

22218

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

V.

FRED JACK SANDERS,

APPELLANT

APPELLATE CASE NO. 2014-001326

RECORD ON APPEAL

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 2013-GS-40-5849
 2013-GS-40-5850
 2013-GS-40-5851

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Fred Jack Sanders,)
)
 Defendant.)
)
 _____)

March 17, 18, 19, 2014
 Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge, and a jury

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Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

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1 MONDAY, MARCH 17, 2014

2 THE COURT: Is Fred Jack Sanders present?

3 DEFENDANT: Are you saying the trust -- you're
4 administrating his -- the Fred Jack Sanders trust?

5 THE COURT: I'm asking if the individual Fred Jack
6 Sanders is present.

7 DEFENDANT: May I ask with respect as a matter of law
8 what role each of us play in here today with respect to ---

9 THE COURT: You answer my question. I'll answer your
10 question.

11 DEFENDANT: Are you the CQV trustee who is appointed
12 the judge as administrator, the trustee of the constructive
13 case number?

14 THE COURT: Are you Mr. Fred Jack Sanders?

15 DEFENDANT: Did you appoint the prosecutor as ---

16 THE COURT: Sir, will you look at me?

17 DEFENDANT: --- executor of the constructive trust?
18 Are you the trustee?

19 THE COURT: Sir, I am the judge of this court, and I
20 going to sit on the trial.

21 DEFENDANT: And are you the executor?

22 THE COURT: No. I'm going to answer your questions.
23 The answer is no. This is a court of law, and you are
24 about to be tried, and I'm giving you -- I'm going to give
25 you fair notice of what you are about to be tried for if

1 you, if you are Fred Jack Sanders.

2 DEFENDANT: I'm the beneficiary.

3 THE COURT: What is your name?

4 DEFENDANT: So we now know who is ---

5 THE COURT: What is your name?

6 DEFENDANT: And as beneficiary, I authorize you to
7 handle the account and dissolve the constructive trust. I
8 now claim my body. So, I'm collapsing the CQV trust which
9 you have charged, and is no value in it.

10 Respectfully, it is a matter of law for me to know the
11 roles we're all playing here. If you don't answer, I'll be
12 lodging an appeal, and I appeal now that this matter be
13 suspended so I can request an interlocutory argument and
14 have this question answered.

15 THE COURT: Is your name Fred Jack Sanders?

16 DEFENDANT: I am the beneficiary.

17 THE COURT: Mr. Hawks, have you -- you represent Fred
18 Jack Sanders?

19 MR. HAWKS: I do, Your Honor.

20 THE COURT: To the best of your knowledge, is Fred
21 Jack Sanders present?

22 THE COURT: Yes, Your Honor.

23 THE COURT: All right. Well, I'm going to advise Mr.
24 Fred Jack Sanders that he's about -- that he has been
25 charged with manufacturing methamphetamine, possession with

1 intent to distribute meth amphetamine, possession with
2 intent to distribute heroin, possession with intent to
3 distribute crack cocaine, possession of a firearm by a
4 person convicted by a crime of violence, and possession of
5 a schedule IV drug, a controlled substance.

6 Now, how does your client plead to these charges, Mr.
7 Hawks?

8 MR. HAWKS: Not guilty.

9 THE COURT: All right, and how do you wish -- how does
10 he wish to be tried?

11 MR. HAWKS: By a jury, Your Honor.

12 THE COURT: All right, then we will proceed.

13 Now, have you advised your client of his right to be
14 dressed in civilian clothes for the duration of this trial?

15 MR. HAWKS: I have, Your Honor.

16 THE COURT: And does your -- what is your client's
17 wish? Does he wish to be dressed in civilian clothes or
18 dressed in prison garb?

19 MR. HAWKS: He wishes to remain in his prison
20 jumpsuit.

21 THE COURT: All right. Have you advised him that
22 that's probably not a wise thing to do because the jury may
23 infer certain things from the fact that he's dressed in
24 prison garb that may be not beneficial to him, may be
25 prejudicial to him? You advised him of that?

1 MR. HAWKS: I have, Your Honor.

2 THE COURT: All right, and despite your advice, does
3 he wish to remain in prison garb?

4 MR. HAWKS: I believe he does.

5 THE COURT: All right. Fine. All right, I will
6 caution you to caution him about any undue outbursts during
7 the course of the trial. Since he does not wish to
8 communicate with me, I'm going to have to comment with him
9 through you, and that if he becomes unruly or out of order
10 during the course of the trial, he may be excluded from the
11 courtroom and tried in his absence.

12 MR. HAWKS: I have explained that to him, and I will
13 again, Your Honor.

14 THE COURT: All right. Please do. All right.

15 (A PAUSE.)

16 DEFENDANT: Your Honor, is there a reason any of my
17 questions weren't answered?

18 (A PAUSE.)

19 THE COURT: All right, Solicitor, I have the defense's
20 request for voir dire. Does the state have any objection
21 to the requested voir dire from the defendant?

22 MS. CAVANAUGH: Your Honor, we do not have any
23 objections to their requested voir dire. We do -- we would
24 just ask that the reciprocal questions be asked.

25 THE COURT: All right.

1 MS. CAVANAUGH: Included with anyone's ever been
2 arrested for any kind -- any drug crime.

3 THE COURT: All right. Mr. Hawks, another question.
4 Has your client been evaluated for his ability to stand
5 trial, his capability of standing trial?

6 MR. HAWKS: He has, Your Honor.

7 THE COURT: You have a report?

8 MR. HAWKS: I do.

9 THE COURT: You shared that with the state? You don't
10 -- not that you have to.

11 MR. HAWKS: Yes.

12 THE COURT: You have?

13 MS. CAVANAUGH: We received a copy, Your Honor.

14 THE COURT: Could, I see it? How recent was the
15 evaluation?

16 MS. CAVANAUGH: Very recent. It was conducted on
17 February 26th of 2014.

18 THE COURT: All right. You aware of any change in
19 behavior of your client since the evaluation?

20 MR. HAWKS: No, Your Honor.

21 THE COURT: The answer is no?

22 MR. HAWKS: No, Your Honor.

23 THE COURT: Just want to make sure it's on the record.

24 (A PAUSE.)

25 THE COURT: All right, I'd like to make this a part of

1 THE COURT: Tell her it will not last past this week.
2 It may last for a couple of days. I don't know.

3 BAILIFF: Okay.

4 THE COURT: All right, I understand there's some
5 pretrial matters that need to be taken up by the court.
6 Why don't we -- just so everybody will be aware of it, what
7 motions of a pretrial nature need to be heard by the court?
8 We're not going to do it now. We're going to do it after
9 lunch, but I just want a list.

10 MR. HAWKS: I have a long list.

11 THE COURT: You want to hand that up? Have you given
12 it to the state?

13 MS. CAVANAUGH: No, he hasn't.

14 MR. HAWKS: I only have the one copy.

15 THE COURT: Always come with more than one copy.

16 All right, let's talk about suppression. What do you
17 seek to suppress?

18 MR. HAWKS: We are seeking to suppress all the
19 physical evidence that was destroyed, along with some of
20 his statements, alleged statements at the scene, and then
21 also some other things that may be mentioned throughout the
22 trial we don't want the jury to hear.

23 THE COURT: So, that would be in the form of a limine
24 motion?

25 MR. HAWKS: Yes. There were some other drugs found at

1 I called Ms. Ricard to see if I could go inspect the
2 evidence myself and she, she didn't even know what I was
3 talking about, and that's when I learned that it had been
4 destroyed. And I was at that time also given basically a
5 invoice and some other paperwork that the company filled
6 out and Deputy Ricard filled out about what happened to
7 that evidence. But again, I just learned all that last
8 week.

9 Also at that time, I asked Ms. Cavanaugh for the chain
10 of custody information and for the contact information for
11 the confidential informant. Her response to the latter was
12 that she did not think the state had to comply, and I still
13 at this point still don't have the chain of custody
14 information. And if you would like me to begin discussing
15 about *State vs. Burns*, I can do that.

16 THE COURT: Well, let's talk about this evidence that
17 you say has been destroyed. You know what evidence that
18 is, or if you never saw it, I guess you don't know what it
19 is.

20 MR. HAWKS: Well, there's pictures, Your Honor. So, I
21 have an idea of what it is, but again I don't have a
22 property evidence report. So, I couldn't tell you
23 specifically.

24 THE COURT: Well, if the state can't prove the nature
25 of the drugs, they don't have much of a case.

1 MR. HAWKS: Well, the drugs -- you know, as far as I
2 know, I'm just talking about the equipment allegedly used
3 to actually ---

4 THE COURT: Oh. Oh. I thought you said everything
5 was destroyed.

6 MR. HAWKS: No.

7 THE COURT: Maybe Mr. Mathews can clear it up.

8 MR. MATHEWS: I think I can clear it up, Your Honor.
9 Basically what happened was there was, there was not an
10 active meth lab at the time, but there were materials that
11 were used, had been used previous to cook meth at this
12 location. My investigators went in. That is the state
13 policy, if not national policy, to destroy any and all
14 products that are involved with a meth lab because they are
15 actually toxic waste.

16 THE COURT: How about the drugs?

17 MR. MATHEWS: The, the drugs were all preserved. The
18 only things that were destroyed were the bottles and the
19 actual the -- the reagents that were used to cook
20 methamphetamine.

21 THE COURT: Oh. So, that ---

22 MR. MATHEWS: We have the meth, and we have
23 photographs of everything that was destroyed.

24 THE COURT: For example?

25 MR. MATHEWS: There is a, like, a Coleman camp fuel

1 liquid. There were a couple of bottles.

2 THE COURT: A burner?

3 MR. MATHEWS: The -- just the actual fuel for it.

4 THE COURT: Fuel?

5 MR. MATHEWS: Yes, sir. We have actually a list of
6 everything that was destroyed.

7 THE COURT: Have you shared that?

8 MR. MATHEWS: That was the document Mr. Hawks was
9 talking about that was turned over, which was done by, it
10 was done by a company called Phillips -- I don't know the
11 last name of it, but they provided a, looks like about an
12 eight or nine-page form that lists everything that they
13 destroyed. Corrosive liquid, waste lithium, all the after
14 effects of the meth lab.

15 THE COURT: All right. Okay, but you have the
16 finished product?

17 MR. MATHEWS: There was no finished product from, from
18 this lab. There was some meth found in the house, but this
19 was not an active lab. This was, this was what he was
20 charged with making, methamphetamine, because he had all of
21 the material to manufacture methamphetamine.

22 THE COURT: But you have no evidence that he did it?

23 MR. MATHEWS: It was in his room. He admitted to it,
24 and there was meth found in his room.

25 THE COURT: Meth found in his room?

1 MR. MATHEWS: Correct.

2 THE COURT: In what quantity? You've got a PWID
3 methamphetamine ---

4 MR. MATHEWS: Not, not ---

5 THE COURT: --- charge?

6 MR. MATHEWS: --- not PWID. We actually have -- he
7 had it in individual syringes that were, like, one -- used
8 syringes that had liquid methamphetamine for single use
9 which he was selling. So, that's where the distribution of
10 methamphetamine -- and it's not over the inference weight.
11 That's not what we have here.

12 THE COURT: You've got a series or number of syringes?

13 MR. MATHEWS: Yes, Your Honor.

14 THE COURT: How about the heroin and the cocaine?

15 MR. MATHEWS: We have all that. That was not
16 destroyed. The only thing that was destroyed were the
17 other -- the evidence that was the meth lab.

18 MS. CAVANAUGH: Your Honor, I can speak to the heroin
19 charge. It was approximately ten times over the inference
20 weight pursuant to the statute.

21 THE COURT: Okay.

22 MS. CAVANAUGH: We did not indict him for cocaine.
23 Did for crack cocaine but not cocaine.

24 THE COURT: What about crack then?

25 MS. CAVANAUGH: The crack cocaine was located in the

1 middle of where Mr. Sanders was sitting, along with two
2 other people.

