aske)
AKA:)
Race: W Sex: M Age: 31)
DOB: 3-15-75 SS#: 251-13-2093)
Address: 853 Crystal Springs Dr)
City, State, Zip Pelion SC 29123)
DL# 4296688 SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:
2006 -GS- 32 - 2156
A/W#:
Date of Offense: 12-22-05
S.C. Code §: 44-53-375(A)
CDR Code #: 0 1 0 1 0
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of Crack
in violation of §44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 0 1 0
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center,** for a determinate term of 3 ~~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: 2006-DS-32-2155
☒ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
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	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$100.00
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$225.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Bill A Carrigg
Clerk of Court/ Deputy Clerk
Court Reporter: K Scott

PRESIDING JUDGE: Judge Code: 1 1 4 1 4
Sentence Date: Oct. 25, 2006

SCCA/217 (2/2006) *White* – Clerk *Green* – Corrections *Canary* – Probation *Pink* – Defendant

DOCKET NO. 2006-GS-32-2154

WITNESSES

LCSD Lexington County Multi-Agency
Narcotics Enforcement Team
Gleaton, Jimmy

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

July TERM 2006

THE STATE
vs.
Christopher W. Ashe
AKA Christopher Wayne Ashe

A-2006-32-00082 7/21/2006 11:46 AM

ARREST WARRANT NUMBER

485

TRUE BILL

ACTION OF GRAND JURY

Darlene M. Addy
Foreperson of Grand Jury
Date: 7-31-06

VERDICT

Guilty

Dennis A. Cason 10-25-06
Foreperson of Petit Jury *Date:*

Indictment for

Possession of Crank

§44-53-375(A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of crank
§44-53-375(A)

At a Court of General Sessions, convened on July, 2006, the Grand Jurors of Lexington County present upon their oath:

That Christopher W. Ashe did in Lexington County on or about December 22, 2005, knowingly and intentionally possess a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, to wit: crank in violation of § 44-53-375(A) 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)
COUNTY OF Lexington)
STATE VS.)
Christopher W Ashe)
AKA:)
Race: W Sex: M Age: 31)
DOB: 3-15-75 SS#: 251-13-2193)
Address: 853 Crystal Springs Dr)
City, State, Zip Pelion SC 29123)
DL# 4296688 SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:
2006 -GS- 32 : 2157
A/W#:
Date of Offense: 12-22-05
S.C. Code §: 44-53-375
CDR Code #: 3 1 1 9 1 8
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Manufacturing Meth
in violation of §44-53-375 of the S.C. Code of Laws, bearing CDR Code # 3 1 1 9 1 8
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center,** for a determinate term of 15 ~~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: 2006-GS-32-2155
☒ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
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 ea
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§ 35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$25 ea
§33.7, 1B TP (Drug Court Surcharge)	$100	$100 ea
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$225 ea

PTUP
___ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd in equal consecutive weekly/monthly pmts. of $ beginning
$ paid to Public Defender Fund
Other:

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Bill A Carrigg
Clerk of Court/ Deputy Clerk
Court Reporter: R Hartley

PRESIDING JUDGE R Jamie Gilbert
Judge Code: 2 1 1 4 1 4
Sentence Date: Oct. 25, 2006

SCCA/217 (2/2006) *White* – Clerk *Green* – Corrections *Canary* – Probation *Pink* – Defendant

DOCKET NO. 2006 -GS-32- 2157

WITNESSES

LCSD Lexington County Multi-Agency
Narcotics Enforcement Team
Gleaton, Jimmy

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2006

THE STATE
vs.
Christopher W. Ashe

A-2006-32-00082 3/8/2006 11:50 AM

ARREST WARRANT NUMBER

TRUE BILL

ACTION OF GRAND JURY

Darlene M. Addy
Foreperson of Grand Jury
Date: 7-31-06

VERDICT

Guilty

Joanne H. Cason 10-25-06
Foreperson of Petit Jury *Date:*

Indictment for

Manufacturing Methamphetamine

§44-53-375

DONALD V. MYERS, SOLICITOR

A TRUE COPY
RNC
Lex. Co. C.C.C.P., G.S. & F.C.

