

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

ORIGINAL

RECEIVED

JUN 26 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES CLYDE DILL, JR.,

APPELLANT

APPELLATE CASE NO. 2013-000724

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, SC 29648-0516
(864) 942-8800

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
TESTIMONY	
JUSTIN MOODY (PRETRIAL)	
Direct Examination by Ms. Agnew	23
Cross-Examination by Mr. Mayer	26
BEN BLACKMON	
Direct Examination by Ms. Agnew	49
Cross-Examination by Mr. Mayer	52
BRYAN TODD GARRICK	
Direct Examination by Ms. Agnew	53
Cross-Examination by Mr. Mayer	75
Redirect Examination by Ms. Agnew	84
Recross-Examination by Mr. Mayer	84
JURY CHARGE	124
SEARCH WARRANT	144
AFFIDAVIT	146
RETURN	147
INDICTMENT	148
CERTIFICATE OF COUNSEL	150

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 (PHOTO)
STATE'S EXHIBIT #2 (PHOTO)
STATE'S EXHIBIT #3 (PHOTO)
STATE'S EXHIBIT #4 (PHOTO)

State of South Carolina	)	
	)	Court of General Sessions
County of Laurens	)	2011-GS-30-633
	)	2011-GS-30-515

State of South Carolina	)	
vs.	)	Transcript of Record
	)	
James Clyde Dill, Jr., and	)	
Molina Lynn Armstrong	)	
DEFENDANTS	)	

April 9, 2012
Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Ashley Agnew, Assistant Solicitor
Attorney for the State

William Mayer, Esq.
Attorney for the Defendants

Joy E. Holston
Official Court Reporter

INDEX OF WITNESSES

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Justin Moody (Pretrial)

Direct examination by Ms. Agnew: 23

Cross-examination by Mr. Mayer: 26

(SW) Ben Blackmon

Direct examination by Ms. Agnew: 55

Cross-examination by Mr. Mayer: 58

(SW) Jimmy Sharpton

Direct examination by Ms. Agnew: 59

Cross-examination by Mr. Mayer: 81

Redirect examination by Ms. Agnew: 90

Recross-examination by Mr. Mayer: 90

Jury Charge 131

Certificate of Reporter 153

EXHIBITSState'sNO.DESCRIPTIONIDEVPAGE#

1

Photo

X

74

2

Photo

X

74

3

Photo

X

74

4

Photo

X

74

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE COURT: All right. Ms. Agnew, are we ready to
2 call the first case?

3 MS. AGNEW: Yes, Your Honor.

4 THE COURT: All right, call it.

5 MS. AGNEW: This is State of South Carolina versus
6 Molina Lynn Armstrong charged in indictment 11-GS-30-515
7 with manufacturing methamphetamine. And the State of
8 South Carolina versus James Dill, Jr., charged in
9 indictment 11-GS-30-633, also with manufacturing
10 methamphetamine.

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, Ms. Agnew representing the State is the prosecutor
13 and has presented two indictments against Molina Lynn
14 Armstrong and James Clyde Dill, Jr. She has presented
15 these two indictments to the Court and has called that
16 case for trial on behalf of Laurens County and to South
17 Carolina. So that you understand, an indictment is a
18 document handed down by the Laurens County Grand Jury.
19 Each of the accused in these two cases, and I say accused
20 because an indictment is a formal accusation to each of
21 the defendants of what needs to be prepared to come into
22 court to defend yourself against. The State is making the
23 accusation of manufacturing methamphetamine against both
24 Ms. Armstrong and Mr. Dill, nothing more, nothing less.
25 It is an accusation. It is the State's responsibility

1 during the trial to present evidence and testimony
2 sufficient to convince the jury beyond a reasonable doubt
3 of the guilt or if there is not sufficient evidence during
4 the trial and a jury of twelve believes that the case has
5 not been proved then the accused are acquitted or found
6 not guilty. Now, I don't want you to take or make any
7 reference to the indictments being anything more than just
8 accusations. It is the State's responsibility to present
9 evidence sufficient for the jury to consider. Now, the
10 first question is first. Mr. Mayer, I want you to stand
11 and introduce yourself and your two clients.

12 MR. MAYER: I am Bill Mayer, an attorney in Laurens,
13 an office up on the square. James Dill is next to me and
14 Molina Armstrong. There have been allegations made that
15 they committed a crime.

16 THE COURT: Ladies and gentlemen, as I told you my
17 questions to you would be generally what do you know about
18 the lawyers, what do you know about the witnesses, what do
19 you know about the case. Now, this indictment refers to
20 an incident that occurred on the 15th day of February of
21 2011 regarding manufacturing methamphetamine. So my first
22 question to you, now please understand that I need you to
23 answer these questions as honestly and fully as you can.
24 I do not need you to stand up and tell me everything you
25 know. Let me ask the questions, let me ask your name, get

1 your juror number down so that the lawyers and the court
2 reporter will know the juror responding to my questions.
3 And then let me ask additional questions as to what
4 information the Court needs in order to make a
5 determination of whether or not you can be fair and
6 impartial because that is what I am looking for. I want
7 jurors who are fair and impartial and willing to listen.
8 So any member of this jury panel related by blood or
9 marriage or close personal friends to any of the attorneys
10 in this case, Mr. Agnew, Mr. Hammack seated at the
11 Solicitor's table, he is the Deputy Solicitor for Laurens
12 County, or Mr. Mayer, the attorney here in Laurens County.
13 If so please stand.

14 (No response.)

15 THE COURT: Is there any member of this jury panel
16 who is related by blood, marriage or close personal
17 friends to either Molina Lynn Armstrong or James Clyde
18 Dill, Jr., if so please stand. No one is standing.

19 (No response.)

20 THE COURT: Now potential witnesses in the case are
21 Jimmy Sharpton, Keith McIntosh, Ben Blackmon, Justin
22 Moody, Christiana Earle. Regarding those potential
23 witnesses, any member of this jury panel close personal
24 friends, related by blood or marriage to any of the
25 witnesses, if so please stand.

1 (No response.)

2 THE COURT: No one is standing. Any member of this
3 jury panel related by blood or marriage to any person
4 employed by the Laurens County Sheriffs Department, if so
5 please stand.

6 (No response.)

7 THE COURT: No one is standing. Any member of this
8 jury panel a member of any organization, citizens against
9 crimes organization such as MADD, SADD, CAVE, any type of
10 organizations of that type. If so please stand.

11 (No response.)

12 THE COURT: No one is standing. Any member of this
13 jury panel know any reason whatsoever they cannot give
14 either the State of South Carolina or Ms. Armstrong or Mr.
15 Dill a fair trial in this matter. If so please stand.

16 (No response.)

17 THE COURT: Do y'all have any other questions?

18 MS. AGNEW: Nothing from the State.

19 MR. MAYER: Nothing from the defense, Your Honor.

20 THE COURT: Those are all of my questions and that
21 being said the Clerk will generate a random list. Now,
22 what is going to happen, momentarily Ms. Lancaster, for
23 your information she is your Clerk of Court for Laurens
24 County and she is an excellent Clerk of Court. She takes
25 great care, she is very efficient, she has a wonderful

1 staff. She is in charge of keeping track of all records
2 for Laurens County as well as all of the civil cases
3 filed, family court and general sessions. She will
4 generate a random list of your names, the computer prints
5 them out and you will be called one at a time. She will
6 call your name and you will come to the front and turn
7 around and the attorneys will take turns alternately of
8 excusing you or accepting you as jurors. And so when your
9 name is called please come forward.

10 CLERK OF COURT: Juror number 40, Tracy L. Davis.
11 What says the State?

12 MS. AGNEW: Please present Ms. Davis.

13 CLERK OF COURT: The defense?

14 MR. MAYER: Please excuse Ms. Davis.

15 CLERK OF COURT: Juror number 34, John L. Cowan. What
16 says the State?

17 MS. AGNEW: Please present Mr. Cowan.

18 MR. MAYER: Please seat Mr. Cowan.

19 CLERK OF COURT: Juror number 68, Alan D. Johnson.
20 What says the State?

21 MS. AGNEW: Please excuse Mr. Johnson.

22 CLERK OF COURT: Juror number 77, Theresa A. Latta.
23 What says the State?

24 MS. AGNEW: Please present Ms. Latta.

25 CLERK OF COURT: What says the defense?

1 MR. MAYER: Please excuse Ms. Latta.

2 CLERK OF COURT: Juror number 104, Freddie G. Pinson.

3 What says the State?

4 MS. AGNEW: Please present Mr. Pinson.

5 CLERK OF COURT: What says the defense?

6 MR. MAYER: Please seat Mr. Pinson.

7 CLERK OF COURT: Juror number 150, Norma J. Zell.

8 What says the State?

9 MS. AGNEW: Please present Ms. Zell.

10 CLERK OF COURT: The defense?

11 MR. MAYER: Please seat Ms. Zell.

12 CLERK OF COURT: Juror number 14, Jason A. Boyce.

13 What says the State?

14 MS. AGNEW: Please present Mr. Boyce.

15 CLERK OF COURT: What says the defense.

16 MR. MAYER: Please seat Mr. Boyce.

17 THE COURT: Juror number 134, Kevin L. Walrath. What

18 says the State?

19 MS. AGNEW: Please present Mr. Walrath.

20 CLERK OF COURT: What says the defense?

21 MR. MAYER: Please seat Mr. Walrath.

22 CLERK OF COURT: Juror number 4, Carrie D. Bailey.

23 What says the State?

24 MS. AGNEW: Please excuse Ms. Bailey.

25 CLERK OF COURT: Juror number 60, Russell S. Hickum.

1 What says the State?

2 MS. AGNEW: Please excuse Mr. Hickum.

3 CLERK OF COURT: Juror number 37, Pamela M. Crawford.

4 What says the State?

5 MS. AGNEW: Please present Ms. Crawford.

6 CLERK OF COURT: What says the defense?

7 MR. MAYER: Please seat Ms. Crawford.

8 CLERK OF COURT: Juror number 51, Joseph E. George,

9 Jr. What says the State.

10 MS. AGNEW: Please excuse Mr. George.

11 CLERK OF COURT: Juror number 5, Henry L. Barksdale.

12 What says the State?

13 MS. AGNEW: Please excuse Mr. Barksdale.

14 THE COURT: Juror number 15, Michael W. Bragg. What
15 says the State?

16 MS. AGNEW: Please excuse Mr. Bragg.

17 CLERK OF COURT: Juror number 16, Jeffrey L.

18 Breazeale. What says the State?

19 MS. AGNEW: Please present Mr. Breazeale.

20 CLERK OF COURT: What says the defense?

21 MR. MAYER: Please seat Mr. Breazeale.

22 CLERK OF COURT: Juror number 54, Barbara A. Grant.

23 What says the State?

24 MS. AGNEW: Please excuse Ms. Grant.

25 CLERK OF COURT: Juror number 108, Frank H. Roberts,

1 Jr. What says the State?

2 MS. AGNEW: Please present Mr. Roberts.

3 CLERK OF COURT: What says the defense?

4 MR. MAYER: Please seat Mr. Roberts.

5 CLERK OF COURT: Juror number 121, Randerio D.

6 Taylor. What says the State?

7 MS. AGNEW: Please excuse Mr. Taylor.

8 CLERK OF COURT: Juror number 95, Amy R. Hazel. What
9 says the State?

10 MS. AGNEW: Please present the juror.

11 CLERK OF COURT: What says the defense?

12 MR. MAYER: Please excuse Ms. Hazel.

13 CLERK OF COURT: Juror number 102, Damion M.

14 Peterson. What says the State?

15 MS. AGNEW: Please present Mr. Peterson.

16 CLERK OF COURT: What says the defense?

17 MR. MAYER: Please seat Mr. Peterson.

18 CLERK OF COURT: Juror number 85, Derek L. Martin.

19 What says the State?

20 MS. AGNEW: Please present Mr. Martin.

21 CLERK OF COURT: What says the defense?

22 MR. MAYER: Please seat Mr. Martin.

23 CLERK OF COURT: Juror number 20, Rebecca L. Burrow.

24 What says the State?

25 MS. AGNEW: Please present Ms. Burrow.

1 CLERK OF COURT: What says the defense?

2 MR. MAYER: Please excuse Ms. Burrow.

3 CLERK OF COURT: Juror number 47, Donnie R. Evans.

4 What says the State?

5 MS. AGNEW: Please present Mr. Evans.

6 CLERK OF COURT: What says the defense?

7 MR. MAYER: Please seat Mr. Evans.

8 CLERK OF COURT: Juror number 135, David R. Weathers.

9 What says the State?

10 MS. AGNEW: Please excuse Mr. Weathers.

11 CLERK OF COURT: Juror number 3, Bobbie J.

12 Aylesworth. What says the State?

13 MS. AGNEW: Please present Mr. Aylesworth.

14 CLERK OF COURT: What says the defense.

15 MR. MAYER: Please present Mr. Aylesworth.

16 CLERK OF COURT: Juror number 56, Marty L. Haggard.

17 What says the State?

18 MS. AGNEW: Please present Mr. Haggard.

19 CLERK OF COURT: What says the defense.

20 MR. MAYER: Please present Mr. Haggard.

21 THE COURT: Are there any matters of law for the

22 Court to take up regarding the selection process employed

23 or composition of this jury from the State or the defense?

24 MR. HAMMACK: None from the State, Your Honor.

25 MR. MAYER: None from the defense, Your Honor.

1 THE COURT: Very well. All right, y'all sit tight.

2 I will give y'all some extra instructions.

3 Folks, do y'all all have the jury information card
4 handed to you. If you do here is your instructions, we
5 would like for y'all to call back tomorrow afternoon after
6 6:00 to the number on the card. It will be Ms.
7 Lancaster's number at the Clerk's office. And the
8 recording will say either call back Wednesday night,
9 please come in Wednesday morning at 9:00, please come in
10 Wednesday morning at 10:00, please come in some time or
11 please call back. Or it could say, thank you for your
12 service this week. If it says call back, call back. If
13 it says come in come in at the time it says come in. If
14 this trial takes a day or so and other work the
15 Solicitor's office has and your service is not needed then
16 thank you for your service. You are excused and call back
17 tomorrow after 6:00. Ms. Lancaster has a staff, don't
18 call until 6:00, she won't know until after 4:30 what is
19 going to happen. So don't call early. Call at 6:00
20 o'clock. Thank you and you are excused.

21 (Whereupon, the jury panel was excused from open
22 court.)

23 THE COURT: I have got a few things scheduled in the
24 morning that I need to take up and your presence is not
25 required. So I am going to ask y'all as a group can you

1 be here tomorrow at 1:30. Is that okay. You can work in
2 the morning as long as you are in the jury room by 1:30.
3 Mr. Bolt generally has water and soda drinks, a snack or
4 two. It is my intent to make this trial happen to not
5 waste much of your time. I want to minimize your downtime
6 and so I try to do things I can do without you. Now, I am
7 not going to place you under oath quite yet. Ms.
8 Lancaster, can you accommodate these calls if I ask them
9 to call in by 12:00, just in case. You can take 13 calls?

10 CLERK OF COURT: Yes.

11 THE COURT: Out of abundance of caution, Mr. Mayer
12 being under the weather. I want to make sure he is good
13 and well tomorrow. So y'all call the number on here of
14 the Clerk's office and make certain to come in at 1:30.
15 If he is doing no better I am not going to make him go to
16 trial, we will start Wednesday morning at 9:30 and I will
17 tell you that then. I want to make certain he is ready
18 and well and not contagious and fit. If he is good to go
19 we will start tomorrow and get it done. If not we will
20 start Wednesday morning. Now, as the case goes, the State
21 will go first. They get to present their case first. Mr.
22 Mayer can present whatever evidence he wishes, perhaps
23 nothing, he can do whatever he likes and he gets to go
24 second of the presentation of his two clients. Now, y'all
25 cannot make a decision until you have heard all of the

1 evidence that the parties wish for you to hear and I give
2 you my instructions on the law of South Carolina on how
3 they evaluate or weigh or consider the evidence you have
4 heard. So, you can't begin discussing the case at all in
5 any fashion or talk to one another about the case until
6 the very end. So I am going to give you an instruction
7 just about at every break. Don't begin discussing the
8 case. You haven't heard all of the testimony, you haven't
9 heard my instructions. I will say that over and over to
10 make certain we don't begin discussing the case because it
11 wouldn't be fair to make up your mind today or tomorrow
12 first thing or after the first witness or prior to hearing
13 the instructions on the law. Y'all might have an idea of
14 what the law is. The law of South Carolina is I instruct
15 to you and part of your oath tomorrow will be, you have to
16 accept the law as I instruct it to you. If you understand
17 it to be something different you have got to kind of leave
18 that aside and take it as I give it to you. That is my
19 job is to provide the accurate law to you because things
20 on TV aren't the same as they are in South Carolina. So
21 you have got to take the law as I give it to you and it is
22 my job to know the law in South Carolina. If it changes
23 then I give you the appropriate law. Do not put anything
24 on Facebook, Twitter, Myspace and all that sort of stuff.
25 Stay off of that. When I say don't talk about cases,

1 don't put on Facebook, I am on the jury, don't do that.
2 And don't go on the internet and research the law of South
3 Carolina. You are not allowed to do any research on the
4 facts on the internet, definitions or terms or chat about
5 it or whatever those words are that all the kids do these
6 days. And I know about the stuff, I have got kids and the
7 only way to keep up with them is I know a little something
8 about it. So I do know about it. You can talk about
9 whatever you like but not about the case until I say,
10 okay, begin your deliberations. Call in tomorrow, before
11 12:00 and find out if we are going to start at 1:30. If
12 not you will get the alternate starting time for Wednesday
13 morning which I would believe to be 9:30. Other than, I
14 allow notepaper and notes. Mr. Bolt can get you a notepad
15 and a pencil. If y'all tell your Foreman, Ms. Crawford is
16 your Foreman, tell her you want to take notes. She is the
17 spokesperson for the jury so if any of these people, you
18 know, I want to take notes. You can tell Mr. Bolt and he
19 will round them up for tomorrow. Other than that she will
20 sign the verdict form. Mr. Bolt will show you to the jury
21 room and we will see you tomorrow at 1:30 or Wednesday
22 morning when told. Thank you.

23 (Whereupon, the jury was excused from open court
24 until the next day at 1:30 p.m.)

25 THE COURT: See y'all in the morning.

1 (Whereupon, the trial will resume the next morning at
2 9:30 a.m.)

3 APRIL 10, 2013.

4 THE COURT: All right, Ms. Agnew, are you ready?

5 MS. AGNEW: Yes, Your Honor.

6 THE COURT: Mr. Mayer, how are you doing today?

7 MR. MAYER: Fine.

8 THE COURT: Are you ready to go?

9 MR. MAYER: I guess. I am going to ask the Court if
10 we could do the actual trial tomorrow. I am still a
11 little misty between my ears here but as far as getting
12 the motions done I think I can handle that. I have a
13 couple of pretrial motions.

14 THE COURT: Okay. Is that okay with y'all?

15 MS. AGNEW: Yes, sir.

16 THE COURT: We have got plenty of time to get in
17 touch with the jury. Let's deal with the pretrial
18 motions. Is 9:30 okay with y'all tomorrow?

19 MS. AGNEW: That is fine.

20 MR. MAYER: Yes, sir.

21 THE COURT: It is your record.

22 MR. MAYER: Thank you, Your Honor. Your Honor, this
23 case, this case is based at a location where officers were
24 serving a search warrant copy of which was provided to me
25 by the Solicitor's office and I have given you a copy of

1 that. The accuracy of the warrant and the legality of it
2 is one of the things that I would like to bring into
3 question.. The problem I have is the warrant as it has
4 been provided to me and I point to the second page after
5 the cover page, actually page three of the warrant.
6 Reason for belief that the property is on subject
7 premises. If I may read, Laurens County Sheriffs Office
8 has received information last 72 hours that the location
9 is an active methamphetamine lab is in operation. The
10 confidential informant working in an undercover capacity
11 with the Laurens County Sheriffs Office was at that
12 location and did see numerous items that are used in the
13 fashion of methamphetamine. On its face, the two
14 statements are inconsistent. One is the allegation that
15 they have knowledge that a lab is in operation. An
16 operating lab is one thing. The existence of materials is
17 something completely different. This, of course, could be
18 settled if we could find out what the CI said and the
19 credibility of the CI as to whether they actually worked
20 at the location or not. My request is to provide that
21 information, having been denied by the State. As far as
22 the position that I have in arguing that the warrant
23 should not have been issued based upon the velocity of
24 information provided by the affiant, I am hampered to the
25 point of almost being unable to make an argument because I

1 don't have any of the information that I would need and I
2 think should be provided. The Magistrate whose job is to
3 issue these warrants needs to be provided certain
4 information. If the standard has reached the point where
5 we reached a level of information provided by the
6 statement saying, Hi, I have a badge, somebody, and I'm
7 not going to tell you who told me something and I'm not
8 going to tell you what but take my word for it, this stuff
9 is there. If that is the standard then we really don't
10 need the Magistrates to sign off on that, if that is all
11 it takes. I understand the importance practically of
12 protecting the identity of a confidential informant. It
13 is also been a year since this has happened, it is not
14 like we are down there screaming the next day. I would
15 like to see something that says that the CI made this
16 statement. This is now 14 months after the statement was
17 supposedly made. There are no affidavits in the file,
18 presented to the Magistrate. And I think that before I
19 can adequately argue to the Court whether or not the
20 warrant should have been issued I need to be provided that
21 information if it exist. If it doesn't exist that is a
22 completely different argument for dismissal.