3 THE COURT: He was there?

4 MS. CAVANAUGH: And he was there, yes, when they
5 executed the search warrant.

6 THE COURT: And is that an inference weight also?

7 MS. CAVANAUGH: No, Your Honor. That was based on how
8 it was cut up and packaged.

9 THE COURT: Packaged. Same as the methamphetamine?

10 MS. CAVANAUGH: Similar. Well, the methamphetamine,
11 they -- there's additional methamphetamine that he admitted
12 to that was in the syringes that were not tested because
13 the Richland County lab's policy is they do not open for
14 safety concerns. They do not open syringes or, or test
15 anything with needles. However, he did admit after Miranda
16 that in those syringes was methamphetamine in liquid form.
17 There was also residue located in his room.

18 THE COURT: Was that tested?

19 MS. CAVANAUGH: That was tested, and that was less
20 than inference weight, but it did come back as positive for
21 methamphetamine.

22 THE COURT: All right. Well, getting the picture.

23 All right, Mr. Hawks, she -- they say that they have
24 the evidence of the drugs but not of the cooking equipment.

25 MR. HAWKS: Yes, Your Honor, and I'm sorry if I

1 confused the court. I have a separate motion about the
2 destruction. I'm simply asking for more time because this
3 stuff was given to me last week.

4 THE COURT: Oh.

5 MR. HAWKS: I thought we would have time to look at
6 the evidence, and that's why I called Investigator Ricard.

7 THE COURT: Okay. So, you're just, you're telling me
8 it wasn't timely delivered to you?

9 MR. HAWKS: Yes.

10 THE COURT: That's basically your motion?

11 MR. HAWKS: To be honest, I'm not sure I ever would
12 have gotten it until today if I had not tried to seek it
13 out myself.

14 THE COURT: Well, how long have you had this case?

15 MR. HAWKS: I've had this case since I started in
16 general sessions in June of last year.

17 THE COURT: Okay. Did you do a Rule 5?

18 MR. HAWKS: Absolutely, and I renewed it last week.

19 THE COURT: And you're saying ---

20 MS. CAVANAUGH: And, Your Honor -- I'm sorry.

21 THE COURT: One at a time, and you say that pursuant
22 to your Rule 5 request you got nothing or you got -- you
23 didn't get any of this information until ---

24 MR. HAWKS: I did get discovery ---

25 THE COURT: --- last week?

1 MR. HAWKS: --- back in the fall, I believe, but no
2 mention of the fact that the supplies that they are using
3 to charge him with manufacturing had been disposed of. I
4 learned of that last week.

5 THE COURT: In response to what?

6 MR. HAWKS: In response to calling Investigator Ricard
7 and asking her ---

8 THE COURT: But not in response to your Rule 5
9 request?

10 MR. HAWKS: No. I'm not sure Ms. Cavanaugh knew that
11 it had been destroyed either.

12 THE COURT: And the evidence -- we'll call it evidence
13 -- that was destroyed, is that the basis for the
14 indictment, of the warrant?

15 MR. HAWKS: The basis for the manufacturing.

16 THE COURT: How about that, Ms. Cavanaugh? He
17 says ---

18 MS. CAVANAUGH: Your Honor.

19 THE COURT: --- he's surprised that, he's surprised
20 that the evidence which the state plans to use to prove the
21 manufacturing has been destroyed, and you're only going to
22 show the jury pictures.

23 MS. CAVANAUGH: Your Honor.

24 THE COURT: And he only found out about that last
25 week.

1 MS. CAVANAUGH: Well, it is standard in any meth case
2 I've ever had, they -- it is standard practice for the
3 Richland County Sheriff's Department to not keep the
4 hazardous materials in their evidence room, and they ---

5 THE COURT: Well, why did they destroy it? When was
6 it -- when did all that take place?

7 MS. CAVANAUGH: The day of the...

8 THE COURT: Of the arrest?

9 MS. CAVANAUGH: The day of the arrest, Your Honor.

10 THE COURT: Why, why wasn't -- why couldn't you tell
11 defense counsel that's what happened?

12 MS. CAVANAUGH: Well, Your Honor, I guess -- the
13 search warrant indicated that these items were collected.
14 The return, he had the search warrant return. The drug
15 reports show, you know, the drugs that were tested and
16 obviously other evidence.

17 Mr. Hawks handles methamphetamine cases just more
18 frequently than I do, and it is standard policy that
19 Richland County always -- just cannot keep these hazardous
20 materials in their laboratory.

21 THE COURT: I understand.

22 MS. CAVANAUGH: He has photographs of the materials
23 that were collected on the actual original return from the
24 search warrant, which we have a copy of. Although we
25 cannot see it on our copy, it does indicate that the

1 hazardous materials from the actual lab were destroyed,
2 although this does not show up on the copy that we have.

3 I also found out, specifically as it relates to this
4 case, I found out about the same time that Mr. Hawks did
5 that the evidence was destroyed by the company. That is
6 often in these cases. However, under 44-53-375(d), there
7 is a statute that relates to this specific case that we
8 have here that says that evidence of equipment used, and I
9 believe it's -- the statute basically says that if there's
10 equipment collected in a methamphetamine case that is used
11 in manufacturing the methamphetamine, that that is prima
12 facie evidence of intent to manufacture, Your Honor.

13 THE COURT: And how do you plan to prove it?

14 MS. CAVANAUGH: By the photographs that were taken by
15 the investigators of the equipment and the materials used
16 to manufacture methamphetamine that Mr. Hawks has had in
17 his possession since we delivered discovery several months
18 ago.

19 THE COURT: All right. How about that, Mr. Hawks?

20 MR. HAWKS: Well.

21 THE COURT: Statute says it's prima facie evidence.

22 MR. HAWKS: That's correct, but they're going to have
23 to prove more than just intent, and she's right. I do have
24 other methamphetamine cases, but this is the first case
25 I've ever had where I found out that it has been destroyed.

1 I did not know that that was their policy and I don't
2 believe is their policy, and we can get into that in my
3 other motion. But I've never heard of this company,
4 Phillips Recovery. I've never had, I've never had a meth
5 case go to trial, so perhaps that's why..

6 But just because of the fact that they found equipment
7 produced -- is prima facie showing of intent, I don't know
8 how that gets around the fact that they destroyed it. We
9 can't see it and go over it here in court. The jury can't
10 see it. The question is going to be did it rise to the
11 level of intent.

12 THE COURT: Well, I think that's a jury question.

13 MR. HAWKS: Well, it's going to be hard for them to
14 determine that without this equipment.

15 THE COURT: I'm not the finder of fact, and I'll allow
16 you to object to it during the -- I think I'm just going to
17 have to see or hear what the state offers in terms of
18 evidence and rule on at that time. I don't want to try the
19 case now. Don't want to go through all the evidence now.
20 I'm aware of your concerns; I've duly noted it, and I'll
21 deal with it as it's offered. We may have to just do
22 proffers of the evidence at that time.

23 All right, what's next?

24 MR. HAWKS: Your Honor, *State vs. Burns*, John Henry
25 Burns, it's a 1988 case. If I may, do you have a copy?

1 THE COURT: Thank you.

2 MR. HAWKS: And I'm just going to read on the second
3 page:

4 The right of the accused to learn the identity of
5 an informant includes more than the state's
6 revelations of informant's name, specifically in
7 cases where the informant's testimony relates to
8 the defense and preliminary matters such as
9 search and seizure or other constitutional
10 matters. The defense is entitled to a reasonable
11 opportunity to search for the informant.

12 When I learned about this case, I sent Ms. Cavanaugh
13 an email requesting information, any information she has
14 about the alleged confidential informant, and I have not
15 gotten anything up to this point, Your Honor.

16 THE COURT: All right.

17 MR. HAWKS: And if I may, I'm not trying to confuse
18 this with *State vs. Diamond* or with burning the informant
19 of anything like that. All we wanted was some information
20 so that the defense could interview him or send an
21 investigator to try to interview him or her.

22 THE COURT: All right. Yes, ma'am.

23 MS. CAVANAUGH: Your Honor, the only role that the
24 confidential informant in this case provided to the police,
25 to the investigators in this case was that she, he or she

1 was a -- conducted a controlled -- was a participant in a
2 controlled buy that was the probable cause, that was the
3 probable cause for that search warrant obtained for Mr.
4 Sanders's residence. So, she -- Mr. Sanders was not
5 involved -- Mr. Sanders was not charged with anything
6 related to the controlled buy performed by this -- the
7 confidential informant.

8 It just -- the CI just served as the basis for the
9 probable cause for the search warrant at the house, which
10 was subsequently executed within the seventy-two hour time
11 frame where all these drugs and equipment used to
12 manufacture drugs were found in his home.

13 So, she wasn't -- in this case, the confidential
14 informant is distinguishable from the informant in *State*
15 *vs. Burns* because the CI was not an active participant in
16 any of the crimes that the defendant is charged with.

17 There several South Carolina cases that state -- and I
18 have all these to hand up.

19 THE COURT: This is not tipster then per se. Is that
20 right?

21 MS. CAVANAUGH: Right.

22 THE COURT: This is a person not connected with this
23 case?

24 MS. CAVANAUGH: Not at all.

25 THE COURT: Other than to serve as the basis for the

1 search warrant?

2 MS. CAVANAUGH: Yes, Your Honor.

3 THE COURT: But the buy was made from this defendant?

4 MS. CAVANAUGH: Yes, Your Honor.

5 THE COURT: At the residence or something, and *Burns*
6 is the case where the trial court required the disclosure
7 of the identity of the ---

8 MS. CAVANAUGH: Right, because that -- he was an
9 active participant in the transaction.

10 THE COURT: He was what?

11 MS. CAVANAUGH: Because in *Burns*, the confidential
12 informant was an actual participant in the transaction that
13 the defendant was subsequently charged and arrested for.

14 THE COURT: How about that, Mr. Hawks?

15 MR. HAWKS: Well, Your Honor, with all due respect, I
16 do ---

17 THE COURT: I understand that if the court requires
18 disclosure, that you ought to have -- and this case says
19 you ought to have an opportunity to inquire or interview
20 the confidential informant. But in this case, Woods, who
21 was the informant, looks to me like he was a pretty active
22 participant in the drug transaction, and based on that, the
23 court, trial court required the disclosure. And then the
24 court goes on to say you should have an opportunity to
25 investigate the informant.

1 So, how do you get past the -- what she says? He's
2 not an active -- he or she is not an active participant in
3 this case.

4 MR. HAWKS: Well, the case also uses language from the
5 Fourth Circuit, the first couple of lines I read there in
6 case where the informant's testimony relates to search and
7 seizure. That's what happened here. They allegedly used
8 an informant to make a controlled buy, which, by the way,
9 this is the first time I've ever heard that that was
10 actually Mr. Sanders who made the sale. The warrant does
11 not mention that in any way.

12 The defense is entitled to a reasonable opportunity to
13 search, and then also it says: or other constitutional
14 matters. I would say probable cause to get a search
15 warrant is a constitutional matter. That, that's why I was
16 really trying not to confuse this with *Diamond*, which is
17 more about being charged with a sale.

18 THE COURT: All right. Well, I'm going -- I'll deny
19 your motion. What's next?

20 MR. HAWKS: We could do that *Jackson vs. Denno*, Your
21 Honor.

22 THE COURT: All right.

23 MR. HAWKS: And just to be clear, you're also denying
24 our continuance motion?

25 THE COURT: Well, I have to at this point, yes, at

1 and that such alleged statement was the voluntary product
2 and free and unconstrained will of the defendant.

3 The court finds all of these foregoing conclusions by
4 a preponderance of the evidence and, therefore, I find the
5 statement is admissible into evidence.

6 You certainly realize that it's up to the jury, and I
7 will so instruct them it's up to the jury to find beyond a
8 reasonable doubt, if they find beyond a reasonable doubt,
9 that the statement was given voluntarily, they can rely on
10 the statement. If they find the statement was not given
11 freely and voluntarily, they can disregard the statement in
12 its entirety.