488

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Manufacturing Methamphetamine
COUNTY OF LEXINGTON	)	

§44-53-375

At a Court of General Sessions, convened on JULY 2006, the Grand Jurors of Lexington County present upon their oath:

That Christopher W. Ashe, did in Lexington County on or about December 22, 2005, knowingly and intentionally, willfully and unlawfully cultivate, manufacture or otherwise, aid, abet, attempt, or conspire to manufacture, cultivate, or bring into this State, a quantity of Crank, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in violation of § 44-53-375, 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)
)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS
CASE NUMBER: 95-GS-32-2069

State of South Carolina)
)
vs.)
)
Brian Shealy Jenkins)
Defendant .)

VERDICT FORM

We, the jury, by unanimous consent, find the Defendant:

X Not Guilty of Trafficking in Marijuana

_____ Guilty of Trafficking in Marijuana

(ANSWER THE FOLLOWING ONLY IF YOU FIND THE DEFENDANT GUILTY.)

We, the jury, by unanimous consent, find the Defendant was in actual or constructive possession of _____ (plants) of marijuana.

Foreman

July 17, 1996
Lexington, S.C.

DOCKET NO. 95-GS-32- 2069

The State of South Carolina,

County of LEXINGTON

COURT OF GENERAL SESSIONS

AUGUST TERM 1995

THE STATE

vs.

BRIAN SHEALY JENKINS

CDR#283

Indictment for

TRAFFICKING IN MARIJUANA

DONALD V. MYERS, SOLICITOR

WITNESSES

LCSD

HARTLEY, ED

ARREST WARRANT NO. E-234538

ACTION OF GRAND JURY

TRUE BILL

Foreman of Grand Jury 8-24-95

VERDICT

Not Guilty

Foreman of Petit Jury Date: 7-17-96

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
TRAFFICKING IN MARIJUANA

At a Court of General Sessions, convened on AUGUST 14, 1995,
the Grand Jurors of LEXINGTON County present upon their oath:

TRAFFICKING IN MARIJUANA - §44-53-370(e)(1)(b)

That **BRIAN SHEALY JENKINS,** did in Lexington County on or about July 6, 1995, knowingly, intentionally, wilfully and unlawfully sell cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of marijuana in a quantity of, One Hundred (100) to One Thousand (1,000.00) plants, in violation of Section 44-53-370(e)(1)(b) of the South Carolina Code of Laws, as amended, constituting the criminal offense of Trafficking in Marijuana

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

D. J. Eagle
Asst. SOLICITOR

ARREST WARRANT

E-234538

STATE OF SOUTH CAROLINA

☐ X County/ ☐ Municipality of

Lexington

THE STATE

against

BRIAN SHEALY JENKINS

Address: 1204 DARALYNN DR.
LEXINGTON, SC 29073

Phone: _____ SSN: _____

Sex: M Race: W Height: 603 Weight: 195

DL State: _____ DL#: _____

DOB: 12-31-74 Agency ORI#: _____

Prosecuting Agency: L.C.S.D.

Prosecuting Officer: Det. ED HARTLEY

Offense: TRAFFICKING MARIJUANA (OVER 100 PLANTS) Offense Code: 287

Code/Ordinance Sec. 44-53-370

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Jenkins + Sons
on 7-6-95

_____
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

JUDGE T. RAWL
304 SOUTH LAKE DR.
LEXINGTON, SOUTH CAROLINA

493

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Lex)

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant Det. ED HARTLEY who being duly sworn deposes and says that defendant BRIAN SHEALY JENKINS did within this county and state on 07-06-95 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington) in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING MARIJUANA (OVER 100 PLANTS)
44-53-370

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON JULY 6, 1995 AT APPROX. 5:00 PM, THE DEFENDANT, BRIAN SHEALY JENKINS WAS FOUND TO BE MANUFACTURING, GROWING, CULTIVATING AND TENDING TO OVER 100 MARIJUANA (APPROX. 154 PLANTS) PLANTS ON DARLYN DR.. THIS INCIDENT TOOK PLACE IN THE RED BANK AREA OF LEXINGTON COUNTY, SOUTH CAROLINA.