23 THE COURT: Ms. Agnew.

24 MS. AGNEW: Thank you, Your Honor. With regard to
25 reveal the identity of the person who gave information to

1 law enforcement, the case law in South Carolina is quite
2 clear that when a person gives information that is used as
3 a basis for obtaining a search warrant, that that person
4 is considered a mere tipster, if they weren't an active
5 participant, for example, in a transaction. In this case
6 the information was given to law enforcement that there
7 was an active meth lab, that the person had seen a meth
8 lab at the residence, the person was not sent under the
9 authority of the sheriffs office and merely observed this.
10 The case law shows that in such an incident that the State
11 doesn't have to reveal the identity of the person because
12 they are just a mere tipster. They must only show that
13 that person, that person's information was reliable. As
14 to that effect we do have the affiant for search warrant
15 here. He can testify as to what he told the Magistrate in
16 conjunction with the affidavit presented for the search
17 warrant. And I believe that he can testify as to the fact
18 that the person's information was reliable.

19 MR. MAYER: May I respond, Your Honor?

20 THE COURT: Sure.

21 MR. MAYER: First I would have an objection to this
22 person coming forward now, Sergeant Moody, and saying let
23 me tell you all the things I told the Magistrate that I
24 didn't bother to put on the warrant of the affidavit. The
25 reason that here are some many lines available on the

1 affidavit is so we don't have unrecorded ex parte
2 communication between the person requesting the warrant
3 and the Magistrates. So I would request that any
4 statement or testimony along those lines be discounted.
5 Secondly, I understand Ms. Agnew's comments about the
6 tipster, I have read the cases, I know the law. I would
7 disagree with one thing she said. My position is
8 different. She was talking about this a mere tipster who
9 comes forward according to this affidavit which was sworn
10 to by the affiant. This person was working in an
11 undercover capacity, I believe that is more than a mere
12 tipster. According to this affidavit this is undercover
13 agent, CI. That is not a tipster.

14 MS. AGNEW: And, Your Honor, if I may?

15 THE COURT: All right.

16 MS. AGNEW: With regards to not being able to
17 supplement an affidavit for a search warrant. Again, the
18 case law is quite clear that oral testimony can be used to
19 supplement an affidavit for a search warrant when
20 delivering that to the Magistrate. The affiant is here
21 and is more than happy to testify as to what happened when
22 he got the search warrant. And with regards whether this
23 is a confidential informant or a mere tipster, although
24 the affidavit says this is a confidential informant
25 working with the Laurens County Sheriffs Office, we are

1 not disputing that they, that this person worked with the
2 sheriffs office. But as our affiant can tell you, they
3 weren't working with the sheriffs office with regards to
4 this actual incident.

5 THE COURT: Isn't that kind of self-serving. You put
6 an undercover informant and say, I want you to try to set
7 up Detective Revis over here. And then every case he
8 makes is, he was just working while these other half of a
9 dozen would get a special privilege because he was just
10 working on that one case. The other twelve was not. That
11 is not exactly why we hired him. But we made the other
12 twelve cases and he just accidentally stumbled on those.
13 I mean, isn't that kind of self-serving. It is like the
14 old trick, an experienced officer can't, he has assistance
15 of a senior officer helping him in the prosecution of a
16 case. And a particular police department never lets
17 anybody try the case except a senior officer so everybody
18 stays inexperienced forever. You can't create a situation
19 and use it as a shield.

20 MS. AGNEW: Sure. But the case law in South Carolina
21 says that when a person is providing information as a
22 basis for the search warrant that is acting in a mere
23 tipster capacity. Whether or not they are a confidential
24 informant on other cases, if this had been a situation
25 where the confidential informant had purchased

1 methamphetamine or had been part of some transaction and
2 was an active participant in this then they certainly
3 would qualify as a confidential informant for purposes of
4 revealing identity. But as far as providing information
5 to law enforcement, that capacity is just a mere tipster
6 role.

7 THE COURT: All right, let's hear from the affiant.

8 MS. AGNEW: Call Justin Moody to the stand.

9 JUSTIN MOODY, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 By Ms. Agnew:

13 Q Please introduce yourself for everybody.

14 A Justin R. Moody.

15 Q And, Mr. Moody, do you currently work for the Laurens
16 County Sheriffs Office?

17 A No, I do not.

18 Q Were you working for the Laurens County Sheriffs
19 Office on February 15th of 2011?

20 A That's correct.

21 Q And on that day did you become involved with an
22 investigation at [REDACTED] Happy Valley Road in Fountain Inn?

23 A That's correct.

24 Q Is that in Laurens County?

25 A Yes.

1 Q Can you tell us how you got involved in that
2 investigation?

3 A Received information from an individual of a possible
4 manufacturing of methamphetamine at the residence.

5 Q Had you received information from this individual
6 before?

7 A From that individual, yes I have.

8 Q Had that information panned out?

9 A Yes.

10 Q Had you ever made any arrest based on information
11 that this individual gave you?

12 A Yes.

13 Q In your experience with that individual were they
14 reliable in your eyes?

15 A Yes.

16 Q What did you do with the information that they gave
17 you?

18 A Took the information and actually gave it to Judge
19 Wayne Copeland in a possible search warrant.

20 Q Can you tell us what that information was?

21 A That there was items used to manufacture
22 methamphetamines at the residence.

23 Q Did you also write an affidavit for that search
24 warrant?

25 A I don't believe I did.

1 MS. AGNEW: Your Honor, may I approach?
2 THE COURT: You may.
3 Q Do you recognize that?
4 A I do.
5 Q What is it?
6 A It is the affidavit for a search warrant.
7 Q When is it dated?
8 A It is dated February the 14th of 2011.
9 Q Whose signature is on it?
10 A Mine.
11 Q And what is that search warrant in reference to?
12 A It is in reference to [REDACTED] Happy Valley Road, Laurens
13 County.
14 Q And did you present that to Magistrate Copeland?
15 A I did.
16 Q When you met with Magistrate Copeland did you just
17 give him that and not say anything?
18 A No, that is never the case.
19 Q Did you supplement that affidavit with any oral
20 testimony to the magistrate?
21 A Yes, I did.
22 Q Do you remember what you told him?
23 A That an individual had been used prior in reference
24 to two cases where other arrests had been made and was
25 reliable.

1 Q Based on the information in the affidavit and the
2 information that you testified to orally in front of the
3 Magistrate what did you do?

4 A Issued a search warrant for the residence.

5 Q As a result of that search warrant did y'all find
6 anything?

7 A Yes.

8 Q What did you find?

9 A I found some items used in the manufacturing with, in
10 the manufacturing of methamphetamine.

11 Q So, the information that you received pan out?

12 A Yes.

13 Q No further questions.

14 THE COURT: Mr. Mayer.

15 CROSS-EXAMINATION

16 By Mr. Mayer:

17 Q Good morning, Justin.

18 A Good morning.

19 Q Everything you testified to a few minutes ago true
20 and accurate?

21 A Yes sir, to the best of my knowledge.

22 Q And this person who you don't want to name you say
23 was reliable in your eyes?

24 A Yes.

25 Q Is there any way at all, anything that could be

1 offered to this Court that would support that other than
2 just your statement?

3 A No, not at this time.

4 Q Is there something available in the future?

5 A Not to my knowledge.

6 Q So there is no way to support it other than just
7 taking your word for it?

8 A That's correct.

9 Q And the oral testimony provided to the Magistrate, to
10 your knowledge is that recorded anywhere?

11 A Not to my knowledge, no sir.

12 Q There is no supplemental affidavit or amended
13 affidavit or anything like that?

14 A Not to my knowledge, no sir.

15 Q So there is no record about anything about what you
16 said to the Magistrate?

17 A Not to my knowledge, no sir.

18 Q You said that items were found as a result of the
19 search that was used in the manufacturing of
20 methamphetamine?

21 A That's correct.

22 Q Which ones, which items?

23 A I don't have those in front of me, I am sorry.

24 Q I have nothing further.

25 THE COURT: Anything else, Ms. Agnew?

1 MS. AGNEW: Not from the State, Your Honor.

2 THE COURT: You may step down. Anything else, Ms.

3 Agnew?

4 MS. AGNEW: Just arguments in response to Mr. Mayer.

5 THE COURT: I will hear from Mr. Mayer.

6 MR. MAYER: My position hasn't changed in this in the
7 slightest. I realize it isn't a surprise to everyone.
8 The first question that I asked Sergeant Moody was, did he
9 testify honestly and truthfully. He said he did, he said
10 everything that he said was true. The inconsistencies
11 between what he just said in this application are
12 fundamental. There is absolutely, his testimony saying
13 that this individual has provided information before but
14 he admits that there is absolutely no way to confirm any
15 of that. We are just kind of going on his word and that
16 is it, we have to take his word for it. Reliable in his
17 eyes, anybody back anything up, anything else the State
18 can call, anybody that helped anybody with this person,
19 no. Once again, it is just Sergeant Moody's word. The
20 testimony, he said what the person told him was, I wrote
21 down what he said, items used to manufacture were at the
22 residence. That is not what he wrote in this application.
23 He wrote there was an active methamphetamine lab. There
24 is a world of difference between those two things. An
25 active methamphetamine lab. The testimony that should

1 have been put on this application, somebody has told me
2 that there are things at the house that can be used to
3 manufacture methamphetamine. Since the manufacture of
4 methamphetamine involves things you buy at Walmart,
5 predominately, most likely every house in this county has
6 things that are used, that can be used in the manufacture
7 of methamphetamine which leads to another point which is
8 subtle but it is striking to me. The testimony that the
9 CI provided the Sergeant with information that there were
10 items in the house used to make methamphetamine which I am
11 assuming mean could be used and not were being used.
12 Because the testimony wasn't that they say anything be
13 used or being manufactured versus the claim that there was
14 an active lab. The testimony that the search subsequently
15 generated things which were used or were used in the
16 making of methamphetamine. Once again, this is like an
17 English exam, final question because it is the grammar
18 that kills us here. Were used, does that mean the things
19 which could be used, the things you would use if you made
20 it or something that was actually made. There is nothing
21 that I know of looking at this return that the State is in
22 a position to argue was used in the manufacturing of
23 methamphetamine. They recovered from this home, a gallon
24 of Coleman lantern fuel, a plastic bottle of Coleman,
25 excuse me, a plastic bottle of Coleman lantern fuel, five

1 one pound containers of salt, a bottle of hydrogen
2 peroxide, numerous hypodermic needles, an HCL generator
3 which to my knowledge, I haven't been given anything to
4 show that has been tested and has residue of any kind on
5 it. And one person's HCL generator is another person's
6 any number of things. A metal container containing a
7 cotton swab with methamphetamine on it. And the return
8 does show a clear baggy with meth residue. That has
9 nothing to do with my clients, that and if I am not
10 mistaken, possibly the box, I have never gotten an answer
11 on that, were in the possession of somebody who was in the
12 house who wasn't living there who has already plead guilty
13 to possession of that and done time. And the last thing
14 is a gallon glass container with a caustic liquid. We
15 have absolutely no idea what that was, I don't know what
16 caustic liquids are involved in the manufacturing of
17 methamphetamine. But law enforcement took it upon
18 themselves to destroy that before they had it tested for
19 anything. So I don't see anything that has been used in
20 the active manufacturing of methamphetamine that would
21 support the warrant. Once again, we come down with the
22 situation that we were faced with earlier which is if the
23 standard is an officer can walk up and allege and that is
24 sufficient then we really don't have a warrant protection
25 system for the people of this State. Basically what we

1 have is a confirmation that the person who applied for the
2 warrant actually lives and breathes and actually applied
3 for it. I think, Your Honor, that if such a circumstance
4 existed, a warrant could or should have been issued had
5 proper procedures been followed to protect the citizens of
6 the State that may well be. But if the process has
7 degenerated to this point then we are at the point where
8 the sheriffs department has the ability to use a
9 constitutionally provided shield as a sword. Because
10 there is absolutely no way for anybody to question or
11 defend against this. I might add also, the point on
12 testimony, the information limited such as it is in the
13 warrant was apparently buttressed by an oral
14 communication. Once again there is no record of that. I
15 understand the cases, I understand the procedure, I
16 understand the rules. I also understand the use of the
17 word, testimony, that a claim can be buttressed by oral
18 testimony. I am aware that the Courts and the Magistrates
19 of this State all have tape recorders and recording
20 devices so they can take oral testimony. What we have is,
21 no Magistrate to say anything was said. I am not sure it
22 would be proper to put the Magistrate on the stand anyway.
23 Nothing to back up anything and we are left with what we
24 started before the Sergeant made his testimony which is we
25 either believe him in which case the Magistrate is

1 irrelevant or he has to prove things which we cannot prove
2 other than he says so.

3 THE COURT: Ms. Agnew.

4 MS. AGNEW: Thank you, Your Honor. While I can
5 appreciate Mr. Mayer's policy arguments we do have a
6 standard in a process for acquiring a search warrant in
7 this State. That process was followed in this case. We
8 are not here to have the search warrant issued, the
9 Magistrate did that. And the law holds that this Court
10 must show deference to the Magistrate's decision on that.
11 The Magistrate, all the Magistrate requires is probable
12 cause, not proof beyond a reasonable doubt. An officer
13 doesn't have to go back and double check every single
14 piece of information that he received especially if it is
15 from an informant that is proven reliable in the past.
16 The standard is that an officer has a good faith belief
17 that based on the information he is received that there is
18 criminal activity going on. In this case the officer
19 testified that he had worked with this informant before,
20 this informant had given information to him that had
21 panned out, that had proven to be reliable, that had led
22 to arrest. So in this officer's eyes--

23 THE COURT: Did he say that?

24 MS. AGNEW: Yes, Your Honor, he did.

25 THE COURT: I missed it.

1 MS. AGNEW: We can go back and check it.

2 THE COURT: All right, keep going.

3 MS. AGNEW: But in this case, all the officer needed
4 was a good faith belief. He presented that to the
5 Magistrate and as it has been said, it is quite common for
6 oral testimony to supplement an affidavit on a search
7 warrant. Mr. Mayer brought up the point that there is no
8 recording of it. Unfortunately that is not the
9 requirement. With regards to the inconsistencies that Mr.
10 Mayer perceived in the search warrant and the officer's
11 testimony, the officer said he received information that
12 there was an active methamphetamine lab in the 72 hours
13 prior to them serving the search warrant. So if items had
14 been previously used that grammar would be correct. With
15 regards to the items that he found, Mr. Mayer indicated
16 that these items are all things that can be found at
17 Walmart. However, an HCL generator is only produced from
18 making methamphetamine. I believe you might can produce
19 it if you are attempting to make a bomb. Other than that
20 I don't believe there is any other purpose or any other
21 way to create an HCL generator because it is caused when
22 certain chemicals to make methamphetamine are combined to
23 gas off, to create the final product of methamphetamine.
24 And last time I checked you cannot find that at Walmart.
25 So as far as the search warrant goes, the officer

1 testified that he has got the oral testimony,
2 supplementing the affidavit, that this information he
3 received he believed to be reliable because the
4 information he received from that informant had been
5 reliable in the past. He presented this to the Magistrate
6 and the Magistrate found that this was sufficient to
7 produce a good faith belief that this information was
8 reliable.

9 MR. MAYER: May I respond?

10 THE COURT: Sure.

11 MR. MAYER: The procedure as I understand it is that
12 the Magistrate is suppose to make an informed decision.
13 My point is, there is nothing here which a Magistrate can
14 make an informed decision. Now, we are not issuing the
15 search warrant, that is correct. But this is the forum in
16 which we can question whether one was properly issued it
17 or not. We don't have anything other than the word of
18 this officer that supports anything in this or says
19 anything about it. I understand if they don't take
20 subsequent testimony it is not a law, it is not a law they
21 have to issue. But the system is set up to protect people
22 from getting their houses invaded. I still haven't seen
23 anything that protects anybody including me from having
24 the Laurens County Sheriff burst into my house because
25 they told the Magistrate somebody who they once said told

1 them that I might be doing something. The purpose of the
2 search warrant is to keep that kind of stuff from
3 happening. I mean we go back, are you prerevolutionary
4 theory, the purpose of the warrant in the Fourth Amendment
5 is to keep officials from kicking in your door just
6 because they want to see something. If the only standard
7 is, they have to go to a Magistrate and say they want to
8 see something where are the protections there. The
9 statements that are in this, that the Magistrate are given
10 was not what this individual just testified to. Ms. Agnew
11 said, she quoted the warrant. There was a meth lab at
12 active production and that is what the Magistrate was
13 told, that is not what Sergeant Moody said he was told.
14 On that stand he said, he was told there was stuff in the
15 house used to make meth. His words.

16 MS. AGNEW: And, Your Honor, we can go back and
17 listen to the recording but that is inaccurate as to what
18 Officer Moody said. He said that is what was found. But
19 what was testified to him by the informant that there was
20 an active methamphetamine lab in the past three days at
21 that residence.

22 THE COURT: All right. I was thinking there had to
23 be some allegation before the Magistrate to verify, sworn
24 to, that the information provided was accurate, the
25 information was directly from the officer. I guess my

1 concern is, this alleged tipster, is he or she, as I
2 understand the case law there, an occasion where that has
3 got to be or compelled to be shown or told, discovered by
4 the defense if there is a likelihood that he is a
5 participant in the crime and a material witness in the
6 guilt or the innocence of the defendants. How is that
7 applicable here. Why is that tipster fit in one of those
8 two situations?

9 MS. AGNEW: Your Honor, our argument is that in this
10 case it is precisely a tipster but because there is not an
11 active participant in a transaction, in a buy bust, in the
12 making of methamphetamine that his identity doesn't have
13 to be revealed. That all he did was give information to
14 law enforcement, they, there is a meth lab at this house.
15 Because he wasn't actively involved in any transaction he
16 is not an active participant who is just supplying
17 information to law enforcement. And in State v. Jenkins
18 from 1996, the Court says that in this kind of case where
19 someone merely gives information to law enforcement for
20 the purpose of obtaining a search warrant that the State
21 is rarely required to reveal the identity of that
22 informant because they are only acting as a mere tipster.
23 I believe that the fact that a confidential informant, the
24 term being used in the search warrant is irrelevant
25 because it is not being used as a term of art in law that

1 this was an active participant. But rather this was just
2 someone supplying information.

3 MR. MAYER: May I respond, Your Honor?

4 THE COURT: Yes.

5 MR. MAYER: This is the sergeant with the narcotics
6 division of the sheriffs department going to a local
7 Magistrate. How is the use of a term of art not to be
8 accepted as a term of art. Would that warrant had been
9 issued if that didn't say it was a confidential informant
10 working with law enforcement. We don't know. But that is
11 the standard they set. They gave the Judge making this
12 decision that they were given this piece of information by
13 a confidential informant working with law enforcement.
14 That implies that they have direct knowledge of this case,
15 been working on this case. It is a decision, would the
16 Magistrate have issued otherwise. I don't know.

17 MS. AGNEW: And, Your Honor. Officer Moody testified
18 that when he spoke with the Magistrate he told the
19 Magistrate that he had received information that the
20 individual had seen a meth lab at the house. He didn't
21 say that the individual was working undercover and bought
22 meth at the house for them to go and then bust the
23 individual. He told the Magistrate exactly the
24 information he received.

25 MR. MAYER: Once again, and we wouldn't be here if he

1 had put it in the affidavit for the record.

2 THE COURT: Here is what I think I can do. We can
3 accept the search warrant as it is based upon the
4 inference that the informant was nothing more than a
5 tipster. But allow the issue to be revisited if the
6 testimony starts unfolding that he was perhaps a
7 participant of the crime or a material witness. I don't
8 know why you don't have him here. Either he doesn't exist
9 or you can't find him.

10 MR. MAYER: We just want to know who he is.

11 THE COURT: I know that. So I am going to deny your
12 motion but I am listening attentively.

13 MR. MAYER: How will we know.

14 THE COURT: Well, that is your job. With the
15 disclosure of the CI to enable this case to be resolved
16 without the benefit of a trial?