13 All right, your next motion.

14 MR. SHIPMAN: Your Honor, our next motion is under
15 *State vs. Lyle* Rule or 404(b) of the rules of evidence to
16 suppress the admission of the last statement due to having
17 disposed of waste products and cooked meth before. It's
18 our position that ---

19 THE COURT: Say that again.

20 MR. SHIPMAN: Defendant's admission to having cooked
21 meth before and buried bottles.

22 THE COURT: Oh, buried the bottles.

23 MR. SHIPMAN: Yes, sir, that he made to Investigator
24 Smith, I believe. We'd moved to have that excluded under
25 404(b). We don't believe it meets any of the *Lyle*

1 exceptions for motive, intent, identity, absence of
2 mistake, or common scheme or plan.

3 Your Honor, I think the dangers inherent in this is
4 that it's character evidence that will be used to show
5 propensity rather than prove that a new crime was
6 committed, specifically attempting, attempting to
7 manufacture methamphetamine. The introduction of evidence
8 that he had done it before would create in the jury's mind
9 a spurious inference of guilt.

10 The exception is motive. I think the only way to get
11 him is to say that he had done it before, so he'd want to
12 do it again, which is propensity evidence. As far as
13 intent, same sort of reason: that he had done it before, so
14 he intended to do it again.

15 THE COURT: How about the one that you're avoiding?

16 MR. SHIPMAN: Excuse me?

17 THE COURT: How about the one that you're avoiding?

18 MR. SHIPMAN: Oh, common scheme?

19 THE COURT: Yeah.

20 MR. SHIPMAN: Well, Your Honor.

21 THE COURT: That's what they're going to argue.

22 MR. SHIPMAN: Yes, sir. For common plan or scheme, it
23 has to be one crime committed in furtherance of another.
24 And I think the classic example of that is if I were to go
25 steal a car in another county, drive it into Richland and

1 rob a bank here and they used evidence that I had stolen
2 that car, and that car was used as the getaway vehicle for
3 the bank robbery, to connect those that -- such that proof
4 of one tends to prove the other. Here it would just be
5 that he'd done it before. He must have done it again that.
6 That -- that's bare propensity, Your Honor, and not a
7 common plan or scheme.

8 And it's not so -- it's not such a signature crime
9 that would go to even establish his identity in, in that
10 regard either so that he's accused of using the one-pot
11 method or shake and bake method to manufacture this
12 methamphetamine. And that there's nothing so particular
13 about that that they would say this is Mr. Fred Jack
14 Sanders's style of cooking methamphetamine. So, I don't
15 think it would be common plan or scheme either.

16 And that even if it did, Rule 403 still cuts across
17 that, and I think it would -- prejudicial danger would be
18 to create in the jury's mind that he'd done it before. He
19 must be doing it again, that kind of propensity evidence,
20 and I believe ---

21 THE COURT: Tell me what you -- and I heard the
22 officer, but I don't want to have to play it back. What
23 exactly did he say with -- I thought -- I don't know what.
24 Maybe I was ---

25 MR. SHIPMAN: Well ---

1 THE COURT: --- paying half attention. That he, that
2 he, in regard to this, the cooking of the methamphetamine
3 that was found at this location at this time, that he had
4 disposed of the residue that was used in the cooking of
5 this methamphetamine.

6 You're telling me that he testified -- and we can
7 bring him back if necessary -- that on previous occasions,
8 he had -- that that was his method of operation. That he
9 would dispose of the residue, harmful chemicals, by burying
10 them by a power line or something to that effect. You see
11 the difference? I'm not sure ---

12 MR. SHIPMAN: Well, my ---

13 THE COURT: I'm not sure what he testified to.

14 MR. SHIPMAN: I, I believe that he testified -- and,
15 like you said, we may have to call him back. But my
16 understanding was that there were no active cooks going on
17 at the time. From my understanding of the process, once
18 these things are started, you have to, have to watch them
19 through to the end.

20 THE COURT: We've got, we've got product, let's call
21 it that, on the scene and that product, it may have been
22 cooked yesterday. It may have been cooked last week. If
23 it's for sale now, if he -- if the officer said he disposed
24 of the residue from this batch, I think that's just part of
25 this batch.

1 Now, if, if he said that when he cooked it in the past
2 that he had disposed of the residue under the power line, I
3 agree. I think I would agree.

4 MR. SHIPMAN: It was my understanding that there were
5 no active cooks, and I didn't hear any reference to this
6 particular batch. I -- you know, there was no testimony
7 that I heard that would suggest that the meth that was
8 found in the house was from the most recent batch.

9 THE COURT: I don't know.

10 MR. SHIPMAN: And it sounds to me like it's all
11 included past transgressions, Your Honor, which would
12 be ---

13 THE COURT: Well, let me hear from the state.

14 MS. CAVANAUGH: Your Honor, Investigator Smith
15 testified that as -- once additional evidence was collected
16 from his -- from the defendant's bedroom, including Coleman
17 camp fuel, Sudafed cold tablets, cold packs that were open,
18 lithium batteries that were stripped apart, 2-liter bottles
19 in which they all have -- there's been some pictures of all
20 these with the tubing in the 2-liter bottle that he
21 referred to, I believe, as gas, I think he said gas
22 containers. That's what those are. When confronted with
23 that evidence, Fred, the defendant, then stated I buried
24 the bottles in the yard, the power line, and ---

25 THE COURT: But the bottles are in front of him. The

1 bottles are there.

2 MS. CAVANAUGH: Well, some of them are in the room,
3 and then there was one that was located in the yard where
4 he said there would be one. And Investigator Smith did not
5 testify that he said past occasions I have buried them in
6 the yard. It's, it's part of his ---

7 THE COURT: Well, let me, let's ---

8 MS. CAVANAUGH: --- method. It's part of his common
9 scheme actually.

10 THE COURT: --- recall, recall the officer. I want to
11 try to get, just get it straight. You know, one person
12 said the light's red; the other person said the light's
13 green. So, I'm going to try to do it again.

14 Come on back up, sir.

15 CHAUNCEY SMITH, HAVING BEEN
16 PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS:

17 Q. Officer, do you understand what I'm ---

18 A. I do.

19 Q. --- confused about?

20 A. I do. I believe I do.

21 Q. All right. The defense says that your testimony was
22 -- and frankly I was reading another case. I heard what
23 you said, but it didn't register immediately with me. The
24 question is whether this defendant told you that in the
25 past he had cooked methamphetamine and buried the waste

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1 products somewhere in a field or somewhere, or was it with
2 regard to what you saw in front of you as product
3 distillate or whatever it is? Can you explain what you --
4 what this, what this defendant told you?

5 A. Yeah, I can, Your Honor. I can -- it's hard for me to
6 explain the meth thing like a scientist.

7 What happens generally is you have two bottles
8 ultimately to make methamphetamine. One is all the
9 chemicals, and one is more chemicals that they shoot some
10 gas in through, and then they dump it out and it makes the
11 meth.

12 What he would have that I saw at the time, two or
13 three, I believe, little -- of the gas ones. So, I -- my
14 -- and he had some finished meth, so I said where is the
15 other bottle because you need -- there's another part here
16 that's missing that people would use to manufacture
17 methamphetamine, and he said he buries them around the
18 power line. And there was one, I believe, discovered in
19 the back. So, I believe there should have been two or
20 three more bottles somewhere.

21 I was just trying to find them so that -- basically I
22 was trying to find them so they weren't just sitting around
23 for somebody to pick up because they're pretty toxic, as
24 you can imagine.

25 THE COURT: Any questions?

1 CROSS-EXAMINATION BY MS. CAVANAUGH:

2 Q. Investigator Smith, did you also smell any kind of
3 chemical odor coming from his room?

4 A. Yeah. It's God awful.

5 Q. Is that indicative of having recently cooked meth?

6 A. It is.

7 Q. So Mr. Sanders, when you were asking him questions as
8 relates it to the, the containers with the tubes, you were
9 asking where the rest, where the rest of the equipment
10 were?

11 A. I did. That, that was my concern with -- there was a
12 couple bottles I thought were missing out of the equation,
13 and I thought that's what he said he had buried in the
14 power lines or outside somewhere.

15 Q. In reference to bottles that were located in his room
16 where additional methamphetamine was located as well?

17 A. Yes.

18 THE COURT: Any questions?

19 CROSS-EXAMINATION BY MR. SHIPMAN:

20 Q. Investigator Smith, did you write any incident reports
21 after?

22 A. I did not.

23 Q. Did you take any notes of the statements that were
24 made?

25 A. I did not.

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1 Q. How were the -- how was the information that you
2 received from Mr. Sanders transferred to -- I believe it
3 was Investigator Ricard who did the final investigative
4 report?

5 A. Kind of like you talk to somebody standing right
6 beside you.

7 Q. Okay. So, in, in the incident report I got from Ms.
8 Ricard, it says:

9 Sanders also explained how he cooked
10 methamphetamine in his bedroom. Said he buried
11 bottles in various locations.

12 And then another section states a similar thing, how
13 he cooked methamphetamine. None of these statements
14 indicate that he was cooking the methamphetamine found in
15 his bedroom at the time. How come this is the first time
16 you're mentioning this, this was...

17 COURT REPORTER: Could you repeat that, please?

18 MR. SHIPMAN: Sorry.

19 Q. How come now this is the first time you're
20 mentioning that this was the batch that he was referring to
21 cooking ---

22 A. Well, this is ---

23 Q. --- that you found?

24 A. --- the first trial he's had, counsel. This is the
25 first time I've been asked about it. The -- nobody's taken

1 my statement before. The -- that's why.

2 Q. You didn't give your statement to Ms. Ricard?

3 A. I, I just told you who I already gave it to.

4 Q. So, you didn't give her the full statement at the
5 time?

6 A. I just told you how the statement went.

7 THE COURT: I can't quite hear you. Speak up.

8 A. We were talking about what he had said at the time.

9 Q. Right. So, you didn't give her all the information
10 that you're now giving us?

11 A. I believe I gave her exactly what I'm giving you now.

12 Q. So that your testimony, if I'm not mistaken, is that
13 Mr. Sanders was referring -- he said he cooked the batch
14 that you found. He cooked, recently cooked the
15 methamphetamine that you found in the house?

16 A. In my experience, with the smell and the chemicals in
17 the bottles and so on and so forth, methamphetamine had
18 been recently manufactured in that part.

19 There are a couple, three things that go with
20 manufacturing methamphetamine. The gas generator bottles
21 that have the tubing coming out that you see it on, I don't
22 know, *Breaking Bad*, if you watch that, the gas generator
23 bottles. Then there's another bottle that has, like,
24 lithium and so on and so forth in the bottle. That's the
25 part that I was asking about where those were, and that was

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1 his response.

2 Q. His response was that he buried those in the past?

3 A. He buried those or threw them out in the back yard.

4 Q. Okay.

5 A. Something to that effect.

6 Q. Can you date any of these chemicals or how long those
7 bottles have been buried by looking at them?

8 A. I didn't find any buried bottles.

9 Q. Okay. So, he told you that he cooked in the past but
10 not that he was -- you didn't walk in on a cook?

11 MS. CAVANAUGH: Objection. He keeps putting words in
12 the investigator's mouth. He's not ---

13 THE COURT: I overrule. I want to -- let him ask the
14 question.

15 BY MR. SHIPMAN:

16 Q. I'm just trying to understand exactly what he told,
17 he ---

18 A. Are you asking if he said I cooked five minutes ago?
19 Is that what you're asking me?

20 Q. Or I'm trying to figure out how, how, how -- he didn't
21 say I buried these bottles ten minutes before you came? He
22 didn't say I buried them a week ago? Did he just say I
23 buried them in the past before?

24 A. No, his statement was not that I had buried them in
25 the past. I said something to the effect of Jack, because

1 that's what I was calling him at the time. I said where is
2 the other bottles that go with this equation, and that's
3 what he said. Once he -- when he cooks them, he buries
4 them in the back or along the power line.

5 Q. So when you say this equation, what do you mean by
6 that?

7 A. Again, I'm not a scientist so like I said, I have to
8 explain this like not a scientist. Basically there's one
9 bottle that has gas and one bottle that has all this stuff
10 they can shake up and ultimately makes meth, and they dump
11 it into a thing. He had the coffee filters, napkins,
12 whatnot with meth in it. He had the gas generator part,
13 and I think he had two or three of those, and I think he
14 had one of the 2-liter bottles.

15 I was asking for everybody's safety and so on and so
16 forth where the other ones were and that's what he told me.
17 Not that he had done it historically or seven years ago,
18 but that was his statement.