Sworn to and subscribed before me on July 7, 1995

Sheriff M Sons (L.S.)
Signature of Issuing Judge

Edward Hartley
Signature of Affiant

Affiant's Address 521 Gibson Rd.
Lexington, S.C. 29072

Affiant's Telephone 359-8230

STATE OF SOUTH CAROLINA)
☐ X County/ ☐ Municipality of)
Lexington)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07-06-95 defendant BRIAN SHEALY JENKINS did violate the criminal laws of the State of South Carolina (or ordinance of ☐ X County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: TRAFFICKING MARIJUANA (OVER 100 PLANTS)
44-53-370

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sheriff M Sons (L.S.)
Signature of Issuing Judge

Judge Code: 621

Judge's Address 521 Gibson Rd,
Lexington, S.C. 29072

Judge's Telephone _____

Issuing Court: ☐ X Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

WITNESSES

LCSD
Day, David

A-2006-32-00622 1/22/2007 8:25 AM

ARREST WARRANT NUMBER

K083456

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury *Date:*

DOCKET NO. 2007 -GS-32- 605

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

January TERM 2007

THE STATE
vs.
Brian Shealy Jenkins

CDR# 2988

Indictment for

Criminal Domestic Violence of a High and Aggravated Nature

§16-25-65

DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT

Brian S Jenkins
DEFENDAN

DATE

JR. S

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Criminal Domestic Violence of a High and Aggravated Nature

§16-25-65

At a Court of General Sessions, convened on January, 2007, the Grand Jurors of Lexington County present upon their oath:

That Brian Shealy Jenkins did in Lexington County on or about March 02, 2006, did unlawfully and intentionally committed assault and battery upon Teresa Hall, a household member, which involved a deadly weapon or resulted in serious bodily injury, to wit: defendant rammed the victim's car with his car and smashed the window causing cuts to her face, in violation of the Section 16-25-65 and further defined in Section 16-25-20 Code Laws of the State 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

ARREST WARRANT

083456 K- 083456

STATE OF SOUTH CAROLINA

X ☐ County/ ☐ Municipality of

Lexington

THE STATE

against

BRIAN SHEALY JENKINS

Address: 1204 DARALYN DRIVE

Lexington, SC 29073

Phone: _____ SSN: 248-63-7895

Sex: M Race: W Height: 6-4 Weight: 250

DL State: _____ DL #: _____

DOB: 12/31/1974 Agency ORI #: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: DAY, DAVID

Offense: CR. DOM VIO. HAN

Offense Code: 2390

Code/Ordinance Sec. 16-25-65

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant BRIAN SHEALY JENKINS on 3.3.06 · 1:05 pm

pst. Edw Day

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

496

AFFIDAVIT ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

STATE OF SOUTH CAROLINA)

X ☐ County/ ☐ Municipality of)

Lexington)

Personally appeared before me the affiant EDDIE PRESTIGIACOMO who being duly sworn deposes and says that defendant BRIAN SHEALY JENKINS did within this county and state on 03/02/2006 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGREVATED NATURE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT 03-02-06 AT 5:30 PM,THE DEF,BIAN JENKINS,WHO LIVED WITH THE VICTIM,TERESA HALL, FOR SIX MONTHS,RAMMED THE VICTIM'S CAR WITH HIS CAR TO KEEP HER FROM LEAVING 1204 DARALYN DRIVE IN THE LEXINGTON AREA OF LEXINGTON COUNTY.THE VICTIM WAS ABLE TO DRIVE AWAY AS HER CAR STALLED DOWN THE ROAD AS THE DEF RAN UP TO HER CAR AND SMASHED THE WINDOW CAUSING CUTS ON THE VICTIM'S FACE.DEP DAY ARRESTED THE DEF ON THE SCENE AS HE ARRIVED AND OBTAINED STATEMENT FROM THE VICTIM TO PROVE THE SAME.

Signature of Affiant

Affiant's Address LCSD
521 Gibson Road
Lexington, SC 29072

Affiant's Telephone 785-8230

STATE OF SOUTH CAROLINA)

X ☐ County/ ☐ Municipality of)

Lexington)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 03/02/2006 defendant BRIAN SHEALY JENKINS did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: 16-25-65

CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGREVATED NATURE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 03/03/2006

_____ (L.S.)

Signature of Issuing Judge

Judge Code: 058

Judge's Address 205 EAST MAIN STREET
LEXINGTON, SC 29073

Judge's Telephone 803-951-2595

Issuing Court: X ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

1 - 10 yr

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)
STATE VS.)
Brian Jenkins)
AKA:)
Race: W Sex: M Age: 32)
DOB: 12/31/74 SS#: 248-63-7895)
Address: 1208 Dralynn Dr)
City, State, Zip: Lexington, SC 29073)
DL#: SID# SC0839395)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-605
A/W#: 1608356
Date of Offense: 3/3/06
S.C. Code §: 16-25-65
CDR Code #: 2988