17 MS. AGNEW: I highly doubt it, Your Honor.

18 MR. MAYER: I have no basis for an opinion.

19 THE COURT: That is what concerns me on the record,
20 is how can he make, provide disinterested advice to his
21 clients that perhaps that information would change his
22 advice. I mean he is hand-strung greatly by this
23 invisible person over here, the knowledge of that, do you
24 see how beneficial that would be to him, if everything in
25 here is true, the CI is true, the CI is known and the CI

1 is ready to testify. Their decision making process
2 changes dramatically. And I am praying upon your
3 inexperience of only a few years, how much different it
4 would be from his perspective saying, client look, now we
5 know, the information becomes much more in focus rather
6 than through a clap, for his clients benefit.

7 MS. AGNEW: Yes, Your Honor. And we are not accusing
8 his clients or trying his clients based on the
9 methamphetamine lab testified to three days earlier. We
10 are trying his clients for having the items that were
11 found at the house.

12 THE COURT: And I do know with great interest that
13 the list of things sought to be found are inconsistent
14 with the items that were actually found. There is no
15 ephedrine based medications. There are no batteries or
16 lithium batteries or partial batteries. There is no
17 Coleman fuel listed. So there is several inconsistencies
18 there too.

19 MS. AGNEW: Well, Your Honor, they have listed all of
20 the possible items that could possibly be used to make
21 methamphetamine.

22 THE COURT: Is Coleman fuel toluene. I might be
23 wrong.

24 MS. AGNEW: It can be used in the place of toluene.

25 THE COURT: Why not Coleman fuel, why is that not

1 looked for.

2 MS. AGNEW: Your Honor, I think they listed,
3 everything that they could think of at the time. Toluene
4 is consistent with Coleman fuel as far as using it to make
5 methamphetamine. The fact that they didn't find every
6 single item that they hoped to find.

7 THE COURT: They found two. They found two of the
8 fifteen which are listed.

9 MS. AGNEW: And they also found a HCL generator that
10 is only produced when they make methamphetamine.

11 THE COURT: Playing devils advocate, why wasn't that
12 looked for if an active lab is going on and that is the,
13 we are looking for an HCL generator. That is a pretty
14 good name to look for. Pretty distinct thing to look for.
15 It is not listed but yet it is found. I am just, I am
16 trying to help you understand where the confusion is going
17 to be coming.

18 MS. AGNEW: Yes, sir.

19 THE COURT: When you get in front of a jury.

20 MS. AGNEW: It looks like the officer listed one,
21 two, three, four, five, six, seven, eight, nine, ten,
22 eleven specific items and then says and any and all other
23 items that could be used in the manufacturing of
24 methamphetamine.

25 THE COURT: I am not going to use a genetic, could be

1 used. That gets me in trouble in the Judge's chambers. I
2 am not going to fall for that one, that is a general, that
3 doesn't work. I have coffee filters, matches in my
4 office. I am pretty sure you can find salt in the court
5 house somewhere. I want specifics, I will stick with
6 specifics. But anything that could be used could be found
7 in every house. There is not a house in Laurens County
8 that doesn't have one of the ingredients. I don't know a
9 house in Laurens County that has the absence of salt.

10 MS. AGNEW: You are right, Your Honor, but I think in
11 this case the officer tried to elicit as many items.

12 THE COURT: He has worked methamphetamine.

13 MS. AGNEW: If he elicited every single possible item
14 used to make methamphetamine he would have to put two
15 pages.

16 THE COURT: But he had a guy in there that is
17 reliable standing in front of them telling them what all
18 he saw. What did you see. Well I saw these three things.
19 Why aren't those three things on here. Just saying and I
20 am done with that. Do you have another motion.

21 MR. MAYER: No, we just did both of them. The first
22 one was for them to tell us who the CI is. They are
23 apparently not going to. The second one was to argue
24 about the search warrant. But since we couldn't get the
25 CI.

1 THE COURT: Okay. Y'all come back in-chambers real
2 quick. We will start the case tomorrow morning at 9:30.

3 (Whereupon, the trial will resume the next morning at
4 9:30 a.m.)

5 April 11, 2014.

6 THE COURT: Anything before we bring the jury in.

7 MR. MAYER: Your Honor, first I would renew my motion
8 of yesterday to provide us some information concerning the
9 confidential informant and also to suppress the search
10 warrant as having insufficient information.

11 THE COURT: You want to renew that motion when the
12 jury is sworn? I will rule on it now but likewise again.

13 MR. MAYER: Certainly.

14 THE COURT: Respectfully I am going to deny your
15 motion on the grounds as presented yesterday.

16 MR. MAYER: Also, Your Honor, I was a little better
17 in my head last night. I was reviewing this search
18 warrant again last night in detail. And I am under the
19 impression having talked with the Solicitor that some of
20 the things on the return on this warrant will not be
21 admitted in this trial. There was a search of this house,
22 there was actually some methamphetamine and a little baggy
23 found that was on the person of Ms. Earle and it is not
24 directly connected to my clients. The State says they are
25 not going to bring that in. The container of caustic

1 liquid, I would only request that there be nothing of this
2 list of inventory being presented to the court which does
3 not fit the description of the property sought in the
4 warrant which specifically list anything illegal,
5 manufacturing, distribution, cultivation of narcotics.

6 THE COURT: So you want the return redacted to that
7 extent?

8 MR. MAYER: Well, Your Honor, I don't if the return
9 is going to be submitted to the trial anyway. It would
10 require redactions. I think we can certainly read in
11 anything which the State is going to put in. What I don't
12 want to do is I don't want to run into a problem where, I
13 am not fast enough on my feet to object and if we get in
14 things that are presented to the jury which were retrieved
15 from the house are not either listed on this warrant or
16 involved in the manufacturing.

17 MS. AGNEW: Your Honor, I believe that anything that
18 is not involved in the manufacturing of methamphetamine
19 would likely be irrelevant.

20 THE COURT: That is us in here talking and your
21 witnesses aren't all in here. And sometime witnesses will
22 perhaps volunteer things that he is not anticipating.
23 That is what he is trying to prevent I think.

24 MR. MAYER: And because I am not going to sandbag in
25 the middle of trial. I don't do that. The reason that I

1 show about layers you get to watch. What y'all have got
2 to do is be good, interested citizens for Laurens County
3 and act as a group for Laurens County and the State of
4 South Carolina. Now, with that instruction I will ask
5 y'all to stand and take the oath as Ms. Lancaster gives it
6 to you.

7 (WHEREUPON, the jury was sworn at 9:55 a.m.)

8 THE COURT: All right. Ms. Crawford, here is some
9 candy, pass that around. Enjoy it and with that, Ms.
10 Agnew.

11 MS. AGNEW: Your Honor, Madam Clerk, members of the
12 jury. As the Judge told you my name is Ashley Agnew and I
13 am here on behalf of the State of South Carolina. On this
14 case the main fact is methamphetamine. As the Judge told
15 you, those two over there, the defendants are both charged
16 with manufacturing methamphetamine. And it is my job to
17 prove beyond a reasonable doubt that they are guilty of
18 what they are charged with. Now, as the Judge told you,
19 this isn't going to be like TV, we are not going to have
20 fancy expensive machines in the courtroom, we are not
21 going to have commercial breaks and it is not going to be
22 over in an hour. Sorry. But what we are going to have is
23 basically a story of what happened on February 15th of
24 2011. I am going to call witnesses before you, they are
25 going to sit right here, they are going to tell you their

1 side, what happened, what they saw that day, what they
2 heard. They are going to have evidence to show you. Now,
3 as I said it is my job to prove beyond a reasonable doubt
4 what happened that day. Now, we hear reasonable doubt all
5 of the time but the question is, what is it. And the
6 Judge will explain that to you after the trial but I want
7 you to go into this realizing, it is not doubt, or it is
8 not a doubt beyond all doubt. It is not proof beyond any
9 unreasonable doubt. It is not one-hundred percent being
10 convinced. It is proof beyond a reasonable doubt. So
11 what I am going to ask y'all as you hear the witnesses and
12 you see the evidence, just be reasonable, use your common
13 sense, listen to what is being said, look at the evidence
14 you get and decide what is reasonable for each of you.
15 Now, as the Judge also told you, he gets to decide the law
16 but you guys decide the facts and that is your job.
17 Because at the end of this y'all have to decide what
18 happened on February 15th of 2011 at [REDACTED] Happy Valley Road
19 up near Fountain Inn where the defendants live. And so at
20 the end of this trial, after you have heard the evidence
21 or the testimony I am going to come back before you, I am
22 going to summarize everything that you have heard and then
23 I am going to ask you to return a reasonable and a true
24 verdict. And that is finding both of the defendants
25 guilty of manufacturing methamphetamine. Thank you.

1 THE COURT: Mr. Mayer.

2 MR. MAYER: If it please the Court. Thank you for
3 bearing with me while I have been ill this week. My name
4 is Bill Mayer and I am an attorney in town and I have been
5 a defense attorney. I am currently representing the two
6 folks over there, Jamie and Lynn. Nobody understands how
7 this process works. But I am going to disagree with some
8 of the things that Ms. Agnew said. Your role here today
9 is misunderstood a lot of times. They think somebody is
10 arrested because they have done something and they get
11 brought to court and then it is the prosecutor's job to
12 prove they didn't. Law enforcement is trained to find out
13 what is going on in this particular case, had a search
14 warrant that a different deputy had gotten and then went
15 with it to this address because, according to the search
16 warrant, somebody and we still don't know, had said that
17 there was a methamphetamine lab at his house. So with
18 that search warrant they went to his house and they saw
19 there things which lead them to believe there is a problem
20 here. That is when they make an arrest. When an officer
21 arrests somebody for a DUI doesn't mean they said the
22 person is drunk. The policeman's job is not to decide who
23 is guilty and who isn't. The policeman's job is to say, I
24 have got a situation here that looks bad so what we are
25 going to do is we are going to convene some neutral

1 members of the community to review it and make a decision
2 on whether there is a problem or not. The idea that the
3 problem exists and that is why people are arrested, I
4 don't think that is true. The decision as to whether
5 there is a problem is yours, not theirs. The police
6 arrest when they have probable cause to believe that there
7 is a problem. Now, these folks over here are charged with
8 manufacturing methamphetamine, that is a nasty crime, that
9 is a nasty thing and we have a nasty drug problem in South
10 Carolina and in this County. One of the problems we have
11 with it and it is what I want you to keep in mind as this
12 trial goes on. My Grandfather when I was very young told
13 me that if the only tool you have is a hammer you tend to
14 look at every problem like it is a nail. That was many
15 years after I heard that before I finally realized what
16 that meant. It meant you deal with problems the way you
17 always have. Our legislature makes laws because they can
18 make laws and solve problems. Was there a methamphetamine
19 lab on Happy Valley Road that night. Did they get drugs
20 out of these two. I don't see any evidence that there was
21 drugs on these two. What they were in possession was,
22 meaning it was in the house where they were and where
23 other people were as well at their house, was stuff that
24 potentially could be used to make methamphetamine if that
25 is what you wanted to do. Such horrible things as a

1 bottle of hydrogen peroxide, Coleman fuel, salt. But you
2 can be charged with manufacturing in South Carolina for
3 having the stuff that you could make methamphetamine if
4 you wanted and knew how. The big thing is ephedrine and I
5 don't think you are going to see any testimony or evidence
6 that any of that stuff was found. This is a situation
7 where police came upon something and they said, well, we
8 have got something here so let's impanel a jury and have
9 them look at it and see if there is anything there or not.
10 I am going to ask you to do something that is unnatural.
11 People smile when I say that. There are laws that we
12 can't break, laws of physics, laws of science. There is a
13 law in the field of psychiatry and psychology. What it
14 means is you tend to believe what you hear first. You
15 tend to start forming decisions based upon what you have
16 heard first. Because a trial is a lineal progression
17 somebody has to go first and the law says the State goes
18 first and that makes sense because the State is the one
19 bringing the charge. So you are going to hear what the
20 State has to say before anything else happens. What I am
21 going to ask you to do which is unnatural to the human
22 character is do your best not to start forming decisions.
23 The Judge mentioned earlier that when the trial is over
24 you have heard everything is when you deliberate with each
25 other. All we ask as the defense in the interest of my

1 clients having a fair trial is not to grab onto the first
2 you hear which is the State's presentation. Keep an open
3 mind as much as you can. Now, the State will put up their
4 witnesses and the State will ask questions and I will have
5 all the opportunity to cross-examine and ask questions
6 about their testimony. When the State is done and they
7 rest it is the defenses term to put up witnesses. And
8 there will be arguments after all the testimony. When the
9 lawyers get to come up and get to tell you why it is that
10 they think you should focus on a certain point or not or
11 call attention to things. And when that is done and the
12 Judge tells you the law that he needs to tell you is when
13 you start putting this together and forming your opinions.
14 I ask that you not try to form your opinions early on in
15 the trial. With that said I will have an opportunity to
16 speak with you when this is over. Thank you.

17 THE COURT: Ms. Agnew, call your first witness.

18 MS. AGNEW: The State calls Lieutenant Ben Blackmon.

19 BEN BLACKMON, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Agnew:

23 Q Lieutenant, if you could would you introduce yourself
24 to the jury.

25 A Yes, ma'am. I am Ben Blackmon, Lieutenant with the

1 Laurens County Sheriffs Office in criminal investigations.

2 Q And Lieutenant Blackmon, how long have you been
3 working for the sheriffs office?

4 A Since October of 1999.

5 Q What do you do at the sheriffs office?

6 A I am a criminal investigator.

7 Q What does that mean?

8 A Assigned to cases of death, robbery, homicide, work
9 the district of the area and assigned to crimes of
10 whatever nature comes along.

11 Q Were you working on February 15th of 2011?

12 A Yes, ma'am.

13 Q On that day did you get involved with an
14 investigation at [REDACTED] Happy Valley Road?

15 A Yes, ma'am. We were asked to assist in the service
16 of the search warrant.

17 Q Lieutenant, did you go to the house?

18 A Yes, ma'am.

19 Q Can you tell the jury where Happy Valley Road is?

20 A It is in the Fountain Inn area of Laurens County,
21 just off of, I believe, Durbin Road. Where it cuts around
22 to another street, a small sized road.

23 Q And, Lieutenant, did you assist in serving that
24 search warrant at the house?

25 A Yes, ma'am.

1 Q What did you do while you were at the house?

2 A During that time I was there basically, you know, as
3 extra manpower in the service of the actual warrant and
4 also to assist Lieutenant Sharpton taking photographs and
5 taking notes or whatever they needed as well as there were
6 items could have solved other crimes as well.

7 Q And did you take any pictures at the house?

8 A Yes, ma'am.

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

10 THE COURT: You may.

11 Q Lieutenant Blackmon, I am showing you what has been
12 premarked for identification as State's exhibits 1 through
13 4. Do you recognize those?

14 A Yes, ma'am.

15 Q What are they?

16 A These are photographs taken at the residence on Happy
17 Valley Road. I took those photographs with the assistance
18 of Lieutenant Sharpton under his instruction of what to
19 document for.

20 Q Okay. Thank you, Lieutenant. And Lieutenant
21 Blackmon, those pictures I just showed you, do they truly
22 and accurately reflect what you saw that day, what you
23 took a picture of?

24 A Yes, ma'am.

25 Q Answer any questions that Mr. Mayer may have for you.

1 CROSS-EXAMINATION

2 By Mr. Mayer:

3 Q Good morning, Ben.

4 A Good morning.

5 Q Are those picture, you said what you truly and
6 accurately saw?

7 A Yes.

8 Q Did you move anything or reposition anything to take
9 those pictures?

10 A Not that I am aware of.

11 Q You were just told to take a picture of things?

12 A Yes, sir. Lieutenant Sharpton had on protective gear
13 for handling items and wasn't able to necessarily point
14 the camera as well with gloves.

15 Q You pointed the camera at what he told you to point,
16 told you to point it at and you took the pictures. But
17 you don't know if that is the way things were found or the
18 way things were arranged for photography?

19 A As far as I know, my best recollection, I don't think
20 anything was moved or otherwise repositioned unless it was
21 for safety purposes. The bucket photos, I think the
22 Lieutenant had put those in the five gallon bucket for
23 protective reasons. Due to the training that he has had
24 that I have not, cleanup and such as that.

25 Q Thank you.

1 MS. AGNEW: Nothing further.

2 THE COURT: All right, you may step down. Ms. Agnew,
3 call your next witness.

4 MS. AGNEW: The State calls Jimmy Sharpton to the
5 stand.

6 JIMMY SHARPTON, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Ms. Agnew:

10 Q Lieutenant, if you don't mind, would you introduce
11 yourself to the jury?

12 A I am Lieutenant Jimmy Sharpton.

13 Q And Lieutenant Sharpton, where do you work?

14 A Laurens County Sheriffs Office.

15 Q How long have you been working there?

16 A I have finished up my 15th year.

17 Q What do you do at the sheriffs office?

18 A Presently I am the administrative Lieutenant, the
19 training coordinator, the TACT officer.

20 Q And if you don't mind, what is a TACT officer.

21 A TACT is a Terminal Access Control Officer. That is
22 basically the agencies responsible party for NCIC which is
23 a criminal computer that pretty much tracks information.

24 Q Are you involved in drug investigations at all?

25 A Yes. I have been a, what our office calls a meth

1 tech for a couple of years.

2 Q And what is a meth tech?

3 A Basically we go in on calls that there is a meth lab
4 present or one that is suspected, we go in, identify what
5 there is there, we go through the whole process including
6 the disassembly and then bring the lab out for it to be
7 disposed of.

8 Q And how long have you been doing that?

9 A Well, I was first certified in 2010, so almost two
10 years.

11 Q Now, in order to be a meth tech did you have to go
12 through any kind of specialized training?

13 A Yes.

14 Q What kind of training did you have to go through?

15 A You go through an initial class that is a week long
16 that is a lab investigations class. And then there is a
17 second--

18 Q Let me stop you there. What do you do during that
19 week long class?

20 A At the investigations class basically they go through
21 all of the processes and the different ways of making
22 meth. A lot of the process is you actually are hands on.
23 You actually do and then you go out and do surveillance.
24 They set up mock exercises where you are looking for
25 activity that is going on. So basically they just train

1 you to, how to investigate meth labs and the processes
2 involved.

3 Q You said that some of that is hands on. Have you
4 actually made methamphetamine?

5 A Yes, I have. I have. We actually go through a
6 couple of processes, they divide you up into teams and you
7 do different stages of the process in a group. But, yes,
8 you actually, I would make a pretty good cook if I wasn't
9 a cop, I guess.

10 Q So do you know how to make methamphetamine?

11 A Oh, absolutely, yes.

12 Q Now, that was the first training you went through?

13 A No, the, I had had a couple of other occasions that I
14 had had training. My first experience with meth was way
15 back in 2002. After 911 the State put on a symposium in
16 Columbia that they invited a bunch of people down. Meth
17 was one of the things that some of the gangs were using to
18 fund their money and that was something that was coming to
19 this area and it was already out West and moving this way.
20 And they wanted people to have an idea. Then the next
21 occasion SLED came to our agency after it became a problem
22 in South Carolina and basically it was an awareness type
23 class where they put up different things. And this is a
24 meth lab, this is what it looks like. And, you know, went
25 from there.

1 Q Have you had any other trainings or classroom
2 activities involved with methamphetamine?

3 A Yes. After the investigations class I went back to
4 the same facility and the second class was actually even
5 longer, it was a 52-hour course. It is called CLAW. That
6 is clandestine labs and weapons of mass construction.
7 That is a little more intensive class than the first one.

8 Q And when you say intensive, what all did you have to
9 do in that class?

10 A Well, that class goes pretty deep into the, the
11 chemicals, the combinations of chemicals, how hazardous
12 they are. It goes in, it brings in the hazardous material
13 aspect. They certify you from, you can start with level
14 C, B and all the way to level A. HAZMAT suits, you
15 actually go through and break labs down in each level. It
16 is a lot more hands on with the labs, what they are. And,
17 again, it is a lot more intensive into the HAZMAT. You
18 are, you are trained in how to use all the HAZMAT
19 materials and equipment.

20 Q And what is that class, classroom and hands on?

21 A Yes.

22 Q Now, with all of this training that you have had, did
23 you get any certifications involving meth and meth labs?

24 A Yes.

25 Q What kind of certifications did you get?

1 A Well, the first class, that is a certification CLAW.
2 Also it is a certification that you have to do, those are
3 National Certifications, you recert every year.