19 Q. So, how come you didn't explain that statement to
20 Deputy Ricard or describe the smell to her?

21 A. She smelled the smell; she was there as well.

22 Q. Nobody saw fit to mention that in the incident ---

23 A. She was there with me when I took the statement, or
24 when he said it.

25 Q. But yet there's no mention of a chemical smell in the

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1 -- anywhere in the incident reports.

2 A. I didn't write an incident report.

3 Q. And so again you couldn't -- if you look at a used
4 bottle used in the one-pot method, you wouldn't be able to
5 tell how old it was?

6 A. Not exactly.

7 MR. SHIPMAN: No further the questions.

8 THE COURT: All right.

9 Ms. Cavanaugh, I think any mention of past -- that's
10 why I tried to get some clarification -- cooking, burying,
11 dealing is out. I'm going to allow -- grant the motion to
12 that extent. I don't know if this officer -- I think you
13 just need to caution him about prior bad acts.

14 MS. CAVANAUGH: Your Honor, nothing that he's
15 testified to indicates that he -- that Fred was referring
16 to prior bad acts.

17 THE COURT: Then as long as he doesn't testify to it,
18 that's fine, but I'm not -- it's clearly a propensity
19 issue. If he testifies that the defendant told him oh,
20 yeah, I did this, I did this in the past, I've done it,
21 this is where I bury my bottles -- that's why I tried to
22 get some clarification with reference to this, what the
23 officers found, this batch.

24 And it appears that since there was no active cooking
25 on site, no active manufacturing, you've still got to prove

1 manufacturing. That's what the indictment says, but you
2 can't, you can't have this officer testify that he said he
3 did it sometime before. I'm not arguing with you. I'm
4 just telling you what he can and cannot testify to, okay?

5 MS. CAVANAUGH: Okay.

6 THE COURT: Thank you. Next motion.

7 MS. CAVANAUGH: Your Honor, just so the investigator
8 is clear, what he testified to today is proper. He doesn't
9 refer to past ---

10 THE COURT: That's your, that's your characterization
11 of what he testified to. I'm not, still not absolutely
12 clear, but at one time it sounds like I buried the bottle
13 out -- I buried -- that's my habit. I bury the bottles in
14 the power line. That's different from, as he said, there's
15 one bottle here and one bottle missing, and I buried that
16 bottle at the power line. That's the difference.

17 MS. CAVANAUGH: Yes, Your Honor.

18 THE COURT: Just talk to him.

19 All right, next motion.

20 MR. HAWKS: If we could handle the destruction of the
21 evidence, Your Honor, now? I have a separate written
22 motion.

23 THE COURT: I haven't seen it.

24 MR. HAWKS: I have it right here. Give one to the
25 state. Oh, I'm sorry. That's the last one. I apologize.

1 just stand at ease for a few minutes until the jury
2 arrives, and then we'll begin with opening statements.

3 (OFF THE RECORD.)

4 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS 1
5 THROUGH 33 FOR IDENTIFICATION.)

6 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
7 35 THROUGH 42 FOR IDENTIFICATION.)

8 (GREEN BOX MARKED AS STATE'S EXHIBITS 43 FOR
9 IDENTIFICATION.)

10 THE COURT: All right, be seated.. Thank you. Mr.
11 Hawks.

12 MR. HAWKS: Yes, sir.

13 THE COURT: How do you wish to proceed?

14 MR. HAWKS: My client would like to plead guilty to
15 the gun charge.

16 THE COURT: All right. Bring him around.

17 FRED JACK SANDERS, BEING DULY
18 SWORN, TESTIFIES AS FOLLOWS:

19 THE COURT: Mr. Hawks, you represent Fred Jack
20 Sanders?

21 MR. HAWKS: I do, Your Honor.

22 THE COURT: You advised your client of the charge
23 contained in this indictment?

24 MR. HAWKS: I have, Your Honor.

25 THE COURT: How does your client indicate he wishes to

1 plead?

2 MR. HAWKS: He wishes to plead guilty, Your Honor.

3 EXAMINATION BY THE COURT:

4 THE COURT: Mr. Sanders, you're charged in this
5 indictment with possession of a firearm by a person
6 convicted of a crime of violence, a charge which carries a
7 penalty of up to five years in jail. Do you understand
8 that?

9 DEFENDANT: Yes, sir.

10 THE COURT: Understanding the charge you face and the
11 punishment you could receive, how do you wish to plead,
12 guilty or not guilty?

13 DEFENDANT: Guilty.

14 THE COURT: You understand by pleading guilty, you're
15 giving up your right to remain silent?

16 DEFENDANT: Yes, sir.

17 THE COURT: Understand by pleading guilty, you're
18 giving up your right to a trial by jury?

19 DEFENDANT: Yes, sir.

20 THE COURT: If you requested or demanded a trial by
21 jury, the state would give you a trial. At trial, you'd
22 have the right to confront and cross-examine all witnesses
23 against you. You'd have the right to present any witnesses
24 and/or evidence in your own defense. You'd have the right
25 to testify in your defense if you wished to do so. No one

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1 could make you testify at your own trial.

2 If you decide to go to trial and not testify, the
3 judge would tell the jury they could not hold your failure
4 to testify against you. In fact, the jury could not even
5 consider your failure to testify in their deliberations on
6 your guilt or innocence. You'd be presumed innocent
7 throughout your trial.

8 The state would have to prove you're guilty beyond a
9 reasonable doubt to a jury of twelve people, and all twelve
10 people would have to unanimously agree that you were guilty
11 in order for you to be convicted. Even if you were
12 convicted, you would still have the right to appeal that
13 conviction.

14 Do you understand your rights with regard to a trial
15 by jury?

16 DEFENDANT: Yes, sir.

17 THE COURT: Understanding those rights, you still want
18 to plead guilty?

19 DEFENDANT: Yes, sir.

20 THE COURT: Are you under the influence of any
21 alcoholic beverages, drugs, or prescription medications at
22 this time?

23 DEFENDANT: No, sir.

24 THE COURT: Are you satisfied with the manner in which
25 your attorneys advised and represented you in this case?

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1 DEFENDANT: Yes, sir.

2 THE COURT: Has he been over the evidence in this
3 case, presented the evidence that the state has to prove
4 you guilty? He's been over that with you?

5 DEFENDANT: Yes, sir.

6 THE COURT: Reviewed that with you? You satisfied
7 with his services?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right. You aware of any emotional or
10 nervous condition that you have that would interfere with
11 your ability to enter this plea today?

12 DEFENDANT: Excuse me?

13 THE COURT: I said are you aware of any nervous or
14 emotional condition that you have that would interfere with
15 your ability to understand what ---

16 DEFENDANT: Yes, sir.

17 THE COURT: --- you're doing here today? You clearly
18 understand what you're doing here today?

19 DEFENDANT: Yes, sir.

20 THE COURT: Pleading guilty of your own free will and
21 accord?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right, Solicitor.

24 MS. CAVANAUGH: Thank you, Your Honor. Richland
25 County Sheriff's Department executed a search warrant on

1 April 23, 2013, at the defendant's residence located at 113
2 Rockingham Road here in Richland County where he lived with
3 his mother. Upon searching his bedroom closet, they found
4 a firearm, as well as various ammunition.

5 Mr. Sanders, the defendant, has been convicted of a
6 violent crime. That would be trafficking crack cocaine
7 from -- beg the court's indulgence. He was convicted of
8 that on April 29, 2005, and, therefore, he is classified
9 under 16-1-60. He is prohibited from having a firearm or
10 ammunition. That is the extent of the facts of this
11 particular indictment, Your Honor.

12 THE COURT: Mr. Sanders, are those facts true and
13 correct?

14 DEFENDANT: Yes, sir.

15 THE COURT: I find the decision of the defendant, Fred
16 Jack Sanders, to plead guilty to be freely, voluntarily,
17 and intelligently made. He's had the representation of a
18 competent attorney in the person of Mr. Hawks, with whom he
19 said he's satisfied. I find, in fact, the factual basis
20 for his plea and, therefore, I will accept his plea.

21 Mr. Hawks -- I'm sorry, Mr. Sanders, if you disagree
22 with the sentence I give you, the procedure we just
23 completed, you have ten days from the date of the
24 imposition of sentence to file a notice of intent to
25 appeal. You understand?

1 DEFENDANT: Yes, sir.

2 THE COURT: All right. Thank you very much. At this
3 time I withhold sentencing until the completion of the
4 incident matter.

5 MR. HAWKS: Thank you, Your Honor.

6 MS. CAVANAUGH: Thank you, Your Honor.

7 THE COURT: All right, I have finally been informed of
8 the jury is all present. We had a straggler this morning.
9 Number, juror number 154 is the foreperson of the jury.
10 State ready for the jury?

11 MS. CAVANAUGH: We are, Your Honor, and just so I'm
12 clear, we are going to read the state's witness list before
13 we get started with openings, right?

14 THE COURT: Yes, ma'am.

15 MS. CAVANAUGH: Thank you.

16 THE COURT: Defense ready?

17 MR. HAWKS: Yes, Your Honor.

18 THE COURT: All right. Bring the jury, please.

19 MS. CAVANAUGH: Oh.

20 THE COURT: Hold the jury.

21 MS. CAVANAUGH: Just so we don't read the charge, the
22 charge he just pled to.

23 THE COURT: I'm not going to read it.

24 MS. CAVANAUGH: Okay.

25 THE COURT: That's all right. Bring them on.

1 same kind of undivided attention to the attorneys and
2 parties in this case. We will now begin with opening
3 statements.

4 Solicitor.

5 MR. HAWKS: Your Honor, Your Honor, before we begin, I
6 would like to place -- all my prior motions for the record
7 are renewed.

8 THE COURT: All right.

9 MR. MATHEWS: May it please the court?

10 THE COURT: Yes.

11 MR. MATHEWS: Good morning. Fred Sanders is a drug
12 dealer; Fred Sanders is a meth dealer. He was selling
13 drugs and cooking meth in his sixty-six-year-old mother's
14 house. How do we know this? We know this because Richland
15 County narcotics investigators had information about drug
16 activity in that house. With that information, they went
17 and got a search warrant and on April the 23rd of 2013,
18 they went in and executed that search warrant.

19 When they went in and executed that search warrant,
20 they found Mr. Sanders and two other individuals in the
21 garage sitting around some crack rocks. They also found a
22 small green box with a large amount of heroin, ten times
23 more heroin than is considered just enough for personal
24 use. Later on, Mr. Sanders would admit that that crack was
25 hidden and that heroin was his.

1 They continued to search the house, and they went to
2 Mr. Sanders's room, which had a space for a padlock so he
3 could keep everything that he was doing away from the eyes
4 of his mother. And when they went into that room,
5 investigators were overcome by the strong chemical smell
6 and when they walked in, they saw the portable meth lab.
7 They also found methamphetamine in the room.

8 When I say a portable meth lab, it's not some big
9 laboratory set up like anything you may have seen on TV,
10 something to cook meth. This was just basically a 2-liter
11 bottle, a lot of tubing, and then items that you can buy
12 anywhere but when put in together can create
13 methamphetamine.

14 He had stripped lithium from batteries, coffee
15 filters, plastic tubing, camp fuel, open instant cold
16 packs, Sudafed tablets that have been ground up, plastic
17 bottles with tubing attached, drain cleaner, and even meth
18 itself in the room, all these items that couldn't be used
19 for anything else other than cooking meth. Now, while
20 there wasn't an active cook going on at the time, these
21 items were there, were indicative that Fred Sanders was
22 cooking meth.

23 Later that day they interviewed Fred Sanders, and he
24 admitted that all the drugs that were found were his.
25 Even in that room, they found syringes with liquid

1 methamphetamine set up for single shots ready to be
2 distributed.

3 Later on that day, they even had to bring in workers
4 in the hazardous materials suits to come to in and break
5 down that lab and take it away and destroy it because of
6 the extreme danger that that posed to the area. Could have
7 blown up. Could have killed anybody in that house.

8 For all of that, Fred Sanders has been charged with
9 manufacturing methamphetamine, possession with intent to
10 distribute methamphetamine, possession with intent to
11 distribute heroin, possession of a controlled substance,
12 possession with intent to distribute crack cocaine.