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: CDUTAN
in violation of § 16-25-65 of the S.C. Code of Laws, bearing CDR Code # 2988
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. BSJ (Defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor | Defendant | Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 5 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: 2/26/07
☒ 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. 37 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
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	$
§35.13 (Public Def/Prob)	$500	$
§73.3, 1B TP (Law Enforce. Funding)	$25	$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 125.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP Requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter: Staci Shipp

PRESIDING JUDGE
Judge Code: 175165
Sentence Date: 2/26/07

SCCA/217 (9/2006)

Lexington Co. Sheriff's Dept.
Booking Form
Run Date: **03/02/2006** - 21:49
ORI: SC0320000

Inmate Bio Information

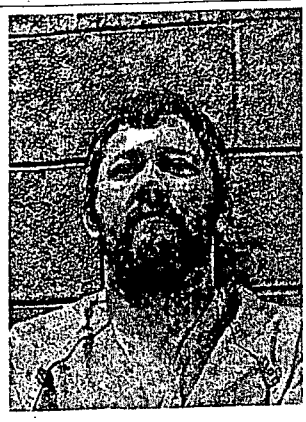
Inmate: **JENKINS, BRIAN SHEALY**
AGE: **31**
SSN: **248-63-7895**
Resident Status: **THIS JURISDICTION**
Address: **1208 DARALYNN DRIVE**

LEXINGTON, SC 29073
License No: **D/ 4190319/ SC/ V**
No of. Children: **1**
Military:
Occupation **UNSKILLED LABOR - TREE CUTTER**
Birth Place: **LEXINGTON**
Employer
Country/State: **U.S.A. / SC**
Potentially Dangerous: **N**

Jail ID: **921930**
DOB: **12/31/1974**
Booking No: **23407110**
Citizen: **Y**
FBI#:

Marital Status: **S**

Phone: **(803) 755-3177**
Church/Religion: **NONE**
Education **GRADE NINE**
Housed at Unit: **PA16**
Escape Risk: **NO**
Suicidal Risk: **NO**
ClassCode: **MX**



Inmate Physical Information

Sex: **MALE**
Skin:
Height: **6'04**
Eyes: **BROWN**
Eyes: **BROWN**
Glasses:
Build: **HEAVY FAT STOCKY**

Race: **WHITE**
Ethnicity: **NON HISPANIC**
Facial Hair: **GOATEE/MUSTACHE COMBINATION**
Hair Style: **SHORT-ABOVE EAR**
Hair: **BROWN**
Weight: **250**

Current Charges

Charge Code	Offense	Fel/Mis	ITN	Docket No Case No	Bond Amt
2390	DOMESTIC/CRIM DOM VIOL-HIGH & AGGR NATUR	M			$0.00
Note:HOLD FOR CHARGES		Dispo:AWAITING BOND COURT			
0013	ASSAULT/ASSLT & BATT OF HIGH & AGGRAV NA	M			$0.00
Note:HOLD FOR CHARGES		Dispo:AWAITING BOND COURT			

Current Arrest Information

Arrest Date: **03/02/2006**
Arrest Type: **FULL BOOKING**
Arresting Agency: **LEXINGTON COUNTY SHERIFF DEPT**
Armed I:
Armed II:
Drug Activity:

Arrest Time: **20:00**
Arresting Officer: **ISPHORDING**
Arrest Situation:
Weapon Type I:
Weapon Type II:
Drug Type:
Juvenile disposition:

Current Booking Information

Booking Date: **03/02/2006**
Booking Officer: **[E72367] Joseph STIREWALT**
Search Officer: **[E72367] Joseph STIREWALT**
Warrant No.:
Civil Process: **N**
Resist: **N**
Physical Education: **N**
Release Date: **?**
Outdate: **03/02/2006**

Booking Time: **21:38**

Warrant No.:
Local Check: **Y**
Alcohol: **N**
NCIC Check: **Y**
Total Bond: **0.00**
Release Time: **00:00**

Scars/Marks/Tattoos

Type	Description
TATTOO	DRAGON ON BACK
TATTOO	WOLF ON LEFT ARM

Alias Info

Type	Alias Information

Next of Kin

Relation	Name	Age	Can Visit	Notif?	Address
MOTHER	JENKINS, MAZIE		Y	Y	LEXINGTON, SC