4 Q What do you mean by recert?

5 A It is a recertification process to keep your
6 certification going you have to go back to a class and
7 attend to keep your certification going. It is a thing
8 you have to pass every year to keep you abreast of what is
9 current, anything new, that is where they update you on,
10 you know, it gives people that are certified around the
11 State, area wise, I think there are three groups on the
12 State that do this in the upstate. It gives you a chance
13 to get together and tell each other what you are finding
14 out there and what is new, something somebody has come up
15 with to what to look out for.

16 Q And are you currently certified under this CLAW?

17 A Yes.

18 Q With all of these certifications and training things,
19 what do they train you and what do these certifications
20 certify you to actually do, like out in the real world?

21 A Well, you perform a lot of tasks. It basically
22 teaches you how to investigate different labs. It teaches
23 you how to recognize one, it teaches you on how to deal
24 with what you find and also teaches you how to dispose of
25 what you find.

1 Q Have you ever had a chance to testify in court
2 before?

3 A No. First case.

4 Q Well, speaking of cases, about how many
5 methamphetamine labs have you worked in your career?

6 A Way over one-hundred.

7 Q How many have you worked in the last year?

8 A Well, I did 86 in 2011 for our department. We are
9 farmed out, I guess you would say, to different agencies.
10 Sometimes when they need help also their agencies around
11 us that don't have certified people. And during the
12 disposal process, mostly through 2011 the DEA was paying
13 for the cleanup. So they required somebody who was
14 certified, and that certification is certified through the
15 DEA. So, you know, they would call us to assist another
16 agency when they didn't have anybody certified. We have
17 done several this year. So I mean to give you an exact
18 number I, we have done way too many to track them like
19 that. I don't keep up with it, I am not keeping score.

20 Q Have you ever taught any classes about
21 methamphetamine or methamphetamine labs.

22 A Yes, on several levels. We try to keep our street
23 officers aware of, you know, we have new people coming in
24 and during their training that's part of it. There is a
25 big training process that they go through before we put

1 them on the street.

2 Q Do you actually do that with the new officers?

3 A Yes. I have been asked to do, not really classes,
4 little talks on different agencies. I recently did one
5 for a nursing home, you know, to their employees. I will
6 do a little talk at a church. Sunday I am lined up. So
7 there are a lot of, not necessarily classes you do, but
8 just trying to make people aware of what dangers are out
9 there and what they need to be on the lookout for.

10 MS. AGNEW: Your Honor, at this time we would tender
11 Lieutenant Sharpton as an expert in the field of
12 methamphetamine lab identification and cleanup.

13 THE COURT: Any voir dire?

14 MR. MAYER: Without objection, Your Honor.

15 THE COURT: All right, ladies and gentlemen, the law
16 allows certain witnesses, because of their training and
17 expertise, experience to be qualified as experts. And so
18 if they are so qualified as experts and they are allowed
19 to provide additional testimony as to their opinions in
20 that particular field. For instance a doctor who
21 testifies to what he thinks about a broken arm, disease
22 and that kind of thing. They have expertise in the field
23 of medicine. The State has offered Lieutenant Sharpton as
24 an expert in the field of methamphetamine laboratory
25 identification and disposal, is that correct?

1 MS. AGNEW: Cleanup.

2 THE COURT: Cleanup. And with his experience and
3 training qualification Mr. Mayer has agreed that he is so
4 qualified. So he may offer his opinions in that field for
5 your consideration.

6 Q Now, Lieutenant, let's talk specifically. Were you
7 working on February 15th of 2011?

8 A Yes, I was.

9 Q On that day did you have a chance to get involved
10 with an investigation at [REDACTED] Happy Valley Road?

11 A I did.

12 Q And where is Happy Valley Road?

13 A Up in Fountain Inn. It is just a little, really not
14 even a two-lane road. It is a little blacktop road off of
15 Durbin Road. Well, going into Fountain Inn, if you go by
16 the bakery, everybody knows where that is. It is way off
17 in here.

18 Q Is it in the Laurens County section of Fountain Inn?

19 A Yes, it is in Laurens County, yes.

20 Q Now, what were you at [REDACTED] Happy Valley Road to do?

21 A I was asked if I would go help serve a search warrant
22 on that location.

23 Q So what did you do when you got there?

24 A Well, as in most search warrants you hit the location
25 pretty quick. There was some officers that went around to

1 the back of the location. I went with one of the
2 narcotics officers to the front door, we went through the
3 front door and made entry and then went from there.

4 Q And why do you do that? Why do you go into the
5 location first?

6 A To secure the people and the location itself.

7 Q So is it a safety reason?

8 A Absolutely.

9 Q Now, once you did that what did you do next?

10 A Well, when we went through the front door we put,
11 pretty much secured everyone. And after that was
12 established, that the location was secure I turned my
13 focus to whether or not there was a methamphetamine lab
14 there and to deal with it. I went into meth mode as you
15 could say.

16 Q What were you looking for?

17 A Any indication that there was a meth lab there.

18 Q Did you see anything that indicated a meth lab to
19 you?

20 A Yes, I did.

21 Q What all did you see?

22 A There were different items. There was Coleman fuel
23 present, there was a fairly large amount of salt. There
24 was hydrogen peroxide. One of the things that caught my
25 attention that sort of sends my antennas up. There was

1 hypodermic needles everywhere which is a big safety thing.
2 And then eventually we found an HCL generator at the
3 location.

4 Q Now, Lieutenant Sharpton, a lot of the things that
5 you just mentioned. Let's go through them one by one.
6 Coleman fuel, is it illegal to have Coleman fuel at your
7 house?

8 A Absolutely not.

9 Q Is it illegal to have salt at your house?

10 A No, it is not.

11 Q How about hydrogen peroxide?

12 A No, it is not.

13 Q Why was it important to you that you found Coleman
14 fuel at the house?

15 A Well, what I am looking for is I am looking for
16 certain things that are grouped together. And do you want
17 to go through each one and why.

18 Q Well, let's start with Coleman fuel, why did that
19 matter.

20 A Coleman fuel is used as a cheap substance. It is
21 used in the precursor state which is--

22 Q What does that mean?

23 A I will explain. A precursor is the beginning
24 elements that you would use in this case to make meth.
25 And it is used as a solvent. What happens with the

1 Coleman fuel is you would take whatever your base is,
2 whatever your cold medicine is and you put it in with that
3 solvent. Okay. The ephedrine or pseudoephedrine migrates
4 into that solvent. Okay. If you are using Sudafed or you
5 are using a pill that is ground up and mixed in it, if
6 issued to get the goody, if you will, the medicine into
7 your body. It has no other value than that. So that
8 Coleman fuel is used as an agent that gets the medicine
9 out of that binder into that liquid.

10 Q What about salt. Well, first of all, how much salt
11 did you find in the house?

12 A There was five one pound containers, I think two of
13 them actually had salt in it, three of them were either
14 partial or complete.

15 Q And what does salt have to do with making meth?

16 A Salt is used to make a shell generator, it is
17 combined with sulfuric acid, drain cleaner, liquid fire.
18 There is a lot of different types of sulphuric acid you
19 can just buy on the shelf. Once you mix those two
20 together it produces hydrogen chloride. It is a gas that
21 converts meth from a liquid state to a crystalline state.
22 So it is the last step in the process of manufacturing
23 meth. No matter what method you use before that you are
24 going to gas it off.

25 Q So, you said, is Coleman fuel part of the first step

1 of making methamphetamine?

2 A Yes.

3 Q And is salt one of the last steps of making of
4 methamphetamine?

5 A It is the last step, yes.

6 Q What about hydrogen peroxide?

7 A It is used in the process to make, it is also pretty
8 heavily used, most meth that is made, especially like in a
9 shake and bake type. That is what we all hear about and
10 that is mostly what we see these days. Yes, it is a
11 pretty dirty dope. You can use peroxide to wash your
12 dope, it cleans it up and makes it look pretty.

13 Q What about hypodermic needles. Why were those
14 important?

15 A Generally I see a progression of methamphetamine
16 users, they may start ingesting it by snorting it. The
17 progression goes through smoke in it. But usually if they
18 are on it long enough they end up injecting
19 methamphetamine.

20 Q Now, with all the things we have talked about, as you
21 said none of these are illegal to own by themselves,
22 right?

23 A That's correct.

24 Q Now, is Coleman fuel an ingredient to make the
25 methamphetamine?

1 A It is used in the process to make it.

2 Q And hydrogen peroxide?

3 A Yes.

4 Q And salt.

5 A Yes.

6 Q And you also mentioned that you found an HCL
7 generator?

8 A Yes.

9 Q Is that something that you can buy at the store?

10 A No.

11 Q What is an HCL generator?

12 A It is a hydrogen chloride, as I said it is a tool
13 that is made to gas off the meth, to convert it from a
14 liquid to a crystalline state.

15 Q How do you make an HCL generator?

16 A You will take a plastic bottle that can be anywhere
17 from, I see a lot of 16.9 ounce just water bottles, drink
18 bottles, the biggest one I have seen was a five gallon
19 garden sprayer that had a lot that was in a big lab that
20 they were, they needed it to last a long time. You start
21 by pouring an amount of salt and then you pour the
22 sulfuric acid over the top of it. There is another method
23 to make an HCL generator but we rarely see it.

24 Q And once you combine the salt and the sulfuric acid
25 in this HCL generator, what does that do?

1 A It immediately starts to react. The HCL gas is
2 formed immediately. It starts to smoke and then it
3 continues, it gets worse and worse. The generators
4 generally have a tube, they will cut a hole in the plastic
5 top and they have a tube that comes out. That tube is put
6 down in the liquid that has the liquid methamphetamine and
7 it bubbles like a fish tank and that gas and that liquid,
8 it will start to snow, it looks like it is snowing in the
9 liquid and the meth is turning into a crystal and collects
10 in the bottom of the container.

11 Q Now, is that crystal, the finished product or the
12 finished meth?

13 A Yes, it is generally, they will take and pour it over
14 into a coffee filter that is sitting in a funnel. And
15 they will dry it and what is left is the crystal meth.

16 Q So is the HCL generator the last step in making meth?

17 A Yes.

18 Q So if you have an HCL generator what does that mean?

19 A To me it means that somebody has been making meth at
20 that location.

21 Q In your training and experience would there be any
22 other reason to have an HCL generator?

23 A No.

24 Q Now, Lieutenant Sharpton, can you tell me where you
25 found those items you listed?

1 A The generator was outside the back door, if memory
2 serves me right, I am not sure whether there was a little
3 stoop that was on the ground outside. I feel better it
4 was out in the air. Everything else was inside the
5 residence.

6 Q Lieutenant Sharpton, I am handing you what has been
7 marked for identification as State's exhibits 1 through 4.
8 Do you recognize those?

9 A I do.

10 Q What are they?

11 A These are pictures that were taken at the location.

12 Q Do you recognize what is in those pictures?

13 A Yes, I do.

14 Q How do you recognize them?

15 A Well, they are easily identified and I was there when
16 they were taken.

17 Q So did you see that in those pictures that day at
18 Happy Valley Road?

19 A Yes.

20 Q And do those pictures accurately reflect what you saw
21 that day?

22 A Yes, they do.

23 Q If you don't mind going one by one through the
24 pictures and the numbers are on the back, can you tell us
25 what are in those pictures?

1 A Okay. Number 1, you have a fairly large number of
2 hypodermic needles. And you have a roll of, you have got
3 two different kinds of a bottle of medication.

4 Q Just tell us what is in the pictures that are
5 important?

6 A You have got hypodermic needles, the hydrogen
7 peroxide and the one that we talked about. And in 2, this
8 was inside. You have got three of the five containers of
9 salt. In the third one you have what is left of the
10 generator, this is the roll of aluminum foil that was
11 packed up out of there. One of the containers of salt and
12 I can't tell whether there is, the rest of them are there
13 but I can't see. There was a bottle of unknown fluid that
14 was in that one. And in the last one there is two butane
15 cylinders and two containers of Coleman fuel. These two
16 pictures, the stuff has already been collected and I had
17 put them in five gallon buckets. They were sealed up and
18 transported out of there.

19 MS. AGNEW: Your Honor, at this time we would offer
20 State's exhibits 1 through 4 into evidence.

21 MR. MAYER: Without objection.

22 THE COURT: State's 1 through 4 admitted into
23 evidence.

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

1 Q Now, Lieutenant Sharpton, you mentioned that you were
2 glad that that HCL generator was outside. And you talked
3 about putting these things in five gallon buckets. What
4 does it take to clean up a meth lab?

5 A Well, of course, it depends on what you have. You
6 have got to isolate the different chemicals. Of course,
7 you don't want to throw things together that don't need to
8 be together. They have got to be packaged up. They have
9 got to be rendered safe to transport to get out of there,
10 to expose of it.

11 Q Why do you have to do that?

12 A Well, you are dealing with hazardous materials they
13 are by nature dangerous to public health. They are
14 dangerous to your health, to officers that are on the
15 scene and if you are going to move them you need to make
16 sure that you don't cause a problem.

17 Q We are talking about things you can buy at Walmart,
18 you are talking about salt, peroxide and fuel. What makes
19 these dangerous to everybody?

20 A Some of the chemicals are dangerous just on their
21 own. They are hazardous materials, the containers are
22 labeled that way. What particularly makes things
23 dangerous in a methamphetamine lab is when you start
24 combining chemicals and they start reacting. That is when
25 they need to be dealt with.

1 Q What could happen if chemicals got combined or if
2 they were combined the wrong way?

3 A Well, of course depending on what chemicals you could
4 have fire, explosion, you know, there are vapors that
5 could come off that could be harmful to inhale. The HCL
6 generator, that gas can actually kill you if you inhale
7 enough of it.

8 Q So what do you do in order to clean these up safely?

9 A There is a procedure you go through and you have
10 protective equipment that you wear, depending on what you
11 are dealing with determines what level of equipment that
12 you need to put on. Generally when I go in to do an
13 investigation to go into a house and I have got unknowns,
14 before I start digging around I am going to put a chem
15 suit on, I am going to glove up.

16 Q Sorry, just for the jury, can you explain what a chem
17 suit is and what it means to glove up?

18 A We have a suit that will protect you from, that will
19 protect you from chemical exposure. We go through a
20 process, we will put on the latex gloves you can even use
21 to stain furniture. Then there is a heavier glove that
22 goes over there, the chem suit covers it. There is the
23 same thing for the boots. A thing you put over your shoes
24 and then there is a rubber boot that goes over that that
25 has got tread on the bottom. Then the suit covers it,

1 your gloves and boots go on first. You may put an APR,
2 which is just a respirator, it is a full mask, it covers
3 your eyes and provides filters that you breath through and
4 then there is a hood that covers it that pulls down tight.
5 So you are pretty much covered. The next level up would
6 be basically the same suit except you would be in a SCBA
7 which is a tank with air. But you rarely get into that
8 too much. That is when the oxygen content in the room is
9 down so much is you need to take your own air with you.

10 Q Did you have to put on a protective suit to clean up
11 at Happy Valley Road?

12 A I did, yes.

13 Q Once you put on the protective suit what do you do
14 after that to clean up these items that you find?

15 A That is mostly to handle the chemicals. As I said
16 you separate them out. Most of the chemicals are
17 characterized together, if the generator is active you are
18 going to, we have got, all you have to do to deactivate a
19 HCL generator is just every day water and baking soda
20 which neutralizes the acid in it and stops the reaction.
21 Sometimes you don't have to do that depending on how much
22 is in the container. A lot of times you can just knock it
23 out into the bucket and seal it up. If I can that is what
24 I like to do.

25 Q Now, based on what you found on February 15th did you

1 have to do a cleanup?

2 A Yes. Pretty much everything you saw is what we took.

3 Some of the things there, I didn't take all of the

4 hypodermic needles. Some were brand new. Some were

5 capped off and had been used. As I said, the used one,

6 when I find those I do take those, there is always a

7 thing, that chem suit is not going to protect you neither

8 those gloves from stuff in a needle. So we cap them off

9 when we can. We have sharp containers that you put them

10 in.

11 Q Now, you said you will take these items. Where do

12 you take them?

13 A Well, we have an area at the sheriffs office. If a

14 lab is big enough, if a lab has, for instance a shake and

15 bake lab and there is enough of it and it has got active

16 lithium we will call SLED, they pay for cleanup and they

17 will send a cleanup contractor. We are responsible for

18 bringing it outside to them and then they package it up

19 and haul it off. When I first begin this process DEA was

20 paying and you were an agent of DEA and you would call

21 them and they called the contractor and they came. DEA

22 ran out of money--

23 Q Let me stop you there. The question I was trying to

24 get to is what happens to this stuff that you find at a

25 meth lab?

1 A Eventually it is taken from that location, it is
2 packaged up. We have a safe location to hold it, it is
3 held in that until a cleanup crew comes and disposes of
4 it. It is eventually incinerated.

5 Q And what happened to the things you found at Happy
6 Valley Road?

7 A They were sent to a contractor and disposed of.

8 Q And why do you do that?

9 A They are hazardous materials, they are health
10 hazardous. You get rid of them.

11 Q So, Lieutenant Sharpton, all of that evidence that
12 you found at the scene that day, do you have any of it
13 with you here?

14 A No, you wouldn't want me to bring that stuff in this
15 courtroom.

16 Q When you found it did you fingerprint any of it?

17 A No.

18 Q Why not?

19 A Well, a lot of it doesn't tend to be fingerprinted
20 anyway. I don't need to know everybody that handled the
21 container. It would serve no purpose and again a lot of
22 those chemicals, I mean you are talking about putting a
23 fingerprint dust on a container that most of these places
24 aren't the cleanest in the world and would have stuff on
25 the outside. It would be difficult to do anyway. And to

1 me would serve no purpose.

2 Q Would it be safe to fingerprint these items?

3 A Well, if you did and the process where you spread
4 powder and then you are going to take and lift the
5 fingerprint off and then you are going to put it on a
6 card, whatever hazardous material and whatnot is also
7 going to come up with the tape. I am going to stick it to
8 a card and hand it to you and you are going to pass it
9 around in the courtroom and wouldn't be safe to do. I
10 would be handing you something that is hazardous material.

11 Q Now, the salt, the peroxide, the fuel, the needles,
12 the HCL generator, did you send any of that off to be
13 tested?

14 A No.

15 Q Why not?

16 A Well, first of all SLED does not take that kind of
17 liquids to start with. Their lab won't accept that.

18 Q Do you know why they won't accept that?

19 A Well, I think one of the biggest reasons is what we
20 have been saying, it is hazardous material and they don't
21 like doing that. The other thing is there is really no
22 need to send it off to be analyzed. It is what it is.
23 And, you know, we have been trying to look at this stuff,
24 table salt is table salt.

25 Q So, from your training and experience, when you saw

1 those items, when you saw that HCL generator what did that
2 mean to you?

3 A That someone had been manufacturing meth at that
4 location. A generator is not something that you would
5 transport, to go from one location to another. It is just
6 pieces of the puzzle.

7 Q And based on your training and experience was there
8 any other reason for those things that you found?

9 A Not that I know of.

10 Q Thank you. Answer any questions that Mr. Mayer may
11 have.

12 THE COURT: We will take a break. We will take 10
13 minutes. Step in the jury room and don't discuss the
14 case.

15 (Whereupon, the jury was excused from open court to
16 take a break.)

17 (Whereupon, a short break was taken.)

18 THE COURT: Let's get the jury in, please.

19 (Whereupon, the jury came into open court at
20 approximately 11:15 a.m.)

21 THE COURT: All right, Mr. Mayer.

22 CROSS-EXAMINATION

23 By Mr. Mayer:

24 Q Lieutenant Sharpton, your training, that training is
25 done by whom. Who puts on that training that you had in

1 those classes?

2 A That was at the Regional Counter Drug Training
3 Academy, it is put on by the DEA.

4 Q That is teaching you on how to deal with meth labs?

5 A Yes.

6 Q What is the weapon of mass destruction that they
7 touch this on?

8 A Level A, and I mentioned in the HAZMAT equipment is
9 that totally encapsulated suit, that would be the, if you
10 remember back with the ricin scare, white powder in the
11 post office and that kind of stuff.

12 Q They weren't talking about nuclear weapons, how to
13 respond to biochemical attacks and that sort of thing?

14 A Right, predominantly, yes.

15 Q It was a control lesson, how to control contaminants
16 and the potential problems about exposure to chemicals and
17 that sort of thing?

18 A That was part of it, yes.

19 Q Now, you were on this with Sergeant Moody and
20 McIntosh?

21 A And Lieutenant Blackmon.

22 Q And this was a result of a search warrant that was
23 issued?

24 A Yes.

25 Q And you don't know anything about the warrant or the

1 reason for it?