13 My name is Foster Matthews. This is Kathryn
14 Cavanaugh, and we are assistant solicitors, Fifth Judicial
15 Circuit. We prosecute crimes that happen here in Richland
16 County, and we're here today to prove beyond a reasonable
17 doubt that Fred Sanders is, in fact, guilty of all five of
18 these indictments for which he's charged today.

19 And now I said we're here to prove that beyond a
20 reasonable doubt, and later on in the case the judge will
21 explain what exactly reasonable doubt is, but I just want
22 you just to remember that it's not beyond all doubt or not
23 beyond any doubt. It's beyond a reasonable doubt we'll
24 show that he's guilty.

25 We're going to introduce evidence and elicit testimony

1 from the witness stand up here. The evidence that is going
2 to be introduced is going to be everything that they got
3 out of that house when they served the search warrant that
4 day. You're going to see the drugs; you're going to see
5 the syringes with the liquid methamphetamine in there.
6 You're going to see all the paraphernalia, the smoking
7 pipes and everything that was taken out of there, but you
8 are going to see pictures of the meth lab because as I
9 stated before, it had to be destroyed for safety purposes.

10 You're going to hear testimony from a number of
11 witnesses. You're going to hear from narcotics officers
12 there who executed the search warrants. You going to hear
13 from the chemists who analyzed the drugs to prove that
14 they, in fact, were illegal drugs. You're going to hear
15 from workers from that recovery company who came in and
16 broke down that meth lab.

17 And as I said before, the judge at the end the case
18 will explain to you specifically what the law is, but I
19 kind of want to break it down a little for you now so you
20 know what to listen for.

21 He's been charged with possession with intent to
22 distribute a number of drugs. That means not enough of
23 himself was he actually selling the drugs at the time the
24 investigators came in. There are a number of other factors
25 that can go to show he actually possessed these with the

1 intent to distribute them. The first major fact is the
2 sheer amount of the drugs that he had, specifically with
3 the heroin. You'll hear that he had over ten times what is
4 the inference weight that constitutes possession with
5 intent to distribute, ten times more than a person should
6 have for personal use.

7 Also in cases of possession with intent to distribute
8 there could be scales, and you're going to see where scales
9 were found in the house. Any money, any packaging that he
10 would have to split it up for sale, you're going to see
11 that, too, what we have.

12 He's also been charged with manufacturing
13 methamphetamine, and as I said earlier, there wasn't an
14 active cook going on at the time. Because these cooks
15 don't take that long, it's kind of hard to catch somebody
16 in the act with an active cook going on. But as I listed
17 the materials that he had in his room, those are indicative
18 that nothing else could have been done in there but make
19 methamphetamine.

20 You, as the jury, are the fact finders in the case.
21 So, you can determine what you believe to be true from the
22 testimony and the evidence. So, from that you're going to
23 be able to judge the credibility of each and every witness
24 on the stand, as the judge explained to you earlier. And
25 to judge the credibility of a witness, it's just like

1 you're talking to somebody in normal, everyday
2 conversation: whether or not you believe that they're
3 telling you the truth. Somebody up here has a reason to
4 lie? Does somebody up here have anything to gain from
5 their testimony? You can choose to believe all of what
6 somebody says on the stand, just some of what they say on
7 the stand, or none of it. But just keep in mind some of
8 the things to think about when somebody gets on the stand
9 and whether or not they had any reason to not tell the
10 truth.

11 Now, each of you jurors was specifically picked as we
12 went through this process because you have a very important
13 job, and that job is to ensure that justice prevails. Hold
14 Fred Sanders accountable for all of these drugs that he had
15 in his house and the meth lab that he had. Hold him
16 accountable for putting these drugs into our community.
17 Find him guilty of all five indictments for which he is
18 charged. Thank you.

19 MR. HAWKS: Your Honor, at this time, I believe we
20 have a matter of law we need to take up outside the hearing
21 of the jury.

22 THE COURT: Not now. I'll take it up with you at the
23 appropriate time.

24 MR. HAWKS: Thank you, Your Honor.

25 THE COURT: Make your opening remarks.

1 MR. SHIPMAN: Good morning. The state would have you
2 believe that Jack Sanders is a drug dealer and a meth cook.
3 I believe at the end of this trial, you will see that
4 they're making mountains out of molehills.

5 When police officers walked into Mr. Sanders's home,
6 they found a pile of household debris that could possibly
7 in, in some world be combined to produce methamphetamine.
8 They found leftover drugs. What they found is an addict
9 that they want you to believe that he's a meth cook and a
10 drug dealer. It's a mountain out of a molehill.

11 As he said, you'll be able to judge the credibility of
12 any witnesses that come here and listen to them, and you'll
13 be able to look at the evidence that they offer to you.
14 Unfortunately, there's not going to be a lot of evidence in
15 this case as you would typically think of. You're not
16 going to see any of the items they're saying is this meth
17 lab. They're not here. You'll never be able to see them
18 to see if they were put together, if they were opened, or
19 if there was anything going on with them. That's just
20 something you'll never be able to do. So, when you're
21 judging credibility, keep that in mind. Ask yourself what
22 you hear. Ask yourself also what you don't hear.

23 They said batteries, fuel, coffee filters, salt,
24 Sudafed, scales. These are all things that everyone has in
25 their home. Does that make anyone a drug dealer or a meth

1 cook, simply having those things in their home? He says
2 they couldn't be used for anything else. I think you
3 simply know that that's false. I have a scale on my
4 kitchen counter. I'm not a drug dealer.

5 He said the syringes were ready to be distributed. I
6 would challenge they were ready to be distributed into his
7 arm. He's an addict, not a drug dealer.

8 As he said, there was no active cook. He wasn't
9 caught in the act; they didn't walk in and find some
10 chemical stew bubbling away. This man is not Walter White.
11 He's an addict.

12 He said there's ten times more heroin than is the
13 normal use. In my desk drawer right now, I've got a large
14 bottle of aspirin for days like this. I can't possibly use
15 all that aspirin at one time. I'm not a pharmacist; I
16 don't sell it out of my desk. It's for myself.

17 Ladies and gentlemen, as the judge told you earlier
18 this week when you were qualified, that this isn't a
19 voluntary service. I know that this is all time out of
20 your life lives that you'd probably rather be spending
21 somewhere else, but I'd like to thank you for being here.
22 You are the, you are the sole finders of the facts in this
23 case. As he said, this is something our forefathers fought
24 for. Many people died to have a jury so that a group of
25 citizens can review the actions of the state. They want

1 you to take this man's freedom on their bare assertion that
2 a pile of trash is a meth lab and that an addict is a drug
3 dealer.

4 We're glad that you are here today, and as the judge
5 will tell you later on, Mr. Jack Sanders is presumed to be
6 innocent unless the state can prove to you beyond a
7 reasonable doubt. They want you to hold him accountable.
8 We want you to hold them accountable. They are the ones
9 with the standard -- or the burden of proof, excuse me.
10 They're the ones who have to prove beyond a reasonable
11 doubt that Mr. Sanders is not guilty.

12 One way I like to think about this is in relation to a
13 football game, and you've seen a call that's kind of
14 questionable. The coach from the other team throws a red
15 flag out there. The referees come out and they look at the
16 video. You are the referees. The state is the coach
17 challenging the call on the field. The call on the field
18 here is not guilty. For a referee to overturn a call on
19 the field, it has to be proven by a irrefutable evidence.
20 That's the highest standard in calling or taking back a
21 play; it's the high standard evidence they have.

22 Here it's beyond a reasonable doubt. The legal
23 definition of reasonable doubt is that doubt which would
24 cause a reasonable man to hesitate to act. And so when
25 you're back reviewing the play, so to speak, and it comes

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1 time for you to decide whether or not you'll overturn the
2 call of not guilty, if you hesitate to act, then you must
3 acquit. If you look at this pile of evidence and see that
4 it's a molehill and not a mountain, you must hesitate to
5 act and acquit, and we believe that's what you will do.
6 Thank you for your time.

7 THE COURT: Counsel, approach the bench briefly.

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 THE COURT: Call your first witness.

10 MS. CAVANAUGH: Your Honor, may we approach briefly?

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 MS. CAVANAUGH: State calls Investigator Chauncey
13 Smith.

14 CHAUNCEY SMITH, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Have a seat in the witness stand.
17 State your name and spell it for the record.

18 WITNESS: Chauncey Smith.

19 DIRECT EXAMINATION BY MS. CAVANAUGH:

20 Q. Investigator Smith, where are you employed?

21 A. With the Richland County Sheriff's Department.
22 Richland County Sheriff's Department.

23 Q. Make sure you're loud enough.

24 A. Better?

25 Q. Yes, thank you.

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1 A. Okay.

2 Q. And how long have you been employed with the Richland
3 County Sheriff's Department?

4 A. About ten years now.

5 Q. And what is your position?

6 A. I am currently a motor vehicle theft investigator.

7 Q. And what was your position in April of 2013?

8 A. Narcotics investigator. Narcotics investigator.

9 Q. And how long were you a narcotics investigator?

10 A. About a year and a half.

11 Q. What are some of the duties and responsibilities of a
12 narcotics investigator?

13 A. Mainly you field, get complaints. Information comes
14 in. Investigating narcotics activities. Prior to we go
15 out there, kind of observe what's going on, and take care
16 of narcotics complaints.

17 Q. Were you involved in the investigation of Fred Jack
18 Sanders?

19 A. I was.

20 Q. And was a search warrant obtained of his residence?

21 A. It was.

22 Q. And where was that? Where was the residence located?

23 A. It's at which is on the northeast side
24 of town right close to Flora and Brickyard Road.

25 Q. And is that in Richland County?

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1 A. It is.

2 Q. I'm going to show you what's marked as State's Exhibit

3 1. Do you recognize that home?

4 A. That is I'm sorry.

5 Q. And is that the residence that you executed the search
6 warrant on April 23, 2013?

7 A. It is.

8 MS. CAVANAUGH: Your Honor, at this time I'd move to
9 introduce State's Exhibit 1.

10 MR. HAWKS: Without objection.

11 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 1.)

13 BY MS. CAVANAUGH:

14 Q. Where did the investigators first make entry into the
15 home?

16 A. I don't know if you can really see because the tree's
17 in the way. The front door of this residence is right
18 behind that tree. It's a white door it looks like from
19 there. That's initially where we made entry into the home.

20 Q. And approximately how many investigators were with you
21 when you entered the home?

22 A. I would say probably a total of somewhere around ten.

23 Q. And why is it important that multiple investigators
24 execute a search warrant?

25 A. I guess on the other side of the door you have no idea

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1 a lot of times what you're walking into. Multiple subjects
2 armed, unarmed, you never know. Animals. You never know
3 what's on the other side of that door.

4 Q. And according to your information you had at the time,
5 who else lived in that -- at this address?

6 A. At the time we executed the search warrant, I believe
7 the records stated that Mr. Jack Sanders lived there, along
8 with the mother, and I can't remember her name off the top
9 of my head.

10 Q. You said after you entered the front door, you went to
11 the garage area?

12 A. I don't know if I said that or not, but that is what I
13 did. I come through the front and then take a left past
14 like a, there's like a living room area. Take a left past
15 the kitchen area, and there's a garage area there that was
16 converted to kind of like a living room sort of. I don't
17 know. There were couches and whatnot in there.

18 Q. Okay, and who was in the garage area?

19 A. When I entered the garage area, Mr. Sanders was inside
20 and two other individuals, a female and another male.

21 Q. And what did it appear that they were doing?

22 A. It appeared as if they were about to do some type of
23 narcotics. They weren't actively doing it when I first
24 went through the door.

25 MR. HAWKS: Objection, Your Honor. It's speculation.

1 THE COURT: Overruled.

2 BY MS. CAVANAUGH:

3 Q. Continue.

4 A. That's what it appeared that they were about to do.

5 Again ---

6 Q. Was there any -- was there a substance in between
7 them?

8 A. There was a small glass ashtray with crack cocaine
9 inside of it and a small -- like a glass, small piece of
10 glass that looks it's been broken with a Brillo pad inside
11 commonly used to smoke crack cocaine.

12 Q. And were you aware of these -- the other two
13 individuals' names?

14 A. Josh, I believe Johnson and Sara something. I don't
15 know her last -- can't remember her last name.

16 Q. Brassell?

17 A. Sounds right.

18 Q. So, once entry was made and once you observed who all
19 was in the home, what was the investigators' next step?
20 What was y'all's next step?

21 A. His mom was also in the home at the time. She was not
22 in the room, in the area with them. She was also in the
23 home.

24 Once we secured him, the three people in the garage
25 area, spoke with Mom, and pulled all three people into the

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1 living room to advise them of their Miranda rights, all
2 four people, actually, which was done by Sergeant
3 Maldonado.

4 Q. And were they aware at that point the investigators
5 had a search warrant for the residence?

6 A. They were. We read it to them.

7 Q. And who was actually responsible for reading their
8 rights verbally first?

9 A. Sergeant Maldonado.

10 Q. And he did that?

11 A. He did do that.

12 Q. And were you present?

13 A. I was.

14 Q. Did the defendant indicate, that he understood his
15 rights at that time?

16 A. He did.

17 Q. Did he seem coherent to you?

18 A. He did.

19 Q. Did he seem under the influence or intoxicated in any
20 way?

21 A. No, he did not.

22 Q. Did the other individuals, Sarah Brassell and Joshua
23 Johnson, also appear to understand their rights?

24 A. They all did.

25 Q. After this, what occurred next? What did you do next?

1 A. At that point, I was responsible for scribing the
2 search warrant, which is a fancy term for saying I write
3 down what we take out of the residence. We also, we began
4 searching the residence to see what's inside, if we missed
5 anybody. Usually we don't; occasionally we have. Usually
6 it's the drugs and paraphernalia associated with that is
7 what we're looking for.

8 Q. Were you present when the defendant was read his
9 rights the second time?

10 A. I was.

11 Q. And who was responsible for that?

12 A. Investigator Clarke.

13 Q. Was that done verbally or in writing as well or both?

14 A. Both.

15 Q. And did again, did the defendant indicate he that
16 understood his rights?

17 A. He did and he signed them.

18 Q. And did you actually witness that?

19 A. I did.

20 Q. Did you sign as a witness?

21 A. I did.

22 Q. Where in the house did you actually go yourself?

23 A. I went through the majority of that entire house that
24 day.

25 Q. And where was the majority of the drugs that were

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1 seized located?

2 A. In two locations: the garage and the bedroom of Mr.
3 Sanders.

4 Q. And how did you know that was his bedroom?

5 A. Well, he stated it was; his mom stated it was. It had
6 all his belongings in it. It was all men's clothing at
7 whatnot in there. He said it was his.

8 Q. And before you actually collected anything in the
9 home, did you have on gloves?

10 A. I did.

11 Q. And why ---

12 A. We all do.

13 Q. Why is that important?

14 A. Well, you don't want to contaminate evidence, nor do
15 you want to contaminate yourself.

16 Q. As -- in your experience as a narcotics investigator,
17 did you have occasions to come into contact with
18 methamphetamine?

19 A. I did, unfortunately.

20 Q. And also methamphetamine labs?

21 A. I did.

22 Q. Can you describe in general terms some of the
23 different types of methamphetamine labs there are?

24 A. It will be very general because I'm far from a
25 scientist. There are some that you see on these crazy

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1 movies that are big -- set up like -- I don't know. They
2 look like something you'd see in a science laboratory from
3 high school or whatnot, and they don't move. They just sit
4 there and they'll make meth, and it looks pretty
5 controlled.

6 The ones I have come in contact with are just about
7 one hundred percent little portable bottles with chemicals
8 and whatnot inside.

9 Q. Did you find evidence of a meth lab in Mr. Sanders's
10 bedroom?

11 A. I did.

12 Q. I'm going to show you what's been marked State's
13 Exhibit 2 through 33 and 35 through 36 and ask if you
14 recognize these photographs.

15 A. I do.

16 Q. And what are those photographs of?

17 A. These are photographs of what was discovered in Mr.
18 Sanders's residence: narcotics and materials to manufacture
19 methamphetamine, along with paraphernalia associated with
20 narcotics.

21 MS. CAVANAUGH: Your Honor, at this time we'd move to
22 introduce State's Exhibit 2 through 33 and 34 -- excuse me,
23 35 and 36 into evidence.

24 MR. HAWKS: Objection, Your Honor, based on my prior
25 motions.

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1 THE COURT: All right, overruled.

2 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
3 STATE'S EXHIBITS 2 THROUGH 33.)

4 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
5 STATE'S EXHIBITS 35, 36.)

6 BY MS. CAVANAUGH:

7 Q. And we'll go through each of these individually on the
8 projector.

9 Now, you mentioned a portable lab, a portable,
10 portable methamphetamine. What is that also known as?

11 A. They call it one-pot method. There's a lot of names
12 depending -- a lot of them call it a baby. They call it
13 all kinds of strange things.

14 Q. So, one-pot method is a common term?

15 A. That's commonly what we refer to it as.

16 Q. And what type of materials are used in this one-pot
17 method?

18 A. Pretty hazardous and toxic materials. Generally --

19 MR. HAWKS: Objection, Your Honor. This is opinion.

20 THE COURT: Overruled.

21 BY MS. CAVANAUGH:

22 A. Generally what happens is they will -- the people that
23 are cooking methamphetamine will gather a few normal
24 household items. Well, fairly normal. Coleman camp fuel
25 for example, salt, lithium batteries which have to be

1 stripped apart and the lithium pulled, pulled out so when
2 you finally see it -- I never saw it. I never knew what I
3 was looking at it until I started working with meth. It's
4 little stripped out parts and they come out black.

5 There is -- what all am I missing? The -- there's
6 cold packs which generally you get and you kind of put, you
7 put them in the freezer. They get cold. You stick them on
8 you, so on and so forth. The methamphetamine cooks will
9 take them, cut them apart, and inside there's two parts.
10 There's actually a water bladder and a -- all the little
11 balls. That's what they look like. I'm not exactly sure
12 what the chemical name of those little pellets are inside,
13 but they will pull those pellets out, and that's also a
14 part of the cooking process.

15 Q. So, they are common household items. However, when
16 you take them together, does that indicate anything to you?

17 A. When you take them apart and put them all together,
18 then yes, it's that the only thing you ---

19 MR. HAWKS: Objection.

20 THE COURT: Just hold on. This is distracting. Go
21 ahead and get it set up or don't get it set up.

22 (A PAUSE.)

23 MS. CAVANAUGH: I apologize.

24 THE COURT: Ask your question again. There was an
25 objection.

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1 BY MS. CAVANAUGH:

2 Q. You said the items that you mentioned are household,
3 are household goods commonly used as household goods,
4 right?

5 A. If bought and used correctly.

6 Q. But when you find them all in one location, what does
7 that indicate to you?

8 A. In one location separated as I described them with the
9 batteries pulled apart and the cold packs opened up and so
10 on and so forth and then put into plastic, 2-liter jugs or
11 1-liter jugs, it's a portable meth lab.

12 MR. HAWKS: Objection, Your Honor. He's giving his
13 opinion.

14 THE COURT: It was based on his observations.
15 Overruled.

16 BY MS. CAVANAUGH:

17 Q. Did you also notice a smell coming from his bedroom?

18 A. It is a God awful smell. It's -- the best thing I can
19 relate it to, I guess -- I hope nobody has this family
20 member, but I have an aunt who has about a thousand cats in
21 her house, and it is an overwhelming odor of that, and it's
22 like a weird metal smell also. And that's what it smells
23 like when you run into a meth lab, just like that.

24 Q. Did you also find scales in his bedroom?

25 A. Yes, like digital-type scales like that.

1 Q. And what does that, in your experience as an
2 investigator in the Narcotics Unit, what did the scales
3 indicates to you?

4 A. Generally when they have those with narcotics, they
5 are using them to measure out narcotics in order to sell
6 them and distribute them.

7 Q. Were there also spoons and residue located in his
8 bedroom?

9 A. There were. Like that.

10 Q. Were there are multiple spoons?

11 A. They were. I believe a couple, three, maybe more.

12 Q. And what is that a photograph of, Investigator Smith?

13 A. A Dasani bottle and I believe that on -- it was other
14 -- some type of water bottle. The top there that you see
15 with the green -- with the tubing coming out of it, it is
16 what is called a gas generator in the one-pot method of
17 cooking methamphetamine.

18 MR. HAWKS: Objection again, Your Honor. Opinion and
19 speculation.

20 THE COURT: Overruled.

21 BY MS. CAVANAUGH:

22 Q. And were there multiple bottles of tubing located in
23 his room?

24 A. There were. Two or three, if I remember correctly.

25 Q. Were there also cut straws located in his bedroom?

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1 A. There were.

2 Q. And what, in your experience as a narcotic
3 investigator, what are cut straws usually used for?

4 A. They're used for taking narcotics generally. They'll
5 cut them down a little bit smaller. More portable, I
6 assume, or maybe it's easier to put in your nose. I really
7 have no idea why they cut them. Generally for cocaine or
8 methamphetamine.

9 Q. Did you also collect a jar with residue?

10 A. I did.

11 Q. In his bedroom?

12 A. We did.

13 Q. And what is that photograph of?

14 A. That is Coleman -- I don't believe that's Coleman
15 brand, but it's some type of camp fuel.

16 Q. And is that used in the one-pot method?

17 A. It can be.

18 Q. And was that also located in his room?

19 A. It was.

20 Q. Were their several packs of batteries located in his
21 room?

22 A. There were. Generally for meth cooks and I believe
23 we've -- well, I know we discovered some as well. That's a
24 general battery as you and I and most people would use
25 them. When you're manufacturing methamphetamine, they will

1 actually cut those apart and pull the lithium part out,
2 which is little black strip.

3 Q. Is that what ---

4 A. That's what that is.

5 Q. So, what are those -- what is that a picture of?

6 A. That is -- those are, looks like the black strip
7 probably already used, and those are batteries that are
8 already cut open there.

9 MR. HAWKS: Objection, Your Honor, for the same
10 reasons.

11 THE COURT: Overruled.

12 BY MS. CAVANAUGH:

13 Q. And what is actually done with the black strips from
14 those batteries?

15 A. Okay, again very far from scientific. The gas
16 generators, you'll take a -- they take a 2-liter bottle or
17 1-liter bottle, some type of plastic bottle, put several of
18 these chemicals inside, pseudoephedrine pills, salt-type
19 cold packs, the little pills, stuff like that. And it kind
20 of looks pretty mundane until you stick the lithium
21 batteries in there, and that's when it starts spinning
22 around and doing all the crazy stuff to manufacture,
23 actually make the methamphetamine. And then they'll take
24 the other ones, the other little plastic things with the
25 tubes coming out and make some kind of gas in there, push

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1 the gas down in, and it separates the methamphetamine down
2 to the bottom.

3 Q. You mentioned cold packs. Are these like things that
4 you would might use to ice ---

5 A. That's what generally ---

6 Q. --- your elbow?

7 A. That's what generally they are used for.

8 Q. And are they supposed to be opened?

9 A. I've never seen anyone open a cold pack other than to
10 manufacture methamphetamine.

11 Q. And, in fact, were there open cold packs in his
12 bedroom?

13 A. There were.

14 Q. And is that a picture of one of the open cold packs?

15 A. That is. As, as you see, you can't -- when they're
16 doing it, they'll cut them open to pull the bladder part
17 out, the water part. They don't, they don't need that, and
18 it's just the little chemical balls inside they use.

19 Q. I'm going to actually ask you to read under the
20 warning section. What does it actually say if it's
21 actually ingested? You can just read the whole warning.

22 A. I will because I don't even -- it says:

23 For external use only. Never apply pack directly
24 to skin without soft covering. Harmful to
25 swallow. If accidentally swallowed, drink

1 several glasses of water. Induce vomiting and
2 call physician immediately. Do not puncture bag.