2 A No, I do not. I did not see it beforehand nor have I
3 seen it since.

4 Q You just were told, we have got to serve a search
5 warrant. Come with us because you are the lab guy?

6 A Come help us. The lab guy was kind of a benefit to
7 that.

8 Q And now you said you were the first one in because
9 you go and secure people in the location?

10 A No. I was the second through the door.

11 Q Who was first?

12 A Moody was the first, Sergeant Moody.

13 Q And how many people were there?

14 A There was three females and two or three males.
15 There were some in a bedroom, I believe a male and a
16 female in a bedroom that I didn't go in but they came out.

17 Q So there were five or six people?

18 A Yes.

19 Q You saw Coleman fuel in the house?

20 A Yes.

21 Q Did you see a Coleman stove in the house?

22 A No.

23 Q Did you look for one?

24 A No.

25 Q And you found salt in the house, empty containers?

- 1 A Some empty, some had salt in them all together.
2 There was five one pound containers sitting on the kitchen
3 counter.
- 4 Q How was the trash?
- 5 A Not near as bad as some I have seen and not as clean
6 as my wife would let me keep.
- 7 Q Was there trash in the house, I mean countertops,
8 tables, trashcans?
- 9 A Strewn all over the place. Not really. It wasn't
10 the best kept.
- 11 Q And you know from your training to look for certain
12 things and to seek certain things when you search a house
13 for a lab, correct?
- 14 A Yes.
- 15 Q You have been talking in your testimony about using
16 ephedrine and stuff to make meth, is that one of the
17 things you look for?
- 18 A Yes, it is.
- 19 Q And there wasn't any ephedrine in this house, was it?
- 20 A I did not find any.
- 21 Q No packages or wrappers or anything like that?
- 22 A No.
- 23 Q And lithium strips or parts of batteries or anything?
- 24 A I did not collect any, no.
- 25 Q Cold packs or anything like that?

1 A No, I don't remember seeing cold packs.

2 Q Liquid drain cleaner?

3 A I did not collect any drain cleaner, no.

4 Q Any sulfuric acid?

5 A No, I didn't collect any.

6 Q That is quite a bag of hypodermic needles. Do you

7 know how many were at the house?

8 A No, I don't. There is quite a bag there.

9 Q Now this HCL generator, did you take a picture of it?

10 A No, I didn't take any pictures.

11 Q Was there a picture taken?

12 A Not together, no.

13 Q So it is not in any of these pictures here?

14 A The remains of the bottom of the bottle is there.

15 The top of one of the containers.

16 Q I am looking at State's exhibit number 3. That is

17 with the yellow thing on the bottom?

18 A Yes.

19 Q Was that tested for anything?

20 A No.

21 Q Now, generator, this bottle, it was on the ground

22 outside the back door?

23 A Yes.

24 Q Those pictures are accurate but the pictures that

25 were taken were bottles and things that you moved, were

1 the pictures that were taken?

2 A That's correct. Things in the bucket, yes.

3 Q This is disposal to clean up the meth lab?

4 A Yes.

5 Q Is there any particular thing about salt or bottle or
6 peroxide or anything that requires you to go to this
7 extreme or is it just in an abundance of caution?

8 A I am not sure I understand what you are asking.

9 Q Well, if you came upon, you testified that you did
10 one of these cleanups, you were gloved down I think the
11 term that you used, glove up and had a suit on and stuff.
12 At what point do you decide you need to do that?

13 A Generally you do that initially after the location is
14 secure.

15 Q Do you do that every time you come in contact with
16 that situation?

17 A Most of the time, yes.

18 Q Whose call is it as to whether there is enough of a
19 meth situation to warrant you doing that?

20 A To warrant suiting up?

21 Q Yes.

22 A The individual doing, that is just a precaution.

23 Q Now, to the best of your knowledge, there were people
24 living in that residence, right?

25 A I have no idea.

1 Q But the HCL generator, basically you don't have any
2 physical evidence to bring to court today?

3 A That's correct.

4 Q And it was destroyed before any of it was tested?

5 A That's correct.

6 Q And it was destroyed before the defense had a chance
7 to even ask the court to test it?

8 A Yes.

9 Q You say SLED won't accept it because it is
10 inconvenient I think is the word you used?

11 A I don't know if I used that, they don't test liquids.

12 Q You said, you said in your explanation was it is what
13 it is. What is it?

14 A What is what it is.

15 Q That was your standard, why things shouldn't be
16 tested, why fingerprinting should be done to see if
17 anybody handled anything, why things shouldn't be kept in
18 the evidence log, why stuff that is being presented by you
19 as evidence of a crime is not available for anybody else
20 to see or even challenge. And your explanation was, it
21 doesn't need to be tested, it is what it is. What is it?

22 A What is it, what are you asking.

23 Q It is your word. Your statement and assessment as an
24 expert, those are your opinions, correct?

25 A Yes.

1 Q They are not fact, they are not supported by anything
2 else.

3 A In my training.

4 Q And your training has led you to your opinion?

5 A That's correct.

6 Q You didn't see any chemicals being mixed, did you?

7 A No.

8 Q You didn't see anything that looked like meth was
9 being produced? That is a present tense question,
10 specifically while you were there you saw nothing
11 indicating meth was being produced?

12 A At that time while I was there, correct.

13 Q Your testimony was that there was this generator and
14 your opinion was the only reason you would have one of
15 these, if that is what it was, was to make meth?

16 A It was to gas off meth, correct.

17 Q And you don't know of anything else of such a thing
18 could be used?

19 A That's correct. Let me take that back. I do know
20 that there are several uses for a combination of those two
21 chemicals. The only one I know would kill you in a gas
22 chamber.

23 Q Okay. Having brought that do you have any evidence
24 to show that these two chemicals were ever missed anywhere
25 in this process. You said there was a generator but I

1 thought your testimony was it had never been checked to
2 test it to see what was in it?

3 A That's true. It had not. But you would not mix salt
4 and any other thing in a bottle with a tube coming out of
5 it if you weren't doing that. If that was not an HCL
6 generator you wouldn't make it look like one.

7 Q That is your opinion based upon your training?

8 A That's true.

9 Q You don't know of any reason why such a machine would
10 exist other than what you have been trained?

11 A That's correct.

12 Q But you don't have a personal background in
13 chemistry?

14 A I do not, I am not a chemist.

15 Q Now, there was somebody at that house that day that
16 did have drugs on him, wasn't there?

17 A I did not see drugs, I don't know.

18 Q Nobody was arrested at that house with drugs on their
19 person?

20 A I am not sure. I wasn't involved in that.

21 Q Now, these materials in the house, were inside the
22 house?

23 A With the exception of the generator, yes.

24 Q That was outside?

25 A Yes.

1 Q I have nothing further.

2 REDIRECT EXAMINATION

3 By Ms. Agnew:

4 Q Lieutenant Sharpton, every time you clean up a meth
5 lab do you also find every ingredient used to make
6 methamphetamine?

7 A Absolutely not. People have learned, your more
8 experienced cooks know what we are looking for. One of
9 the biggest problems we have in the county now is they
10 will do a cook, they will bag it up and throw it out in a
11 ditch in front of your house. And then, of course, we
12 have unsuspected citizens locate these bags. That is
13 probably the biggest hazard to the public is finding these
14 smoking garbage bags that have been thrown out. They
15 dispose of it pretty quick.

16 Q If you don't find every single ingredient used to
17 make methamphetamine does that mean methamphetamine wasn't
18 being made?

19 A It does not.

20 Q Thank you.

21 RECROSS-EXAMINATION

22 By Mr. Mayer:

23 Q If you found everything necessary to make
24 methamphetamine, does that mean methamphetamine is being
25 made?

1 A If I find it assembled, in a way that would lead me
2 to believe that, yes.

3 Q So your answer is, if you find something that leads
4 you to believe that?

5 A Yes.

6 Q Nothing else.

7 THE COURT: You may step down.

8 MS. AGNEW: Your Honor, Permission to publish State's
9 1 through 4 to the jury.

10 MR. MAYER: Without objection.

11 THE COURT: You may.

12 MS. AGNEW: Your Honor, the State would call
13 Lieutenant McIntosh, we have a stipulation.

14 MR. MAYER: Your Honor, as I understand, Lieutenant
15 McIntosh is delayed and it may be some time, the State has
16 told me what they intended to illicit from his testimony.
17 We have no objection to what we were told.

18 THE COURT: Since that was published to me
19 in-chambers I will tell the jury y'all's stipulation.

20 MS. AGNEW: Thank you, Your Honor.

21 THE COURT: Ladies and gentlemen, a stipulation is a
22 fancy word, they have agreed to these facts so y'all don't
23 have to decide these facts. But the Investigator McIntosh
24 was prepared to come to court and he is away working on
25 another case unrelated to this one. His purpose for

1 testifying was to identify Mr. Deal and Ms. Armstrong as
2 the two people in the house, they were residents in the
3 [REDACTED] Happy Valley Road. For purposes of the record, the
4 State and the defense have agreed they were there that day
5 and they live there, is that correct?

6 MS. AGNEW: That is correct, Your Honor. And that
7 that was in Laurens County.

8 MR. MAYER: Yes, it was. And for those with unclad
9 memories, was specifically said, one of the officers said
10 [REDACTED] it is actually [REDACTED] No one is contesting the
11 location of this resident.

12 THE COURT: The address is [REDACTED] therefore that fact
13 is now before you and not challenged by either side. They
14 have agreed to that fact, so not arguing who was who and
15 where they lived, the house was there and it is near
16 Fountain Inn, such as that. So that fact has been agreed
17 to. If that wasn't agreed to the State would have to
18 prove it to you. So, they agreed to this. Anything else.

19 MS. AGNEW: Your Honor, at this time the State rests.

20 THE COURT: Very good. All right. Y'all step up.

21 (Whereupon, a bench conference was held in the
22 presence of the jury but out of the hearing of the
23 jury.)

24 THE COURT: Ladies and gentlemen, y'all have heard
25 testimony that has been a little more abbreviated because

1 the parties have agreed to some certain amounts of it. I
2 have to take up some motions and some arguments up. Since
3 the State is now finished it is the appropriate time to do
4 some of my work. After that we are right at lunch time so
5 I am going to let y'all go to lunch. I want you back at
6 the jury room at 1:30 and we should at that time be ready
7 to get the case finished. So, go to lunch and be back at
8 1:30 and don't discuss the case.

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

11 THE COURT: Do y'all want to argue your motions now
12 and then come back from lunch and be ready to argue and
13 charge?

14 MR. MAYER: Fine with me.

15 MS. AGNEW: Your Honor, one but it doesn't matter
16 which way. Your Honor, just for purposes of the record,
17 the State would like to acknowledge that Bill Mayer does
18 represent both defendants in this case and that that could
19 raise a possible conflict and we would just like for the
20 defendants to be admonished on the record of that problem.

21 THE COURT: At a sidebar I asked Mr. Mayer if he was
22 going to present any evidence. And I think you related to
23 me that you were probably not.

24 MR. MAYER: Our intention at this time is that we
25 would not.

1 THE COURT: So there would be no issue as to any
2 conflict of separate defenses or anything of that sort
3 because of your decision to not present any evidence.

4 MR. MAYER: Your Honor, as we are here and the
5 parties gathered and court reporter is over there, could
6 we put on record the issue of their right to testify if
7 they choose. Can we deal with that now before we go to
8 lunch.

9 THE COURT: Absolutely. Ms. Armstrong and Mr. Dill,
10 you understand that under our constitution y'all have the
11 right to remain silent, you have the right to testify. It
12 is your decision to testify or not. It has to be
13 voluntary, it has to be made with the full reflection as
14 to what your rights are and benefits. You understand that
15 no one can make you testify. Each of you understand that.
16 You understand that Mr. Mayer represents both of you and
17 that he can give you advice to that extent. Now, do
18 either of you wish to testify in this case. Mr. Dill?

19 MR. DILL: No.

20 THE COURT: And Ms. Armstrong?

21 MS. ARMSTRONG: No, sir.

22 THE COURT: Have each of you discussed your right to
23 testify and your right to remain silent with Mr. Mayer.
24 Mr. Dill?

25 MR. DILL: Yes, sir.

1 THE COURT: Ms. Armstrong?

2 MS. ARMSTRONG: Yes, sir.

3 THE COURT: Do y'all understand that right?

4 MR. DILL: Yes, sir.

5 MS. ARMSTRONG: Yes, sir.

6 THE COURT: And so you understand also now because of
7 your decision to not testify the Court, my instructions
8 would instruct the jury they cannot use or discuss in any
9 way your failure to testify in deliberations upon my
10 instructions. Do y'all understand that? Mr. Dill?

11 MR. DILL: Yes, sir.

12 THE COURT: Ms. Armstrong?

13 MS. ARMSTRONG: Yes, sir.

14 THE COURT: Do you understand also that because of
15 your decision to not testify or to present evidence that
16 the State will argue first to the jury. Mr. Mayer will be
17 the final voice they hear in his summary if he believes
18 the State as proved or failed to prove. Do you understand
19 that?

20 MR. DILL: Yes, sir.

21 MS. ARMSTRONG: Yes, sir.

22 THE COURT: So it is your decision after consulting
23 with him, understanding your rights, it is your decision
24 to not testify in your trial today. Once the trial is
25 done and submitted to the jury, you can't wait until after

1 the verdict, wait a minute, I have decided I want to tell
2 them what happened. You can't do that. Once you make the
3 decision to not testify it is done. Do you understand
4 that?

5 MR. DILL: Yes, sir.

6 MS. ARMSTRONG: Yes, sir.

7 THE COURT: Very good. All right. Mr. Mayer.

8 MR. MAYER: Thank you, Your Honor. Your Honor, I
9 move for a directed verdict. The State has not met the
10 burden of proof in this case. I realize in the light most
11 favorable to the State, looking at the language in the
12 indictments and the language is for both, I would move on
13 behalf of both. The State would have to prove that they
14 willfully, unlawfully and knowingly manufactured, there is
15 no evidence, Your Honor, that anything was manufactured.
16 There is a statement, there is a speculation by the expert
17 that something may have been but there is no testimony
18 that that happened in Laurens County. They estimated
19 there was nothing being manufactured there. There was
20 something laying out on the grass, whether that was used
21 for manufactured or not there is absolutely no testimony
22 that manufacturing took place in Laurens County.
23 Potentially we are told there is a confidential informant
24 that might have provided that information, that individual
25 was not called in this trial. So there is no indication

1 that there was any manufacture. The indictment goes on to
2 talk about to aid, abet, attempt or to conspire to
3 manufacture. And, again, there is no indication that any
4 of that happened supported by testimony either. If
5 manufacture did happen there is absolutely nothing that
6 has been provided that would say my clients had anything
7 to do with it. The only evidence of manufacture in this
8 case is predicated on something by the testimony of the
9 expert was found out in the yard. This is the same expert
10 that said, experienced meth cooks bundle everything up and
11 get rid of it and put it in innocent peoples yard. I
12 think that was the testimony of the expert. Well, we have
13 these people here, no testimony of any drugs found in the
14 house. I specifically asked the Lieutenant and he said,
15 no, there was no drugs in the house. There were not the
16 makings to make meth in the house, no ephedrine, none of
17 the lithium, none of the drain cleaner, nothing. They had
18 benign things in the house which are certainly legal to
19 have and something which we have no idea what it was
20 because it is not photographed, while collected it was
21 destroyed before it could be seen. The one photograph we
22 have is anything but indicative. And it would require
23 speculation on the part of the jurors to say that the
24 manufacture had happened and that it happened in Laurens
25 County. So with the elements not having been met we would

1 request a directed verdict of not guilty.

2 THE COURT: Ms. Agnew.

3 MS. AGNEW: Thank you, Your Honor. As Mr. Mayer
4 said, viewing the evidence in the light most favorable to
5 the State there was testimony that items used to
6 manufacture methamphetamine were found at this residence
7 where the defendants were living here in Laurens County.
8 The expert witness testified as to the significance of
9 these items that were found, how they are used to
10 manufacture methamphetamine and the significance of
11 finding them in the position in combinations as they are
12 found. Significantly they found an HCL generator and
13 under his expert testimony said the only purpose for an
14 HCL generator is to manufacture methamphetamine, that it
15 is the last step to manufacturing methamphetamine. You
16 are not going to have one unless there was a final product
17 of methamphetamine produced. This was found on the back
18 stoop of the defendants house. It was not up by the road
19 as if it had been haphazardly slung. Because they were
20 the residences of this house they lived there, they have
21 constructive possession of the items from that house
22 including that HCL generator. As far as to the weight of
23 that evidence goes, that is a decision for the jury to
24 make. But viewing this evidence in the light most
25 favorable to the State, necessary component that directly

1 produces methamphetamine was found in the defendants house
2 on their property here in Laurens County. And so we feel
3 that this is a decision that the jury should decide as far
4 as the weight of that evidence.

5 MR. MAYER: May I respond, Your Honor?

6 THE COURT: Sure.

7 MR. MAYER: Constructive possession is a charging
8 inference, Your Honor. You still have to prove the
9 elements of the crime, you have to prove that somebody
10 actually did something. Now, you can charge people with
11 possession of something but you still have to prove the
12 elements that they knew about it. There has been no
13 testimony that they knew that was there. There is no
14 testing done on it to prove that they ever handled it or
15 seen it. There was no testing done on it to prove that
16 any of the chemicals involved had been combined in any at
17 all. We have a bottle with a hole stuck in it. That is
18 what we have. My guess would be the majority of plastic
19 bottles I have seen in my life with a little tube stuck in
20 them are actually used for smoking weed. We don't know
21 that because we can't even sniff the bottle because the
22 evidence in this case has been destroyed. This is a
23 problem that I have with meth lab cases anyway. That the
24 State grabs things and inspects things, destroys things
25 and then tells you what it has and there is no way to

1 defend against them. But the point remains, for the DV
2 motion it still requires speculation on the part of
3 anybody because the issue of, did these people know that
4 it was there has never been addressed. And if it was,
5 first off, if it was a generator, we are not conceding
6 that it was. If this bottle with the cap on it was a
7 generator there is no evidence to prove that meth was made
8 in Laurens County.

9 MS. AGNEW: And, Your Honor, whether that bottle was
10 a generator is a question for the jury to decide. The law
11 says that possession of the equipment used to manufacture
12 methamphetamine is prima facie evidence of intent to
13 manufacture. The statute doesn't say, you know,
14 successfully completed manufacture methamphetamine with a
15 product sitting there. It says, aid, abets, attempts,
16 conspires or manufactures methamphetamine. The items
17 necessary for making methamphetamine, the necessary
18 component that directly produces methamphetamine was in
19 the defendants' house here in Laurens County. Whether the
20 defendants committed this crime or whether someone else
21 did that is for the jury to decide. But viewing the
22 evidence in the light most favorable to the State there is
23 enough to create a jury question here.

24 MR. MAYER: In response, Your Honor. Again, I agree
25 with the law, what Madam Prosecutor says is the law.

1 Possession is it, constructive possession is not
2 possession. Constructive possession is a charging
3 inference. You still have to prove somebody possessed and
4 there is no evidence that they possessed. And again,
5 there is no evidence that any manufacture occurred in
6 Laurens County, that is purely speculation. That has not
7 even been addressed by anybody. At best it is a
8 paraphernalia issue.

9 THE COURT: All right. I want to read the statute.

10 MS. AGNEW: Just for clarification purposes. The
11 part that I quoted about the evidence of attempt to
12 manufacture is 44-53-375(d).

13 THE COURT: All right. Let me read it and I will let
14 y'all know.

15 MR. MAYER: I would point just because I like to hear
16 my own voice. They are charged under (b), specifically.

17 THE COURT: I understand your arguments and I will
18 let y'all know. See you after lunch.

19 (Whereupon, a lunch break was taken.)

20 THE COURT: Before we took lunch I heard motions.
21 Expound for me, if you will, I have read the statute.
22 Subpart (d), possession of equipment paraphernalia used in
23 to the manufacture of methamphetamine. Ms. Agnew, tell me
24 what equipment or paraphernalia you believe the evidence
25 presented, been presented that would qualify under that

1 subsection.

2 MS. AGNEW: Your Honor, again, viewing the evidence
3 in the light most favorable to the State, I can sit here
4 and tell you salt, hydrogen peroxide, Coleman fuel, and I
5 don't think that is going to go over too well. But I
6 think in this case primarily the fact that we have a HCL
7 generator which is equipment used to manufacture
8 methamphetamine is necessary to manufacture
9 methamphetamine. And according to the testimony of our
10 expert witness it's sole purpose is to manufacture
11 methamphetamine as it transforms liquid methamphetamine
12 into a crystalline substance by which it is ingested, that
13 that component and equipment of methamphetamine lab found
14 on the stoop of the defendants house would definitely be
15 sufficient to show an intent to manufacture. I believe
16 Mr. Mayer talked about people slinging trash out of the
17 yard but this wasn't out in the yard by the street up in
18 front of the house. This was on the back stoop of the
19 house.