3 Q. So, it clearly says on the package not to puncture the
4 bag or open?

5 A. It does.

6 Q. Is salt actually used in making methamphetamine?

7 A. It is, and again to explain the exact process, I'm far
8 from a scientist. I don't know exactly when it goes in and
9 where it goes in, but it's always there.

10 Q. And was salt located in his bedroom?

11 A. It was.

12 Q. By the camp fuel?

13 A. In very close proximity.

14 Q. You mentioned pseudoephedrine. Is that what's
15 commonly in Sudafed?

16 A. That is what's commonly in Sudafed or any of those
17 type of drugs like that.

18 Q. And is that also used in the manufacturing of
19 methamphetamine?

20 A. That is where the ephedrine part of the
21 methamphetamine comes from.

22 Q. Was that located in his bedroom as well?

23 A. It was.

24 MR. HAWKS: Objection, Your Honor. I think we need to
25 take that up outside the presence of the jury.

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1 THE COURT: Overruled.

2 BY MS. CAVANAUGH:

3 Q. Is that photographs of the pseudoephedrine that was
4 located in the bedroom?

5 A. There's -- there was that pseudoephedrine that was
6 already in the packs, and there was a little bit more that
7 appeared to have been crushed up.

8 Q. Was there a grinder? Is there a grinder used to crush
9 up Sudafed?

10 A. Yeah. It's a little plastic thing. You kind of turn
11 it around, squishing them all together. Mashes them all
12 together.

13 Q. Is that a picture of the grinder?

14 A. That is what they look like. That's the one we found
15 in his presence.

16 Q. In his bedroom?

17 A. Yes.

18 Q. Were there...

19 (A PAUSE.)

20 Q. We can continue without this actually.

21 Investigator Smith, were there also syringes located
22 in his bedroom?

23 A. There were.

24 Q. And were you present when he stated what was in the
25 syringes?

1 A. I was.

2 Q. And what did he say was in the syringes?

3 A. He says it -- he said it was liquid methamphetamine.

4 MR. HAWKS: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MS. CAVANAUGH:

7 A. Liquid meth, I believe, exactly what he said.

8 Q. And where those syringes actually collected?

9 A. They were.

10 Q. Now, when you noticed the plastic tubing -- the
11 plastic bottles with the tubing, did you ask the defendant
12 about, about those?

13 A. I did. I asked him. What I asked him, there were all
14 these -- all the parts, the little gas parts with the
15 little things coming out of the top, all the chemicals that
16 you see to make this stuff, and there was one thing that
17 was missing. There's, like, a three-part thing.

18 Q. When you say thing, you mean ---

19 A. A process.

20 Q. Okay.

21 A. There's three parts to it. Generally you find all the
22 chemicals and all the tore up batteries and ephedrine and
23 so on and so forth. You'll find one tube with a bottle
24 top ---

25 MR. HAWKS: Objection, Your Honor. He's testifying to

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1 his opinion of what you generally find.

2 THE COURT: Overruled. It's his observation from his
3 work as a narcotics investigator. That's what he's
4 testifying. You can cross-examine him about his detailed
5 knowledge.

6 Go ahead.

7 BY MS. CAVANAUGH:

8 Q. You were explaining the three-part ---

9 A. Typically in a meth ---

10 Q. --- process.

11 A. Typically in this portable type one-pot meth lab,
12 you'll have that one part that pushes the gas down in the
13 thing, and you'll have another bottle that is -- has a lot
14 of, like, white powdery stuff at the bottom with little
15 black stuff inside as well, which is the battery part. And
16 that part, I asked him where those parts of it were, the
17 white.

18 Q. So, you were asking what was missing basically from
19 this?

20 A. This and all the other stuff that you would put up
21 there with the torn up batteries, pseudoephedrine, and so
22 on and so forth.

23 Again, back to the thing, you take one bottle, put all
24 that stuff in it, all the chemical stuff inside of it. And
25 then you take these little ones, and they make a gas thing

1 that pushes gas down into the third -- or the second
2 bottle, and the second, the other bottle was the part that
3 I didn't see in the bedroom, and I was concerned about
4 finding it.

5 Q. And why were you concerned about that?

6 A. For a couple of reasons. Obviously there's many
7 harmful and toxic chemicals inside there that are bad for
8 anyone that would come in contact with it. I was just
9 concerned about where they might be.

10 Q. And did you ask the defendant where, where that bottle
11 was?

12 A. I did.

13 Q. And what did he indicate to you?

14 A. Well, I didn't know how many bottles ---

15 MR. HAWKS: Objection, Your Honor, based on the motion
16 yesterday.

17 THE COURT: Overruled.

18 BY MS. CAVANAUGH:

19 A. I didn't know how many bottles that there were still
20 from the lab. Obviously there's two things there, and
21 generally those are one-use things. When they use gas in
22 one of them, they won't use it again. So based on that,
23 there probably should have been at least two or three of
24 the bottles with the white stuff and the black stuff in the
25 bottom of it. He said he had put them out back around the

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1 power line.

2 Q. I'm going to show you what's marked as State's Exhibit
3 23. Is this what was located as far as what you were
4 asking him about?

5 A. That's what I was asking him about, and that was
6 located in his backyard.

7 Q. And what is that?

8 A. That is the plastic bottle with all the precursor
9 ingredients to make methamphetamine.

10 Q. And what is that black material in that bottle?

11 A. That's the lithium that I was referring to that once
12 -- it's all pretty mundane until they drop that in there,
13 and then it gets pretty flammable and explosive and so on
14 and so forth.

15 Q. And that would come from the unopened batteries -- or
16 the opened batteries?

17 A. Open them up, strip them out, pull the lithium out,
18 and stick it in there. It's very hot to the touch.

19 Q. Were there other syringes that appeared unused that
20 you located in this bedroom?

21 A. He had a lot of syringes, if I remember correctly.
22 Give you a number, I don't know. It's quite a few.

23 Q. I'm going to show you what's marked as State's Exhibit
24 28. Was this collected from his bedroom?

25 A. It was.

1 Q. And what is that?

2 A. Those are little wax paper -- they call the bindles,
3 bundles. It's used to package, generally used to package
4 narcotics.

5 Q. And it appears to be a box of them?

6 A. A box, quite a few of them.

7 Q. You mentioned earlier that you were the scribe for the
8 search warrant. What does that mean?

9 A. It means -- again, that's some -- I don't even know
10 where that word comes from. That's what we call it. It
11 just means you write down everything that is taken from the
12 house. Ultimately I seal all the packages up, take them to
13 our evidence room, generally call for case numbers and
14 generally stuff like that. Generally most of the paperwork
15 I fill out or have someone fill out.

16 Q. And when the evidence is collected, is that done by
17 the investigators that are there?

18 A. It is.

19 Q. And are they wearing gloves?

20 A. They are.

21 Q. And how is it turned in to you? What form is it in?

22 A. It is generally in the form, however they collect it.
23 They will bring it, and I'll have some plastic bags,
24 Richland County evidence bags or paper bags.

25 Q. Like those?

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1 A. Like that and they will place them in there. I'll
2 seal them up, and we'll fill the bags up.

3 Q. And what did you do after you received the evidence
4 from the various investigators in this case? Where did you
5 take that?

6 A. At the end of all of that, I took it all to the
7 Richland County Sheriff's Department, turned it in to our
8 evidence lab -- evidence room.

9 Q. And while it was in your possession, did you tamper
10 with it in any way?

11 A. I did not.

12 Q. Did you yourself collect anything from this, in this
13 investigation?

14 A. I did.

15 Q. And what was that?

16 A. It was a small greenish, looks like a small tackle box
17 is what I thought it was, and it contained narcotics and
18 stuff.

19 Q. And where was that located?

20 A. It was located in the garage area of the home, kind of
21 shoved in between some things.

22 Q. I show you what's marked as State's Exhibits 30
23 through 32. Are these -- can you tell me what these are?

24 A. The first one is where I initially found the little
25 box. The second one is it open showing what's inside of

1 it, which is narcotics.

2 Q. I'm going to also show you what's marked as State's
3 Exhibit 43. Do you recognize that box?

4 A. That is the little box that I collected.

5 Q. In what area of the house did you collect this?

6 MS. CAVANAUGH: Oh, Your Honor, at this time I move to
7 introduce State's Exhibit 43.

8 MR. HAWKS: Without objection.

9 (GREEN BOX MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 43.)

11 BY MS. CAVANAUGH:

12 Q. Where did you locate this box?

13 A. In the garage area. It was kind of shoved behind --
14 when we went in there to the garage, the door, there was,
15 like, a sofa, I believe there and a chair or two here, and
16 it was back behind all that sort of stuff with other
17 household things.

18 Q. Okay, and I'm not going to open this box, but this is
19 a photograph of it open. Is that correct?

20 A. That is a photograph of one -- of both sides of it
21 open.

22 Q. And after you collected this box, what did you do with
23 it? What did you do?

24 A. At that time, I walked outside and I asked Mr.
25 Sanders, I said what's the deal with this box? Is it

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1 yours?. He said it's mine, and I said why -- and I asked
2 him why he tried to hide it. He stated he didn't try to
3 hide it from me or from investigators.

4 At that time I opened it up, and I asked him what was
5 inside of it, and he went right down the line in each
6 compartment and told me what he -- what was in each of the
7 containers according to the little separated parts.

8 Q. And did he indicate which type of drugs were in the
9 box?

10 A. He did. He went down the list. I believe it was
11 heroin and crack, maybe meth. You would have to show me
12 again. Little, the wax paper things. This is a -- little
13 plastic baggies of packaged narcotics. These are the
14 bundles that -- end product of those wax paper things
15 there.

16 Q. Okay. So, the drugs actually appeared to be packaged?

17 A. They were packaged.

18 Q. They were packaged?

19 A. Prepared for sale.

20 Q. Individually?

21 A. They were. It's kind of a pain to open.

22 Q. It is. Now, were you actually the lead investigator
23 in this case?

24 A. I was not the lead investigator.

25 Q. Who was the lead investigator?

1 A. Investigator Ricard.

2 Q. And was she responsible for charging -- making the
3 charging decisions on the defendant?

4 A. She is.

5 Q. Were the other two individuals that were located in
6 the garage -- they didn't live there, did they?

7 A. They did not.

8 Q. Were they arrested for anything?

9 A. They were arrested for the crack cocaine, I believe.
10 Actually, yes, I know they were.

11 Q. And was -- what crack cocaine was found?

12 A. The crack cocaine that was found at -- again on the
13 little ashtrays as we entered the garage where all three
14 were seated.

15 Q. I mentioned -- you mentioned that you collected some
16 of the evidence and took it back to the sheriff's
17 department. Did you actually collect all of the evidence
18 and take it to the sheriff's department in this case?

19 A. All the evidence that we could collect and turn in to
20 our evidence room.

21 Q. Were there materials that were taken to another
22 location?

23 A. There were.

24 Q. And which ones were those?

25 A. Those are the materials used to make the meth lab. It

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 is -- most of them aren't very toxic individually. Put
2 together, they are extremely toxic, hazardous, flammable,
3 explosive, and our evidence room just will not take them
4 for those reasons.

5 Q. And is there a company that's contacted to take the
6 hazardous materials?

7 A. There is. It's -- they come out and they're all --
8 they look like spacemen to me. They got all these crazy
9 suits on and stuff like that. And they come in and take
10 all the stuff away, separate it and dispose of it.

11 Q. And the suits are for their protection?

12 A. They are.

13 Q. Because they are the ones that are actually coming in
14 contact with ---

15 A. Yes, after we initially come into contact with it,
16 they -- yes. They get a little more prepared to come in
17 contact with it.

18 Q. And is this process used in all meth labs that y'all
19 come in ---

20 A. All that Richland County ---

21 Q. --- contact with?

22 A. --- deal with as far as I know.

23 Q. So, there was a scale located in his bedroom?

24 A. There was.

25 Q. Wax, a bolt -- a box of wax paper?

1 A. Yes.

2 Q. The green box, how were the drugs packaged in the
3 green box?

4 A. They appeared packaged for sale, from my experience.

5 Q. And all of the ingredients were located in his
6 bedroom. All the household items that are legal but when
7 taken together, those were located in his bedroom, and what
8 did that indicate to you?