20 THE COURT: The testimony was the HCL was on the back
21 stoop or near the back stoop, somewhere in close proximity
22 to the rear of the house, outside. The same question to
23 you, Mr. Mayer.

24 MR. MAYER: It comes down to the definition of
25 possession, Your Honor. I understand there is

1 constructive possession. Constructive possession is a
2 charging element. You still have to prove that they
3 possessed it. And my understanding of proving
4 constructive possession is you have to prove they have
5 knowledge of it and there is none. This is not in the
6 house, you can't even presume that they know it is there
7 because it is in their house, it is not. The testimony is
8 it is out in his yard. We have to give in the light most
9 beneficial to the State. So assuming that it even is a
10 HCL generator, assuming that it is. There is absolutely
11 nothing that gives these people possession. There is no
12 knowledge component.

13 THE COURT: Considering that argument, Ms. Agnew, I
14 want you to answer this question. There is a note in the
15 statute coming from the State versus Head regarding
16 sufficiency of evidence being in constructive possession
17 of the actual drugs. Crack cocaine was found in a car
18 wash outside in a recycling bin near the backdoor of a
19 home owned by the defendant's mother. Similar facts, that
20 was insufficient, why is this sufficient.

21 MS. AGNEW: Your Honor, I would argue although the
22 father was at, in this house that they lived there, that
23 the only item, we are not talking about just a single item
24 that is found. In that case it was one item that was
25 found in the recycling bin. In this case we have got--

1 THE COURT: Let me clarify my question for you. I
2 would deem salt, hydrogen peroxide and Coleman fuel
3 ingredients and not equipment.

4 MS. AGNEW: Well, Your Honor, the statute says the
5 possession of equipment or paraphernalia. We have also
6 got hypodermic needles that the officer testified to were
7 all over the house.

8 THE COURT: Or ingested.

9 MS. AGNEW: That's correct, Your Honor.

10 THE COURT: I am asking, this is, I have seen
11 stronger cases. I am trying to make certain my
12 determination is right or close.

13 MS. AGNEW: As Mr. Mayer said, knowledge is one of
14 the elements that we have to prove, whether or not we
15 proved it is a question for the jury. And the question
16 that they are going to have to answer is whether or not,
17 the fact that these hypodermic needles are all over the
18 house, there is a HCL generator on the back stoop of the
19 house. There is these other ingredients that the officer
20 testified are part of manufacturing methamphetamine,
21 whether it is reasonable to believe that these items being
22 where they are that the defendants had no knowledge of
23 them since they are living in the house, they are in the
24 house when this occurred.

25 THE COURT: Let me make certain I am right now. The

1 hypodermic needles were not, there was no testimony from
2 anybody that the hypodermic needles were used to
3 manufacture the process.

4 MS. AGNEW: That's correct, Your Honor.

5 THE COURT: I thought I was right.

6 MS. AGNEW: And the fact that these items are all
7 over the house on the back stoop, I believe that that, I
8 mean the officer testified that you don't see people
9 making meth in one place and then carrying the equipment
10 over to another house and leaving it there. I would argue
11 that with the evidence that we have got, with the items
12 there, that it is up for a jury to decide whether or not
13 they are guilty of knowingly using these items to
14 manufacture methamphetamine.

15 THE COURT: Mr. Mayer.

16 MR. MAYER: It still comes to, the assumption that it
17 was there is asking for speculation. Is it up to the jury
18 to decide. I wish it wasn't so but then the reading says
19 it is. The problem is, there is absolutely no evidence
20 for the jury to rely on. They have to speculate, it is
21 the only way that they can. The only way that they can
22 come to the conclusion that these people knew something
23 was in their backyard was to speculate, nothing else was
24 said or even eluded to.

25 MS. AGNEW: And, Your Honor, my argument to that is,

1 that is the whole point of constructive possession because
2 we can't always get into a defendant's head, they don't
3 always make statements in order to prove knowledge. That
4 is a question for the jury, this is a situation that we
5 have often where we have circumstantial evidence to prove
6 knowledge and that evidence should go for the jury to
7 decide its weight.

8 MR. MAYER: I repeat, the jury has to have something
9 upon which to base its decision other than speculation.

10 THE COURT: In the stipulation as to the defendants
11 living in the house, is there any testimony as to anybody
12 else living there or otherwise. I don't remember.

13 MR. MAYER: The testimony, Your Honor, is there were
14 five people in the building at the time the place was
15 raided, five or six.

16 THE COURT: More than them.

17 MR. MAYER: Yes, that is right.

18 THE COURT: I don't remember the stipulation that--

19 MS. AGNEW: I believe the stipulation--

20 THE COURT: -- that they lived there.

21 MS. AGNEW: And I don't believe anything was
22 mentioned--

23 THE COURT: -- it didn't go any further than to say
24 that they were the only two tenants or anything like that.

25 MR. MAYER: No, sir.

1 THE COURT: I think it is the totality of
2 circumstances. There is evidence there and I am not
3 weighing the evidence. I am determining there is some
4 evidence there. So, I think it is a jury question. Are
5 y'all ready to argue?

6 MS. AGNEW: Do we want to charge first or argue
7 charges first?

8 THE COURT: What do you want to argue?

9 MS. AGNEW: Your Honor, the State just has four
10 request to charge, the last three are out of Judge
11 Anderson's book so it is probably exactly what you have
12 got. The first one is the direct quote from the statute
13 from Judge Anderson's request to charge.

14 THE COURT: Regarding to the State's request to
15 charge one, I think out of abundance of caution I will
16 only instruct the jury that possession of equipment used
17 in the manufacture of methamphetamine is prima facie
18 evidence in the attempt to manufacture. Paraphernalia,
19 syringes, I find they to be distinguishable in ingestion
20 rather than manufacture. I don't believe that is an
21 appropriate charge on the manufacturing process. I would
22 amend the charge to delete paraphernalia from that request
23 to charge one. Do you have any request to charge, Mr.
24 Mayer?

25 MR. MAYER: I am still reading.

1 and that is their right. They have no responsibility in
2 this matter presenting any evidence for you to consider.
3 That being the case the State will argue to you or
4 summarize first their beliefs and the evidence that they
5 presented to you. And after then Mr. Mayer will be given
6 the opportunity to summarize his client's position and his
7 belief on what the State has failed to prove or failed to
8 meet its burden of proof as to these two offenses. So
9 understanding that, Ms. Agnew.

10 MS. AGNEW: Thank you, Your Honor. Members of the
11 jury, I told y'all this morning after all of this was over
12 with I would come back and talk to you. That is what I am
13 here to do. Go over all the testimony you heard and the
14 evidence you saw. Now, as the Judge told you, this is my
15 last chance to talk to you. Mr. Mayer gets to go last and
16 I don't get to come back up here after he has talked to
17 say, well he said this and this is my response to it.
18 This is it for me. So I ask you to just to pay attention
19 to what I have got to say, I am going to try to cover
20 everything that I can. Let's just go over what you heard
21 today. We will start with the very last thing you heard,
22 this was that stipulation. That stipulation means that
23 the State and the defense had an agreement on some facts
24 and we all agreed that the two defendants were living in
25 that house on Happy Valley Road and they were living there

1 and they were there when the police came that day on
2 February the 15th of last year. And nobody is questioning
3 that. There is no doubt about that. They were living in
4 that house and they were there when the police came. Now,
5 let's talk about what you heard from Lieutenant Sharpton.
6 He is an expert in methamphetamine labs, he has been
7 through all of that training, gone to those classes. And
8 he told you, he knows how to make meth, he has made it
9 before, he knows what to look for and that is his job.
10 That is what he is trained to do. And when he went to
11 that house that day he was looking for signs of a meth
12 lab. Now, let's talk about what he found. He found
13 hydrogen peroxide, found Coleman fuel, found salt. I am
14 pretty sure everybody has got those things in their house.
15 But he told you that when, seeing those things in the
16 house in the right place, everything separate, that is not
17 a red flag. But he told you that when he went to this
18 house his antennas perked up. Because when he found that
19 hydrogen peroxide sitting right next to a giant bag of
20 hypodermic needles. When he found two big old containers
21 of Coleman fuel, no Coleman stove in the house, when he
22 found that salt he didn't find salt shaker salt sitting in
23 the kitchen. He found five one pound containers of salt,
24 five pounds of salt. Now, that wasn't enough to make a
25 concern that something was going on, he found some other

1 things, things you can't buy at Walmart. He found
2 hypodermic needles all over the house. He said besides
3 that big bag he found he said they were everywhere. And
4 he found an HCL generator, something else you can't buy at
5 Walmart. He said that the HCL generator is the last step
6 in making methamphetamine, that it takes liquid
7 methamphetamine and turns it into crystal methamphetamine,
8 the kind that people smoke, snort, shoot up. He said that
9 when he found that that it was evidence to him that
10 methamphetamine had been manufactured at that house. He
11 said there is no other reason to have a bottle with the
12 tube coming out of it where you mix sulfuric acid to gas
13 off methamphetamine. He said there is no other reason to
14 have that bottle unless you are making meth. Now, let's
15 talk about what he didn't find. Mr. Mayer came up here
16 and questioned him and said, he didn't find Sudafed, he
17 didn't find drain cleaner, he didn't find these other
18 things. Well, Lieutenant Sharpton told you he doesn't
19 always find every single ingredient for making meth. But
20 that doesn't mean there wasn't a meth lab. And Mr. Mayer
21 said, well that's a good point. Don't people throw
22 ingredients to make meth out on the side of the road so
23 people won't find them. Couldn't that be what happened
24 here, that somebody just threw this stuff on the side of
25 the road for these poor innocent people to be caught with.

1 Members of the jury, Lieutenant Sharpton told you where he
2 found those ingredients. He found them in the house. He
3 found the salt and Coleman fuel in the house. He found
4 those hypodermic needles all over the house. And he
5 didn't find that HCL generator up by the road like it had
6 been thrown out of the car. He found it on the back
7 stoop. Now, talking about things that aren't here, we
8 don't have those things to show you. It would be great if
9 we did. It would be great if we could come in here and
10 say, yes, the defendants fingerprints are on that HCL
11 generator. We did DNA testing and their DNA is on those
12 hypodermic needles. We sent these things off to a lab and
13 tested them and there is meth all over it. We don't have
14 that. We can't have that. As Lieutenant Sharpton told
15 you, you can't fingerprint these things. First of all,
16 they are hard to fingerprint and second of all, if he does
17 he is exposing every single person to come near that
18 fingerprint card to possible hazardous materials. You
19 can't send it off for testing because SLED down in
20 Columbia won't take it. It is so dangerous they won't
21 even take it because it is hazardous materials. Now,
22 members of the jury, Lieutenant Sharpton said that he had
23 to destroy these things. He had to destroy them because
24 they are dangerous. He did it for his safety when he was
25 at the house that day in that protective suit with gloves

1 on and he did it for the safety of anybody that might come
2 into contact with any of those items. And he did it
3 because they are dangerous. He told you that when you
4 have chemicals used to make methamphetamine and they are
5 mixed together the wrong way they can blow up, they can
6 cause a fire. And he said that HCL generator, it is
7 gassing off, he says inhaling those gasses can kill you.
8 That is why those things aren't in front of you today. It
9 is a safety issue. Now, let's talk about possession and
10 where these things are found. The Judge is going to talk
11 to you about possession. And he is going to tell you that
12 is such a thing as active possession and constructive
13 possession. Let me give you an example. It is kind of
14 complicated. This is my pen and I love this pen. It is
15 blue ink which is my favorite. It has got a good like
16 medium line, it is like the gel ink, it is my favorite. I
17 do not let this pen out of my sight, it is mine. It fits
18 in my hand, I have got actual possession of it, I have got
19 it. I can do stuff with it, it is in my hand, it is
20 nowhere else. That is active possession. Now, when I
21 came up here I left it on this table. That is my table,
22 that is where I sit when I come in the courtroom. That is
23 my spot, I reside there when I am in court. Now, I don't
24 have that pen in my hand but it is still my pen and it is
25 still in my possession because it is in my constructive

1 possession. It is on my table where I can get to it, I
2 can do stuff with it, it is still in my possession. Now,
3 sure there are other people at my table, just like there
4 is testimony that there were other people at that house.
5 But just like this is my table, that was their house.
6 Those things were found in their house where they were
7 living, where they were. Members of the jury, just as I
8 have constructive possession of this pen my argument is
9 they had constructive possession of the hydrogen peroxide,
10 two big things of Coleman fuel and the five pounds of
11 salt. They had constructive possession of the hypodermic
12 needles, they were in a bag and spread out all over the
13 house. And that they had constructive possession of that
14 HCL generator that makes that meth siting back on the back
15 stoop. Now, when I first came in front of you this
16 morning I asked you to be reasonable. I have got to prove
17 guilt beyond a reasonable doubt. And I want you to think
18 about what is reasonable in this case. Is it reasonable
19 to think that somebody else came in their house, put these
20 items all over the house, spread those hypodermic needles
21 all over the house and then put that HCL generator that
22 made meth on that back stoop and they didn't know about
23 it. That somebody else came in there and did that and
24 wasn't there and they didn't know about it. Is that
25 reasonable. Is it reasonable to think that those two

1 people have five pounds of salt, had Coleman fuel, had
2 hydrogen peroxide, all items that you use to make
3 methamphetamine. They had those hypodermic needles all
4 over the house and that they had that HCL generator. The
5 only reason an HCL generator is made is when you mix salt,
6 sulfuric acid, create a gas that makes meth. That is the
7 last step. Is it reasonable to believe that they had all
8 of those items, they had the last step, the finished step
9 and they weren't making meth in their house. That is not
10 reasonable. Members of the jury, on February 15th, 2011
11 on Happy Valley Road, those two, the defendants were
12 making methamphetamine and they got caught redhanded with
13 the parts to make it. Find them guilty. Thank you.

14 THE COURT: Mr. Mayer.

15 MR. MAYER: May it please the Court. I told you when
16 this case started the burden is entirely upon the State.
17 The Judge said there are reasons why people put up
18 defenses and there are reasons that they don't. The
19 biggest reason is because they don't need to. The State's
20 job is to prove to you what they need to prove to you to
21 convict. We didn't put up a defense because we don't need
22 to because they didn't do it. We are going to go through
23 the testimony and go through explanations. The biggest
24 thing that I want you to take into account in this, this
25 is not a level playing view, it is not meant to be. It is

1 possible that you may think that they might have done this
2 or probably did it, that is not good enough. The State
3 has to prove this beyond a reasonable doubt, any
4 explanation of facts that can be delivered to you that
5 would explain what has been presented here today other
6 than what the State alleges. This is not a level playing
7 view. The burden is entirely theirs and it is theirs
8 because you can't prove your innocence of anything, you
9 can't. And it is too easy to set somebody up for things.
10 The stipulation, and what I want you to focus on while I
11 talk and afterwards when you deliberate is not just what
12 it is that you heard here today, that is important. But
13 what screams is what you didn't because it is the State's
14 job to prove things and they didn't. Proving a
15 hypothetical, proving a plan, proving this is our theory.
16 You can do that but they have to exclude their
17 responsibility, exclude all other explanations. Because
18 anything that is reasonable, it is not up to me or the
19 defendants to prove that the State's theory is
20 unreasonable, no. If there is any other reasonable theory
21 and the problem is the State has left so many holes in
22 what has been presented to you that we are never going to
23 know, we are not. Because there is too many stuff, they
24 just did the stuff that didn't get done, that wasn't
25 presented. This closing is going to take as long as the

1 whole trial did. The stipulation was that these two lived
2 at that address. There is absolutely no mention of who
3 else lived there or if anybody else lived there. The
4 point was, did the two of them live there, were they
5 there, yes they were. The testimony there were either
6 five or six people in that house. So the fact that these
7 people lived there doesn't mean that they own every single
8 thing in the house any more than anybody in this State
9 owns every single thing that is in their house if they
10 have spouses, children, parents, extended family,
11 roommates or just somebody they brought home one night and
12 never left. There were other people there. So one of the
13 basic things you need to consider is, something that
14 happened didn't necessarily happen because of or involving
15 them. No matter what gets brought forward today, that in
16 and of itself is a doubt that somebody else could be
17 reasonable for this. And I say this because the biggest
18 thing that irritates me in this whole thing is the
19 presumption that the way the State wants things to be is
20 how things are because you possibly can't consider
21 anything other than the way they want things to be.
22 Everybody keeps talking about this generator, it can only
23 be used to make meth. We have heard about five times. It
24 is not what the Lieutenant said. This is apparently a
25 soda bottle with like a tube stuck into it. Is it a water

1 pipe, I don't know. Is it something to do with a fish
2 tank because you can't afford commercial filters. I don't
3 know. Because the really lousy thing about this whole
4 thing from the point of view of being a defense attorney
5 is, we can't defend against them in this, we can't. We
6 can't because the laws of South Carolina apparently say
7 that they don't have to keep any evidence. Wouldn't it be
8 great to have an HCL generator right here so you can see
9 what it is people are talking about. I have been in this
10 trial all day and I have seen these photograph, whatever
11 happened to bringing evidence to court. We impounded a
12 lot of stuff, yeap, we didn't keep any of it, we didn't
13 test any of it. We keep hearing one of the great red
14 herrings in this trial, hypodermic needles, hypodermic
15 needles. Anybody say that hypodermic needles are needed
16 to manufacture methamphetamine. This is a manufacturing
17 case, this is not a possession case, it is not a used
18 case, it is not a distribution case, it is about a
19 manufacture. Anybody hear anything about hypodermic
20 needles are used in the manufacture of meth. No. But you
21 keep hearing that because it spins you toward a mindset
22 that this is some sort of drug house. Anybody pull any
23 records to see if anybody is a diabetic, anyone present
24 any medical records that these people that they arrested
25 with all of these hypodermic needles every where, all over

1 this house, anybody have any needle mark on them. They
2 got them in their custody. Any indication, anybody,
3 particularly these two have shot needles, shooting
4 needles, had needles. No. There is a bunch of hypodermic
5 needles, some clean and some not in the house. That
6 always concerns me when the expert comes in and says his
7 comment for people who are experienced in this sort of
8 thing to get rid of all of the trash and get the nasty
9 stuff out of the house so they can't get caught. And they
10 left the needles. And they left this generator, if that
11 is what it was, if they knew it was there. They left
12 empty salt cans around. That Lieutenant would not tell me
13 if this house was trashy or not, I asked him. Is it
14 trashy and he was not going to give me an answer and he
15 didn't. He said, well it is not over here and it is not
16 over here, he wouldn't say anything else because you can't
17 pin him down if he doesn't say anything. You don't know
18 what this house looks like, you don't. Did they take
19 their trash out. I don't know. That is the kitchen sink,
20 there are some bottles and cans here. We don't know the
21 situation that these were found in either, that is always
22 curious. We moved these out and put them all together,
23 assembled them in a bucket to take a picture of them
24 there. How hard is it to go, click, pick that thing up so
25 we know where it was, so we know what was with it, so you

1 know if everything was in one place or gathered from
2 different places around the house. We don't know that.
3 Moved things before they took pictures. Next to the
4 bedroom is a closet there, hydrogen peroxide. Only thing
5 you use hydrogen peroxide is to make methamphetamine,
6 hardly. People use it to clean with, use it for cuts and
7 bruises, there is all kinds of things to use it for. We
8 don't have multiple bottles of that. What irritates me
9 about cases like this is that there is no body of evidence
10 to attack. They are charged with making methamphetamine,
11 there is no drugs. The testimony, asked the officer,
12 isn't it true that someone got busted? No, no. There was
13 no drugs there, there was no testimony that anybody got
14 popped with any drugs there. So there is no drugs. The
15 State keeps talking about active methamphetamine labs, it
16 was an active lab, they were just finished doing it. No,
17 there is nothing there. There is legal stuff in a house,
18 that is it, that is all there is. Stuff that is in most
19 peoples houses. They only difference is, outside of the
20 house in the back yard is a plastic bottle that they are
21 calling some sort of special chemical generator. They
22 don't even have a picture of it. They don't. They
23 destroyed all of the evidence. There is a gallon of,
24 something in it, we got rid of that too. What was it. We
25 don't know. We are not going to fingerprint it because if

1 we try to fingerprint the evidence to prove that your
2 people had something to do with it, well, what was the
3 explanation. I shake the powder on it and who knows what
4 will happen. It seems to me if you go to two classes and
5 you are qualified as an expert in chemicals and you have
6 been trained to the point where you can make
7 methamphetamine isn't there somebody at one of these
8 academics in Meridian, Mississippi or somewhere and say,
9 hey, let's do a test and see if fingerprint powder affects
10 this stuff. Does that seem reasonable to anybody. Except
11 if you get to where you fingerprint stuff then you create
12 evidence against your case. If you put fingerprint powder
13 on it, put a piece of tape on it and lift that fingerprint
14 powder off of that impression. And then you put it on the
15 card. You might have horrible, dangerous chemicals on the
16 card, we can't possibly do that. So, the Laurens County
17 Sheriffs Department does not want you to be near salt,
18 does not want you to be near Coleman fuel, does not want
19 you to be near hydrogen peroxide because those are the
20 only chemicals there. You heard the Lieutenant, I asked
21 him. Did you find any sulfuric acid, no. Drain cleaner,
22 no. Is the ephedrine, the medicine that you buy at the
23 store to break down to make meth out of, was there any of
24 that. No. Was there any trash from it, left over blister
25 packs from it, no. They talk about, do you have the stuff

1 you need to make that. No, you have some of the stuff you
2 need to make it if you have the stuff and you know how.
3 There is no evidence that these people know how. Did you
4 hear anything that says these people have to have the
5 chemical training that that Lieutenant has, that he had to
6 go to school for two weeks for in Mississippi. No. How
7 did we get here. One of the questions jurors want to
8 know, how do we get here. We don't know because they
9 wouldn't tell us. I suppose there was a search warrant,
10 we don't know who got the warrant. The sergeant knows as
11 the first one in, I believe he said was, the sergeant is
12 not here. What is the basis for the search warrant. We
13 have a movie film of these people making dope, we have a
14 bug in their car, we have a satellite taking pictures of
15 them through the roof. We don't know. How about somebody
16 calling up and left an anonymous tip on the answering
17 machine that there was a meth lab there. I don't know. I
18 just know that we don't know why they believe anything, we
19 just know they show up. Suppose there was an informant,
20 suppose somebody that you don't know and hasn't been
21 brought here and can't be questioned and you don't know if
22 they are alive, you don't know what they are, just call
23 the police and said, they are making meth out there. You
24 need to get out there. So they get a search warrant based
25 upon that phone call and they head out there and what do

1 they find. They find a bottle with a tube stuck in it
2 thrown out the back yard, the only thing which links these
3 two to anything. The only thing that links any of this to
4 methamphetamine at all is the thing that is thrown into
5 the back yard. I mean this is a tool that has been built
6 to make methamphetamine and you are done with it and you
7 are done with the drain cleaner and you got rid of the
8 medicine, packages. You throw this thing out in the grass
9 in the backyard. Now, there has been some swapping
10 testimony, that I keep hearing the word, stoop, and stoop
11 has different definitions for different people. I believe
12 I asked the Lieutenant on the stand if it was in the grass
13 by the backdoor and I think he said yes. But I am old,
14 bear witness to what it is you remember being said. But
15 the point is, it is not in the house, it is outside by the
16 backdoor. Who would throw something outside by the
17 backdoor. The State wants you to believe that they were
18 done with it and threw it out the backdoor. They didn't
19 actually say how they think it got there. But that is the
20 impression I got from them is, we are done making our meth
21 and we will throw it out the backdoor right by the back
22 steps. Apparently they are neat enough to remove
23 everything else that is making meth, that is if they are.
24 The generator, what is it. We keep hearing words, we live
25 and die on words. Words are important and the way people

1 use words are pretty slick. We have witnesses that have
2 been up here today that use the phrase that this is used
3 for that. You use this to make that, you use that to make
4 methamphetamine. Do you realize what a neutral statement
5 that is. Because they don't say, you can use this to make
6 methamphetamine or this can be used to do something. The
7 statement makes it sound like they are saying it is, you
8 use this for that, like there is no other purpose for it.
9 You use hydrogen peroxide to make meth. That is something
10 that most people have and there is no indication that it
11 has been used in this case. The investigation that would
12 have been necessary to prove what they have alleged, there
13 are too many things that weren't done to support what has
14 been presented. The Solicitor told you in her close that
15 there was no stove in the house, that is not true. I
16 asked, he said he didn't see one and he said he didn't
17 look for one. So you have got people who are in
18 possession of Coleman fuel. It seemed to me to be a
19 reasonable question. Was there a Coleman stove in the
20 house. Didn't see one. Did you look. No. If you saw
21 Coleman fuel would you look to see some other reason other
22 than a meth lab of why they would have it. I would. Why
23 wouldn't somebody who was looking. When I first stood in
24 front of you I told you what my grandfather told me. The
25 only tool you have is a hammer you do every problem like

1 it is a nail. When you are trained as a professional to
2 dismantle methamphetamine labs and you are sent to a site
3 with somebody with a search warrant and told beforehand,
4 this Lieutenant testified he went there because there was
5 a lab there. There wasn't a lab there. He went there
6 with the belief that this is a lab. I asked him, at what
7 point when you get to some place do you decide it is a
8 lab. At one point do you put the moon suit stuff on and
9 everything. He didn't even understand my question. There
10 wasn't a place in a way he used things for the possibility
11 that this wasn't a meth lab. He went there because it
12 was, he went there with the attitude that it was. He
13 didn't go there with an attitude that an investigator who
14 is going to look at what is there and reach a point as to
15 what he is looking at. They have got salt, it is a meth
16 lab. What else did we have, the testimony today. Coffee
17 filters is a big one. Said you run things through coffee
18 filters. Well apparently if you have coffee filters and
19 made comments about the aluminum foil that is in the
20 bucket. So if you have aluminum foil and coffee filters
21 and a couple of other things you can buy legally you are
22 in danger being popped for a methamphetamine lab. That is
23 the only thing that was in these peoples house. We keep
24 hearing reference it was an active lab, it was an active
25 lab. The Solicitor said they were caught redhanded.

1 Redhanded, redhanded. Redhanded is an old phrase for
2 murder trials where you kill somebody and you are caught
3 with the blood still on your hands. That is hardly
4 redhanded here. They say they have got everything from
5 the very last stages of methamphetamine production here.
6 But there is no dope. They apparently have what you need
7 to start, they apparently have what you need to finish,
8 but there is no proof that anything happened. If anything
9 did happen there is no proof that they had anything to do
10 with it. And they throw things at you about these
11 hypodermic needles and things that have nothing to do with
12 the question of manufacturing. This is going to come down
13 to a really sticky point of law. And Ms. Agnew gave you a
14 pretty good description of it, possession. Because the
15 law says that if they are in possession of the equipment
16 to make methamphetamine then you can convict them if you
17 want to. The statute talks about their intent to do so
18 but you can convict just upon their possession of it. We
19 used the pen theory, I have constructive possession. That
20 was the example you were given. Once again, it is what
21 you are not told that is the problem. Actual possession.
22 Ms. Agnew has her pen, actual possession. If there is a
23 pen on the floor underneath one of your juror chairs. Do
24 you have possession of it. The trick to constructive
25 possession are two words, control and dominion. If you

1 have control and dominion over something then you have
2 constructive possession of it. You cannot have control
3 and dominion over something that you don't even know that
4 is there. Did anybody hear anything in any testimony
5 today that in any way says, either one or both of those
6 two people over there knew that there was a generator was
7 in their back yard. Did you hear anything at all because
8 if you didn't, if you didn't hear anything that makes you
9 think that they knew that it was there then the only thing
10 you can do is guess or speculate and you can't do that.
11 You are not allowed to do that, it is a violation of your
12 oath. You have to make your decisions based upon the
13 evidence in front of you and there is no evidence that
14 they knew it was there assuming it is what the State says
15 it is which is still in question also. Another layer to
16 deal with. We keep hearing about how horrible it is for
17 these chemicals to be mixed in this generator. There is
18 no testimony that there was any chemicals were ever mixed
19 in anything. I asked the Lieutenant, did you test it to
20 see if anything was in it. No, it was just destroyed. If
21 they pick up the evidence and destroy anything that can be
22 challenged or questioned before anybody has a chance to do
23 it what does that tell you about the credibility of the
24 investigations. There is no way to challenge it, there is
25 no way to question what they do. And you end up making a

1 decision based upon the opinion of somebody. The Judge is
2 going to read you about the law of expert witnesses. You
3 heard Mr. Sharpton is an expert witness, he is an expert
4 on methamphetamine production. He is. But what he says
5 is only his opinion, that is all. You can give it as much
6 weight as you choose or as little or none. The evidence
7 this case isn't there, it might have been if the
8 investigation had been done. The officer that was in
9 charge of this isn't here. Where is the investigator,
10 where is the guy who got the warrant. Where is the guy
11 who was the first one through the door. Where is the
12 investigation. Everything that was in the house was
13 legally to be in the house. They say they can't
14 fingerprint things, they have to be destroyed. The
15 Solicitor asked, is it reasonable to believe that somebody
16 came into the house and just left all of this stuff. Is
17 it reasonable to believe that the manufacturing of
18 methamphetamine with the necessary stuff is not there and
19 there is no final product there. Is that reasonable.
20 Well, what else is a possible explanation of everything.
21 How about you have salt in your house because you have
22 salt in your house. This is February of last year. Now,
23 I think everyone will agree we had a pretty weeny winter
24 this year. But February of last year was cold, was there
25 ice and slush on the ground in the beginning of February

1 that people foresaw upon. Did law enforcement even ask
2 these people when they arrested him any questions at all.
3 Blackmon's job was to come and take pictures. Nothing,
4 there was no investigation. There is an allegation
5 offering to you one explanation of what happened. I will
6 give you one. When I say the State can't speculate and
7 you can't speculate, my job is to offer you an explanation
8 that explains everything other than them making illegal
9 drugs. I will give you one, how about this. How about
10 Melina's ex-boyfriend who is mad because she moved in with
11 Mr. Dillon. Dials 911 and says they got a meth lab and
12 throws one of these things in the back yard. Did that
13 happen, I have absolutely no idea. Please don't take
14 anything I say as evidence. Is it possible that someone
15 else, one of three or four other people in that house who
16 may or may not live there, we don't know, the
17 investigation didn't go that far. Is it possible that
18 they are actually making methamphetamine. Is it being
19 done when they are not home. Does it leave a big smell.
20 This was not being done while the cops were raiding. We
21 keep hearing words that put things in present tense. I
22 have notes up here to get through and I have looked at
23 them a little bit. We have the testimony that this is a
24 lab from the man who said it was a lab before he got
25 there. He was going there for the lab. He didn't walk

1 into a room and say, there is this, there is that, we may
2 have a lab here. He went with it in his mind that this
3 was a lab. When he got there he found Coleman fuel in the
4 house. Coleman stove, didn't even look for one. A bunch
5 of salt, hydrogen peroxide on the bedside table. And this
6 thing in the back yard that he says looks to him like a
7 generator. I asked him was this a generator, he said yes.
8 I asked with the yellow label, he said it isn't all of it
9 because the top isn't on it and some other stuff. It
10 looks like a bottle with either a pipe stuck through it or
11 under it. Only possible thing that could be he said was
12 to make methamphetamine. Soda bottle with a pipe stuck in
13 it. I wish they could have tested it to see what residue
14 was on it. Maybe the missing top was a bowl, someone was
15 smoking weed out of it or something. If they had of
16 tested it we would have known. A decision that you get to
17 make today is quite possibly the most important decision
18 of their lives. And it is an unfortunate reality that you
19 don't have the information that you need to make. Too
20 many holes in it, too many possibles in it. You have got
21 a half of dozen people, they only charged two. Why wasn't
22 everybody charged. If constructive possession just means
23 that you are near, around it, why wasn't everybody charged
24 with it. For whatever reason law enforcement decided that
25 these two were going to get it. Charges in manufacturing,

1 creating. The stuff to make it wasn't there, there was no
2 finished product there. Everything that these people were
3 in possession of was absolutely legal and the only thing
4 that the expert says could link this to methamphetamine
5 production wasn't even in the house, it was outside in the
6 yard. There was a half of dozen people in the house,
7 anyone of whom could have done it. There is no evidence
8 that shows that they did, there is no evidence that shows
9 they know how, there is no evidence to show that they were
10 involved, there is no evidence to show that they knew that
11 thing was in the back yard. There is no evidence that
12 says that bottle was an HCL generator except the opinion
13 of that man who was put in the position, he doesn't make
14 the rules, nobody is around to even look at it or take a
15 picture of it. That is reasonable doubt six was from
16 Sunday. You cannot go in that back room and say there is
17 absolutely no explanation for this other than those two
18 are making methamphetamine. It is an allegation and that
19 is all. And it has not been proved by anything here,
20 certainly not beyond a reasonable doubt.

21 THE COURT: Now, Ms. Crawford and members of the
22 jury, the State of South Carolina has charged the
23 defendants, James Clyde Dill, Jr. and Molina Lynn
24 Armstrong with the crimes of manufacturing
25 methamphetamine. You will of course bear in mind that

1 these defendants have plead not guilty and by that plea
2 they deny the charges alleged in the indictments.

3 The defendants, they come into this courtroom both
4 clothed with the presumption of innocence and this
5 presumption of innocence continues throughout this case
6 and entitles them, the defendants, to a verdict of not
7 guilty unless and until it is dispelled by evidence
8 satisfying you, the jury, beyond a reasonable doubt that
9 these defendants are guilty of the offenses charged and
10 the State has proved each and every element of the alleged
11 crimes beyond a reasonable doubt.

12 Now, under the Constitution and laws of the State of
13 South Carolina you as the jury are the sole finders of the
14 facts in this case. I am not allowed to suggest in any
15 way what I may think about the facts of this case or the
16 guilt or innocence of the defendants. You are the judges
17 of the credibility and the believability of the witnesses
18 who have testified in this case.

19 Now, in passing upon their credibility, I made some
20 suggestions to you earlier as to what you could watch for.
21 Those things regarding credibility you can take into
22 consideration are such things as what was the manner and
23 appearance of the witnesses in the witness stand who
24 testified. Was he straightforward, was he hesitant in
25 answering, how did the witness come to know the facts that

1 he testified to. What was his ability to know these
2 facts. Is there some reason that a witness would want to
3 give testimony which would help or hurt one side or the
4 other. In other words was the witness biased or
5 prejudiced. Also was the testimony of a witness
6 strengthened or weakened by other testimony or other
7 evidence. You, the jury, may believe as much or as little
8 of each witnesses testimony as you deem appropriate and
9 proper. You may believe the testimony of a single witness
10 as that against many witnesses or just the opposite. You
11 may believe part of a witnesses testimony and disbelieve
12 the rest. The fact that the testimony is not controverted
13 does not mean that you must accept as true and undisputed.
14 You still must gage the credibility of the witnesses to
15 determine their believability or the truth of the facts
16 offered through their testimony.

17 Now, normally a person cannot give opinion testimony
18 in a trial. Normally when a person testifies they must
19 testify as to what they either saw, heard or sensed by
20 smell or something of that nature. There is an exception
21 when someone is qualified because of their education or
22 experience that they are permitted to give an opinion in
23 certain areas if the Court qualifies them in that way.
24 There was one witness qualified as an expert witness in
25 this trial. The Laurens County Deputy Sheriff, Lieutenant

1 Jimmy Sharpton was qualified as an expert in the field of
2 methamphetamine drug lab identification and drug lab
3 disposal. This expert was allowed to give opinion
4 testimony in his area of expertise. Now this does not
5 mean that you must accept his opinion but is evidence for
6 you to consider in your deliberations.

7 Now, I instruct you that there are two types of
8 evidence which are generally presented during trials.
9 There is direct evidence and there is circumstantial
10 evidence. Direct evidence is the testimony of a person
11 who asserts a claim to the actual knowledge of certain
12 facts such as an eyewitness. Circumstantial evidence is
13 proof of a chain of facts and circumstances indicating the
14 existence of another fact. The law makes absolutely no
15 distinction between the weight or value to be given to
16 either direct or circumstantial evidence. Nor is a
17 greater degree of certainty required of circumstantial
18 evidence than that of direct evidence. You should just
19 weigh all the evidence which has been presented to you in
20 this case. After weighing all the evidence if you are not
21 convinced of the guilt of the defendants beyond a
22 reasonable doubt you must find the defendants not guilty.

23 Now, as the sole fact finders as I instructed you
24 earlier and I will instruct you again. You should have
25 listened closely to the evidence presented. Weighing the

1 evidence is entirely a mental process. You must weigh it
2 using your good judgment and your common sense. Now, the
3 same constitution and law which makes you the finders of
4 the fact of the evidence as I discussed with you makes me
5 the Judge and I am the sole and only instructor of the law
6 in this case. You must accept the law as correct as I am
7 instructing it to you and apply it to the evidence as you
8 find it and reach a verdict. Now, if I should make an
9 error in the law as I am instructing it to you there is
10 another time and another place where that error can be
11 considered and if necessary corrected. But for the
12 purpose of the case here today you must accept the law as
13 I am instructing it to you. And in that regard I tell you
14 that neither you nor I for that matter should be concerned
15 about what we believe or think the law ought to be but
16 only concern ourselves as to what the law is as I instruct
17 to you to be at the current time.

18 Now, in a criminal prosecution such as this the State
19 has the burden of proof. The defense has absolutely no
20 burden, as the defendants are presumed to be innocent. In
21 this State and according to our Constitution the
22 prosecution must prove their case to the standard of proof
23 called beyond a reasonable doubt before a finding of guilt
24 may occur. If the State fails to meet this high burden
25 then the defendants are entitled to a verdict of not

1 guilty.

2 Now, what is a reasonable doubt. It is simply this.

3 A reasonable doubt is the kind of doubt which would cause
4 a reasonable person to hesitate to act. A reasonable
5 doubt may arise from evidence which is in the case or from
6 a lack of absence of evidence in this case. You, the
7 jury, must make the determination of whether or not
8 reasonable doubt exist as to the guilt of the defendants.
9 And the very fact that you, the jury, engage in full and
10 in free discussion on the issue of guilt or non-guilt in
11 this case does not automatically mean that reasonable
12 doubt exist in this case. Now, if you find the State has
13 not met the burden of proof beyond a reasonable doubt the
14 defendants are entitled to a verdict of not guilty.

15 Now, I instruct you that since there are two
16 defendants in this case each of whom is charged with
17 manufacturing methamphetamine, the case of each defendant
18 and the evidence and the law concerning each defendant
19 should be considered separately and individually. Your
20 verdict does not have to be the same for both defendants.
21 The fact that you find one defendant guilty or not guilty
22 should not control your verdict as to the other defendant.
23 When more than one person is charged with a crime, if the
24 evidence warrants it you may convict one and acquit the
25 other or you may acquit both or you may convict both. It

1 would depend upon your view of the testimony and evidence
2 in this case. You must take each defendant and consider
3 the evidence as to that defendant and my instructions to
4 you on this law. You will then write a separate verdict
5 of guilty or not guilty for each defendant. As I told you
6 earlier there were two separate indictments. One for Ms.
7 Armstrong and one for Mr. Dill and you are to consider
8 those separately.

9 Now, I instruct to you and I emphasize the fact that
10 the defendants chose to not testify. And the fact that
11 they chose to not testify is not a factor to be considered
12 by you in any way in your deliberations and in your
13 consideration of the question of guilt or innocence of
14 each of these defendants. It must not be considered by
15 you in any manner whatsoever, the defendants have the
16 constitutional right to remain silent and the assertion of
17 this right must not be considered by you as the jury in
18 your deliberations. Under your oath you are to draw no
19 conclusion whatsoever from the fact that these defendants
20 in this case chose to not testify. The fact that the
21 defendants did not testify should not even be discussed in
22 the jury room. The burden of proof as I have instructed
23 you earlier is upon the State. The defendants are not
24 required to prove their innocence, the burden remains upon
25 the State to prove their guilt beyond a reasonable doubt.

1 Now, as a necessary element of each crime the State
2 must prove beyond a reasonable doubt criminal intent of
3 the defendants. Criminal intent is always a matter that
4 must be determined by the jury from the circumstances
5 surrounding the situation. There is no way to prove
6 intent to a mathematical certainty and there is no way
7 that medical science can dissect a person's brain and
8 determine what he or she had in mind. And so the law
9 states criminal intent may be inferred from circumstances
10 shown to have existed both before and after the facts.
11 This is how you, the jury, make a determination of whether
12 or not the element requiring an intent was present.
13 Criminal intent is a state of mind that operates jointly
14 with an act or omission in the commission of a crime.
15 Criminal intent is a mental state of conscious wrongdoing
16 so it is up to you, the jury, to determine what the
17 defendants intended to do based upon circumstances shown
18 to have existed. I tell you that the State must prove
19 criminal intent beyond a reasonable doubt just as they
20 must prove each and every element beyond a reasonable
21 doubt.

22 Now, in this case both defendants are charged with
23 manufacturing in methamphetamine. Our State code under
24 code section 44-53-375 states that a person shall not
25 manufacture, distribute, dispense, deliver, purchase,

1 provide financial assistance or otherwise aid and abet,
2 attempt or conspire to manufacture, dispense, distribute,
3 deliver or possess with intent to distribute, dispense,
4 deliver methamphetamine is guilty of the charge of
5 manufacturing in meth. I also instruct you that
6 possession of equipment used in the manufacture of
7 methamphetamine is prima facie evidence or, in other
8 words, evidence on its face that the defendants intended
9 to manufacture methamphetamine. In this case the State
10 must prove beyond a reasonable doubt that the defendants
11 had the intent to manufacture in methamphetamine.

12 Now, in summary, in a criminal prosecution the State
13 has the burden of proof, the defense has no burden to
14 prove anything as they are presumed to be innocence. In
15 our State and according to our constitution the
16 prosecution must prove their case beyond a reasonable
17 doubt before a finding of guilt may occur. And if the
18 State fails to meet this burden then you, the jury, have
19 the duty to find the defendants not guilty. If the State
20 meets this burden of proof the State is then entitled to a
21 verdict of guilty. You must, after weighing all of the
22 evidence, make a determination of whether or not
23 reasonable doubt exist as to the guilt of each of these
24 defendants. And as I told you earlier, the very fact that
25 you engage in full and free discussion with the issue of

1 guilt or non-guilt does not automatically mean that a
2 reasonable doubt exist.

3 Now, your verdict may not be based on conjecture or
4 speculation. But if you are convinced of the guilt of the
5 defendants beyond a reasonable doubt you must find him
6 guilty. However, if you find the State has not met its
7 burden of proof beyond a reasonable doubt then the
8 defendants are entitled to a verdict of not guilty. Ms.
9 Crawford and members of the jury, as you retire to the
10 jury room and begin your deliberations I wish to express
11 the hope that each of you will be mindful of the
12 importance of your responsibility here today as you are
13 not called upon to serve as jurors very often. You
14 collectively are, as a group of the community and of this
15 State and is why I must see to it that this trial has been
16 conducted in a fair manner and you must see to it that a
17 verdict is just. It is my responsibility as a Judge of
18 this case to see that every person tried here in this
19 courtroom receives a fair and impartial justice. Please
20 understand I am not trying to tell you how you should
21 decide this case as the law of South Carolina does not
22 allow me to have an opinion as to the facts in the case.
23 It is your decision as jurors to make those
24 determinations. Now, I am vitally and firmly convinced
25 that whatever verdict you find will be the result of you

1 going in the jury room and confining your consideration to
2 the evidence which you have heard from this trial,
3 applying to the law as I have instructed it to you,
4 weighing the evidence fairly and impartially and reaching
5 a unanimous verdict.

6 Ms. Crawford, I told you earlier, I have the
7 indictments and I will show them to you. There is a line
8 for guilty or not guilty, a signature line and sign and
9 date on each. The indictments are separate, the main
10 difference is the names. I will send these back to the
11 jury room with you momentarily along with the four pieces
12 of evidence, the four pictures, y'all will have those in
13 the jury room. The attorneys are allowed to make
14 suggestions or request for me to give you additional
15 instructions or more clear instructions. I gave y'all a
16 fifteen minute instruction. The lawyers, it is their case
17 and they know it better than I. They may want me to
18 clarify or redefine what a reasonable doubt is or
19 something along those lines. The attorneys are allowed to
20 make comments to me as soon as I send y'all back to the
21 jury room. So I will consider their comments to whether I
22 need to provide you additional instructions or clarify an
23 instruction or in addition an instruction that I failed to
24 give them that I told them I would. So I want to hear
25 their comments first to decide whether or not we need

1 additional instructions. So I am going to hold this with
2 the four pictures here in the courtroom until I hear from
3 the lawyers. If they convince me you need additional
4 instructions I will bring you back in here. If I send
5 these back and retrieve the alternate out at that time, as
6 soon as you get the indictments and the pictures you may
7 then begin your instructions. Until you get this don't
8 start. If you want to hear any testimony again, if you
9 want to be instructed on the law on anything that I have
10 instructed you write it down and give it to the bailiff
11 and give them that note. It will be sent out here and the
12 lawyers and I will discuss on how we are going to instruct
13 you on or perhaps redefine what is a reasonable doubt.
14 That is the best example I have. Now, if you wish to hear
15 testimony of either of the witnesses or stipulation made
16 on the record, that will give Ms. Holston an opportunity
17 to cue up because she recorded everything in here and she
18 using the machine to make a separate transcription. If
19 you want to hear testimony again write it down and we will
20 bring you in to hear it. With those instructions and
21 comments and as soon as I determine whether the lawyers
22 want me to instruct you further I will have you back in
23 here. Otherwise you will have the pictures and the
24 indictments and y'all can begin your discussions at that
25 time. All right.

1 (Whereupon, the jury was excused from open court at
2 approximately 2:55 p.m.)

3 THE COURT: Any comments and I know I have already
4 forgot something. The request to charge on possession,
5 actual and constructive possession. I didn't mention any
6 of that.

7 MR. MAYER: Your Honor, I hate to term prima facie.
8 It gives the impression to people that don't know what it
9 means that they are suppose to do something if they have
10 prima facie evidence.

11 THE COURT: I will try to define on its face
12 separately. Do you have a suggestion, how to interpret to
13 translate the Latin.

14 MR. MAYER: Prima facie is the minimum standard. If
15 you have that you can do it but you don't have to. At
16 that point, that if you reach that point you can, but it
17 is not a requirement.

18 THE COURT: I think that is confusing. Your request
19 is noted but I think that the evidence on its face with an
20 alternate definition more in common sense terms without
21 Latin, I am going to limit my instruction on that too, on
22 its face and not get into trying to tell the jury how to
23 weigh the evidence. I am going to bring them back out and
24 define actual and constructive possession because I didn't
25 do that at all. Anything else, Ms. Agnew?

1 MS. AGNEW: Nothing else, Your Honor.

2 THE COURT: Bring the jury back.

3 (Whereupon, the jury came into open court at
4 approximately 2:58 p.m.)

5 THE COURT: Ladies and gentlemen, I did not give you
6 the legal definition under our law as to the terms, I did
7 not define for you the possession, actual possession and
8 constructive possession of an item or an object, any type
9 of thing. In South Carolina our laws define possession
10 two different ways, there is actual possession and
11 constructive possession. Actual possession occurs when an
12 item or object is found in actual physical custody of a
13 person charged with possession. Constructive possession
14 is when a person has dominion and control or the right to
15 exercise dominion and control of the object or the
16 premises where the object is located. So, that is how our
17 courts determine possession. And, again, possession is
18 one of the elements that has to be proved by the State
19 beyond a reasonable doubt as with all of the other
20 elements of the crime charged. Is that sufficient, Ms.
21 Agnew?

22 MS. AGNEW: Yes, Your Honor.

23 THE COURT: Mr. Mayer?

24 MR. MAYER: Yes, Your Honor.

25 THE COURT: Ms. Crawford, take those pictures and

1 make sure there are four and begin your deliberations.

2 And the alternate, you may stay with me.

3 (Whereupon, deliberations started at approximately

4 3:01 p.m.)

5 (Whereupon, the alternate was excused from the trial

6 of the case at approximately 3:02 p.m.)

7 THE COURT: I understand we have a verdict. Bring
8 the jury in, please.

9 (Whereupon, the jury came into open court with the
10 verdict at approximately 3:44 p.m.)

11 THE COURT: Ms. Crawford, has the jury reached a
12 verdict?

13 FORELADY: Yes, sir.

14 THE COURT: Was the verdict unanimous?

15 FORELADY: Yes, sir.

16 THE COURT: Hand it to Mr. Byers, please. All right,
17 Madam Clerk, you can read the verdict.

18 CLERK OF COURT: In the case of the State versus
19 Molina Lynn Armstrong, case number 2011-GS-30-515. The
20 verdict is guilty. And in the case of Clyde James Dill,
21 indictment number 2011-GS-30-633, the verdict is guilty.
22 Ladies and gentlemen, if this be your verdict please
23 signify by your upraised right hand.

24 (Whereupon, all jurors raised their hand.)

25 THE COURT: Mr. Mayer, do you want the jury polled?

1 That being said I am going to defer sentencing in the
2 morning, first thing. Can you be ready then, Ms. Agnew?

3 MS. AGNEW: Yes, Your Honor.

4 THE COURT: Mr. Mayer?

5 MR. MAYER: Absolutely.

6 THE COURT: The sheriffs department is directed to
7 have the two defendants here in the morning first thing.

8 (Whereupon, sentencing is deferred until the next
9 morning.)

10 April 12, 2012.

11 THE COURT: We are back on the record of the case
12 11-GS-30-633 and 515 which is James Clyde Dill and Molina
13 Lynn Armstrong.

14 MS. AGNEW: That's correct, Your Honor.

15 THE COURT: Ms. Agnew, I will hear from you first.

16 MR. MAYER: Your Honor, if I may, I would like to
17 move before the Court to, ask the Court to consider
18 setting aside the verdict as being unsupported by the
19 evidence. Our position has maintained all along that
20 there was insufficient evidence presented to this jury to
21 make the decision that it did, speculation on their part.
22 We would request the Court to set the verdict aside as
23 being improper.

24 THE COURT: I think that was, the Court made a
25 determination that there was evidence present for the jury

1 to consider, it was the jurys responsibility to weigh and
2 determine whether or not evidence was sufficient to meet
3 the proof required by the State. The jury made that
4 determination. So respectfully I will deny that request.

5 MR. MAYER: Thank you, Your Honor.

6 THE COURT: All right.

7 MS. AGNEW: Your Honor, with regards, the issue that
8 we discussed in chambers yesterday, in regards to whether
9 or not that ten years is suspendible. As Your Honor
10 indicated yesterday, the statute says notwithstanding any
11 other provision of the law that a person convicted of a
12 third or subsequent offense where all the prior offenses
13 were for possession of a controlled substance, pursuant to
14 subsection (a), which outlines the possession statute may
15 have a sentence suspended. In this case, after examining
16 the criminal histories of both defendants and looking at
17 their convictions, both of them have drug conspiracy
18 convictions as part of the enhanceable prior convictions.
19 And so this subsection of the statute would not apply to
20 either of these defendants in this case.

21 THE COURT: Mr. Mayer, have you had an opportunity to
22 examine the prior records?

23 MR. MAYER: Yes, Your Honor, I have. And while I
24 wish there was a reasonable alternative, Ms. Agnew is
25 correct, the law is pretty definite and the exception

1 refers specifically to section (a) and the sentencing
2 section refers to any and all charges and both of these
3 individuals have prior drug convictions which are not
4 within section (a) of this particular statute. And so
5 that would not apply to the minimum of ten, would indeed
6 be the law.

7 THE COURT: All right. You want to present any
8 factors regarding this?

9 MR. MAYER: As far as arguing for sentencing, Your
10 Honor, as far as mitigating factors and putting any
11 evidence before the Court, no, I will just have argument
12 and presentation. The sentences range from ten to thirty
13 years and that range was set by the legislature with the
14 intent of looking at the least culpable being in the ten
15 year end and the most being in the other. In the case of
16 Mr. Dill, Your Honor, his priors are being back to 2000,
17 that is ten years ago. In light of the space between when
18 he had any prior problem, and what I would continue to
19 refer to as the paucity in this case, Your Honor heard the
20 trial. There were no drugs found, there was no
21 manufacturing going on. The jury apparently ruled solely
22 on the constructive argument of a piece of equipment that
23 was in their yard. Again, they determined based upon the
24 opinion. Since none of that was preserved for our
25 analysis I would ask that in Mr. Dill's case that the

1 sentence be the minimum that the Court could impose.

2 With respect to Melina's situation, Your Honor, her
3 record is more extensive. If you look at her record she
4 has convictions as recent as 2009. But the majority of
5 the problems that she has had is evidenced by the record,
6 she has got some drug convictions in the past but the size
7 of her record is drug involvements and some financial
8 situation. Currently these individuals, prior to
9 yesterday were working for Mr. Dill's father, he is in the
10 courtroom. Mr. Dill's parents and his son are here in
11 support of him. Molina doesn't have family to be here.
12 Your Honor, I request that the, in light of the limited
13 amount of involvement, sufficient the Court has ruled to
14 meet the burden required by the law but that minimal
15 amount of involvement in the claim of manufacturing that
16 this be at the low, in the spectrum by the legislature.

17 THE COURT: Ms. Agnew, anything from you?

18 MS. AGNEW: Your Honor, from the State, officers from
19 yesterday are here but I don't think they have anything to
20 add. I am just going to read their criminal histories
21 into the record.

22 THE COURT: I have reviewed them in-camera but you
23 can put them on the record.

24 MS. AGNEW: With regards to James Dill, he has got a
25 conviction for drug conspiracy from 2001 and convictions

1 for criminal conspiracy and possession of methamphetamine
2 second in 2002.

3 And then with regards to Molina Armstrong, she has
4 got CDV, some traffic offenses, simple assault, financial
5 transaction card theft, petty larceny, delivery of false
6 documents, forgery, a second forgery, another forgery,
7 three convictions for drug conspiracy from 2002, malicious
8 injury to personal property and financial transaction card
9 fraud, possession of a controlled substance from 2010, and
10 I believe that was her last conviction.

11 THE COURT: Mr. Mayer, were you appointed?

12 MR. MAYER: No, Your Honor.

13 THE COURT: Anything else?

14 MS. AGNEW: Not from the State.

15 MR. MAYER: Not from the defendants.

16 THE COURT: Hearing nothing else, the sentence of the
17 Court on each, determinate term of ten years, credit for
18 any time they have already served. Good luck.

19 MS. AGNEW: Thank you, Your Honor.

20 MR. MAYER: Thank you, Your Honor.

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

22

23

24

25

STATE OF SOUTH CAROLINA

County/Municipality of LAURENS

SEARCH WARRANT

Date 02/14/2011

Officer SGT. JUSTIN R. MOODY

000000000292

Date Printed: 02/14/2011 09:50:16 AM

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

SEARCH WARRANT

145
Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF LAURENS

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

HAPPY VALLEY ROAD IN LAURENS COUNTY, THE RESIDENCE SITS APPROXIMATELY 50 YARDS FROM THE ROADWAY, AND IS A SINGLE OCCUPANCY DWELLING. THE DWELLING IS A BROWN IN COLOR SINGLE WIDE MOBILE HOME WITH A WHITE IN COLOR DUMP TRUCK IN THE YARD. THIS IS TO INCLUDE ALL PERSONS, OUTBUILDINGS, VEHICLES, CURTLEDGE, AND ANY AND ALL ASSOCIATED PROPERTY OF THIS ADDRESS.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL ITEMS OF EVIDENTIARY VALUE TO INCLUDE BUT NOT LIMITED TO EPHEDRINE BASED MEDICATIONS, LITHIUM STRIPS AND ANY AND ALL PARTS OF LITHIUM BATTERIES, BOTTLES, TUBING, HYDROGEN PEROXIDE, SALT, COLD PACKS AND CONTENTS OF SUCH, TOLUENE, LIQUID DRAIN CLEANER, AND ANY CURRENCY, FIREARMS, SURVEILLANCE EQUIPMENT ELECTRONIC AND OTHERWISE, AND ANY AND ALL OTHER ITEMS THAT COULD BE USED IN THE ILLEGAL MANUFACTURING, DISTRIBUTION, OR CULTIVATION OF ILLEGAL NARCOTICS.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

~~A written inventory of all property seized pursuant to this Search Warrant shall be made to~~

ANY LAWFUL MAGISTRATE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Laurens County, S.C.

Feb. 14-11

11-1

Signature of Judge

(L.S.)

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

AFFIDAVIT

Personally appeared before me, one J. R. MOODY
who, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL ITEMS OF EVIDENTIARY VALUE TO INCLUDE BUT NOT LIMITED TO EPHEDRINE BASED MEDICATIONS, LITHIUM STRIPS AND ANY AND ALL PARTS OF LITHIUM BATTERIES, BOTTLES, TUBING, HYDROGEN PEROXIDE, SALT, COLD PACKS AND CONTENTS OF SUCH, TOLUENE, LIQUID DRAIN CLEANER, AND ANY CURRENCY, FIREARMS, SURVEILLANCE EQUIPMENT ELECTRONIC AND OTHERWISE, AND ANY AND ALL OTHER ITEMS THAT COULD BE USED IN THE ILLEGAL MANUFACTURING, DISTRIBUTION, OR CULTIVATION OF ILLEGAL NARCOTICS.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

HAPPY VALLEY ROAD IN LAURENS COUNTY, THE RESIDENCE SITS APPROXIMATELY 50 YARDS FROM THE ROADWAY, AND IS A SINGLE OCCUPANCY DWELLING. THE DWELLING IS A BROWN IN COLOR SINGLE WIDE MOBILE HOME WITH A WHITE IN COLOR DUMP TRUCK IN THE YARD. THIS IS TO INCLUDE ALL PERSONS, OUTBUILDINGS, VEHICLES, CURTLEDGE, AND ANY AND ALL ASSOCIATED PROPERTY OF THIS ADDRESS.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

LAURENS COUNTY SHERIFF'S OFFICE HAS RECEIVED INFORMATION IN THE LAST 72 HOURS THAT AT THE ABOVE LISTED LOCATION AN ACTIVE METHAMPHETAMINE LAB IS IN OPERATION. A CONFIDENTIAL INFORMANT WORKING IN AN UNDERCOVER CAPACITY WITH THE LAURENS COUNTY SHERIFF'S OFFICE WAS AT THIS LOCATION AND DID SEE NUMEROUS ITEMS THAT ARE USED IN THE MANUFACTURING OF METHAMPHETAMINE.

Sworn to and Subscribed before me

this 14 day of Feb., 11

Signature of Judge

(L.S.)

Affiant

Address PO BOX 68LAURENS SC 29360Phone 864-984-4967

Date Printed: 02/14/2011 09:50:16 AM

RETURN

I received the attached Search Warrant (M. B. Blackmon) 2-15-11, and have executed it as follows:

On Feb. 15, 2011 at 1211 o'clock pm, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

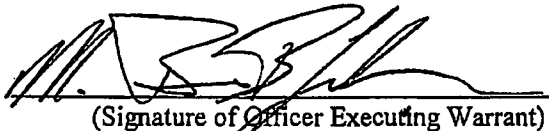
one Gallon Coleman lantern fuel, 32 oz. plastic bottle
Coleman lantern fuel, 5 one pound containers of salt,
one 16 oz container of peroxide, numerous hypodermic
needles, one HCl generator, one metal container with
cotton swabs containing meth, one clear baggie with meth
residue, one Galen glass container with pastic liquid.

This inventory was made in the presence of Simon Sharpton

AND SGT Moody

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____ }
day of _____, }
_____, (L.S.) }
Signature of Judge


(Signature of Officer Executing Warrant)

Date Printed: 02/14/2011 09:50:16 AM

WITNESSES

J. R. Moody
Laurens County Sheriff

WARRANT NUMBER

J619328

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

May Term, 2011

Indictment # 11GS30- 0633

THE STATE

vs.

James Clyde Dill Jr.

VERDICT

Guilty

Pam Crawford

Foreman

4-11-12

INDICTMENT FOR

MANUFACTURING METHAMPHETAMINE
44-53-375

THE STATE OF SOUTH CAROLINA

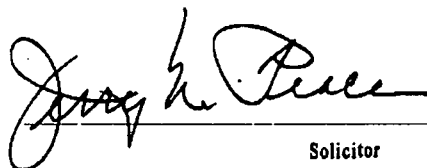
COUNTY OF LAURENS

INDICTMENT FOR**MANUFACTURING METHAMPHETAMINE
44-53-375**

At a Court of General Sessions, convened on the 6th day of May, 2011 the Grand Jurors of Laurens County present upon their oath:

That James Clyde Dill Jr., did in Laurens County, state aforesaid, on or about the 15th day of February, 2011 willfully, unlawfully and knowingly manufacture or otherwise aid, abet, attempt or conspire to manufacture Methamphetamine, in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended.

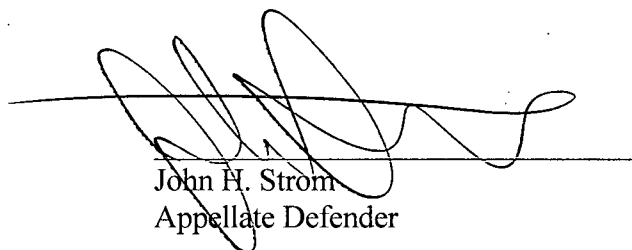
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 26th, 2015



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

JUN 26 2015

SC Court of Appeals