9 A. All the items were located in his bedroom save the one
10 plastic bottle that was located outside, and it, it was
11 used to manufacture methamphetamine.

12 MR. HAWKS: Objection, Your Honor. Opinion and
13 speculation.

14 THE COURT: Overruled.

15 BY MS. CAVANAUGH:

16 Q. And again that smell, what did that indicate to you?

17 A. That is a very -- that, the smell, as strong as it
18 was, indicated and was very indicative of a meth cook that
19 had taken place very recently. It'll dissipate to an
20 extent once they -- once it has time to dissipate.

21 MS. CAVANAUGH: Beg the court's indulgence.

22 (A PAUSE.)

23 BY MS. CAVANAUGH:

24 Q. Can you identify the defendant in the courtroom today?

25 A. I can.

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 Q. And what, what is he wearing?

2 A. A greenish color jumpsuit with a thermal top on. Jack
3 Sanders right there at the table.

4 MS. CAVANAUGH: Let the record reflect he has
5 identified the defendant.

6 THE COURT: Record will so reflect.

7 BY MS. CAVANAUGH:

8 Q. Was that the extent of your involvement in this case?

9 A. I guess pretty much, yes. I spoke with Mr. Sanders
10 quite a bit and did quite a bit of things, but yeah, I
11 think that's about it.

12 Q. You say you spoke to him throughout the search warrant
13 process?

14 A. Right. He was pretty -- he talked a good bit.

15 MS. CAVANAUGH: Thank you. No further questions.

16 THE COURT: All right, ladies and gentlemen, let's
17 take a short break at this time. Please go to the jury
18 room. Just relax for a few minutes. We'll take our
19 morning break, and we'll call you in about five, ten
20 minutes.

21 Again, don't discuss the case among yourselves while
22 you're in the jury room.

23 (THE JURY EXITS AT 11:07 AM.)

24 THE COURT: All right, Officer Smith, you can come
25 down. Just don't discuss the case with anyone during the

1 specifically tell me what you did?

2 A. Yes. Once we gathered them all, all of them together,
3 I simply told them you have the right to remain silent.
4 Anything you say can be used against you in court. You
5 have a right to an attorney. If you can't afford one, one
6 will be appointed for you at no cost. You also have the
7 right to stop answering the questions at any time until you
8 speak to an attorney.

9 Q. And you mirandized the group as a whole?

10 A. As a whole, that is correct.

11 Q. And did each of them indicate they understood what you
12 had told them?

13 A. Yes. What I do is once I say that, I go to each
14 individual person and have them acknowledge me. If they
15 try to nod their head or just say uh-huh, I said do you
16 understand, yes or no. And they, if they, if they would
17 have said no, I would have explained it again, but all of
18 them said yes, they understood.

19 Q. Specifically Mr. Sanders, did he say he understood his
20 rights as you explained them?

21 A. Yes, sir, he did.

22 Q. At that time, especially in your experience as a
23 narcotics investigator, did he appear under the influence
24 of any drugs or alcohol?

25 A. No, he did not.

J. MALDONADO - DIRECT EXAMINATION BY MR. MATHEWS

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1 Q. Did he seem to understand everything that was
2 explained to him?

3 A. Yes.

4 Q. At that point in time, did you promise or offer him
5 anything in exchange for him to talk to you or waive his
6 rights?

7 A. No, sir.

8 Q. Did you threaten him or coerce him in any way?

9 A. No, sir.

10 Q. Did you yourself take a statement from him or hear
11 anything that he said?

12 A. I did not take a statement, no, sir.

13 Q. What primarily was your role on scene as the
14 supervisor?

15 A. Well, I was basically there to make sure that it was
16 all organized. We, we actually had another search warrant
17 lined up as well. So, we were, we were focused on getting
18 in, taking care of that one, and then moving on to the next
19 search warrant, which since it -- the way this one turned
20 out, it took a little bit longer. So, I eventually, I had
21 to take part of the group, and we had to leave to go do
22 another search warrant while we were doing this one.

23 Q. Did you have any further involvement in the
24 investigation of Mr. Sanders?

25 A. No, I did not.

1 MR. MATHEWS: Beg the court's indulgence.

2 (A PAUSE.)

3 MR. MATHEWS: Thank you, Sergeant. I have no further
4 questions.

5 MR. HAWKS: I don't have any questions for this
6 witness.

7 THE COURT: All right, you may come down. Thank you
8 very much.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Approach the bench, counsel.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: Call your next witness.

13 MR. MATHEWS: State calls investigator Joe Clarke.

14 JOSEPH CLARKE, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Have a seat in the witness box.

17 State your name for the record.

18 WITNESS: Joseph Clarke.

19 DIRECT EXAMINATION BY MR. MATHEWS:

20 Q. Investigator Clarke, where do you work?

21 A. Richland County Sheriff's Department.

22 Q. And what do you do at the sheriff's department?

23 A. I am a Special Victims Unit investigator.

24 Q. April 2013, what unit were you assigned to?

25 A. The Narcotics Unit.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 Q. How long have you been in law enforcement?

2 A. Thirteen years.

3 Q. Can you tell me your involvement, or did you have
4 involvement with the service of a search warrant at 113
5 Rockingham Road in April of 2013?

6 A. I did.

7 Q. Can you tell me your involvement with that?

8 A. I was part of the initial team that went in with the
9 Narcotics Unit. We conducted a search warrant at that
10 location. We were assisting another agent who had gathered
11 a search warrant for that address, and so I was part of the
12 initial team that went in.

13 Q. Tell me what you saw when you initially went in.

14 A. I remember going into the home. It was a one-level
15 home. Went into the left into a garage area where we
16 encountered several subjects in the garage area.

17 Q. Do you remember how many?

18 A. I believe it was three.

19 Q. Okay. Do you know their names?

20 A. Don't know their names right offhand. I knew there
21 was two males and a female, all Caucasian.

22 Q. Did you have an occasion to talk to any of them?

23 A. I did.

24 Q. And which one did you talk to?

25 A. The defendant there.

1 Q. And what was his name?

2 A. Bud is what I recall.

3 Q. Fred Sanders?

4 A. Fred Sanders.

5 (ADVICE OF RIGHTS FORM MARKED AS STATE'S EXHIBIT
6 NUMBER 44 FOR IDENTIFICATION.)

7 (STATEMENT MARKED AS STATE'S EXHIBIT NUMBER 45 FOR
8 IDENTIFICATION.)

9 Q. Were you present when Sergeant Maldonado mirandized
10 the three subjects?

11 A. I was.

12 Q. And after you have occasion to talk to Mr. Sanders,
13 where did you speak with him?

14 A. Spoke to him in what best could be described as a
15 laundry room. There was a washer and dryer inside of, I
16 guess, a laundry room. It had the hookups for the washer
17 and dryer. Like a closet area.

18 Q. Was he handcuffed at that time?

19 A. No. We had -- I, I -- if he had been handcuffed, I'm
20 not certain, but he was certainly not handcuffed when I
21 spoke to him.

22 Q. Did you advise Mr. Sanders of his rights again at that
23 time?

24 A. I did.

25 Q. I'm showing you what's been marked as State's Exhibit

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 44. Do you recognize that?

2 A. I do.

3 Q. Can you tell me what that is?

4 A. This is a Richland County form, standard form we use
5 for advising someone of their rights and also giving them
6 the, the opportunity to waive rights if they wish to
7 continue speaking to us.

8 Q. And was that signed by Mr. Sanders?

9 A. It was.

10 Q. Was that read to Mr. Sanders?

11 A. It was.

12 MR. MATHEWS: Your Honor, at this time offers State
13 Exhibit 44.

14 THE COURT: Just 44? Just 44?

15 MR. MATHEWS: At this time.

16 MR. HAWKS: Without objection.

17 THE COURT: Without objection.

18 (ADVICE OF RIGHTS FORM MARKED INTO EVIDENCE AS STATE'S
19 EXHIBIT NUMBER 44.)

20 BY MR. MATHEWS:

21 Q. Can you read that statement to me as -- or did you
22 read the statement aloud to Mr. Sanders?

23 A. I did.

24 Q. Can you read the statement to me?

25 A. Certainly. This, is it says: Richland County

1 Sheriff's Department Interrogation and Advice of Rights.
2 It has an area located at the top where we can put the
3 person's name, date we doing this, and the location. In
4 this particular case, it was in his home. And it says your
5 rights, and they are enumerated this way.

6 As I do it, I read it, I check it off, and I do that
7 in the presence of whoever I'm speaking with, and it goes
8 as following:

9 Before we ask you any questions, you must
10 understand your rights. You have the right to
11 remain silent. Anything you say can be used you
12 -- against you in court. You have the right to
13 talk to a lawyer for advice before we ask you any
14 questions and to have a lawyer with you during
15 any questioning. If you cannot afford a lawyer,
16 one will be appointed for you before any
17 questioning if you wish. And if you decide to
18 answer questions now without a lawyer present,
19 you still have the right to stop answering at any
20 time. You also have the right to stop answering
21 at any time until you talk to a lawyer.

22 And then you can sign your name, and then I witness
23 that. And then below that we have the waiver of rights,
24 and the waiver of rights states:

25 I have read this statement of my rights and

1 understand what my rights are, and I willing to
2 talk and to answer questions, and I understand
3 and know what I am doing. No promises have been
4 made to me. No pressure or coercion of any kind
5 has been used against me.

6 And what is my standard practice, and kind of normal
7 for most investigators, is to say do you understand that,
8 get an acknowledgment of that. And if they understand that
9 and they're willing to go forward, we have them actually
10 sign the waiver at the bottom, and then they are free to
11 continue talking to us, and we've advised them of their
12 rights.

13 Q. Did he indicate that he understood what you read him?

14 A. Yes, he did.

15 Q. Did he sign it?

16 A. He did.

17 Q. Did you witness it?

18 A. I did.

19 Q. Did anyone else witness it?

20 A. Yes, Investigator Smith.

21 Q. Did he sign that?

22 A. He did.

23 Q. And after that, did you get a statement from Mr.
24 Sanders?

25 A. I did.

1 Q. And tell me how this works. Did you speak to him and
2 then reduce it to writing?

3 A. Yes. In, in all cases like this, you, you know, first
4 you speak to that individual. Find out if they're willing
5 to speak to you. And then after advising them of their
6 rights, then what is -- has been my standard procedure, and
7 I've been an investigator since '06, what's been my
8 procedure is to say let's talk about this for a minute.
9 This is after he's waived his Miranda, and then let's
10 reduce it to writing. And sometimes that will come down to
11 just a Q and A. Sometimes it will be an actual statement,
12 I want to say the following. And they'll say the
13 following, and I'll write it down, will reduce it to
14 writing. I'll make sure they understand what they've told
15 me, read it back to them, and if they agree that what I
16 have recorded is what they said, then they affix their
17 signature.

18 Q. And just to go backtrack briefly, I apologize. Did
19 you promise or threaten him in any way?

20 A. No.

21 Q. Did you coerce him into giving a statement?

22 A. No.

23 Q. Did he seem under the influence of any drugs or
24 alcohol?

25 A. Did not appear to be in any way.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 MR. MATHEWS: Beg the court's indulgence one second.

2 (PILLS AND POWDER SUBSTANCE MARKED AS STATE'S EXHIBIT
3 NUMBER 46 FOR IDENTIFICATION.)

4 (CONTAINER WITH SYRINGES MARKED AS STATE'S EXHIBIT
5 NUMBER 47 FOR IDENTIFICATION.)

6 BY MR. MATHEWS:

7 Q. GO back to the statement one second. Did you assist
8 with the search of the house?

9 A. I did.

10 Q. Did you recover any items?

11 A. I'm sure I did. There were multiple items, you know.

12 Q. I'm showing you what's been marked as State's 46 and
13 47. Do you recognize this?

14 A. I do.

15 Q. Start with 46. What is that?

16 A. Make sure I see which one. 46, those would be pills
17 of a green color and a white powdery substance, small
18 plasticine bag with a twist, and a green powdery substance
19 and another -- little Ziploc bags.

20 Q. Do you know where those were recovered?

21 A. Specifically, they would have been the back left
22 bedroom by myself. All of those would have been the back
23 left bedroom.

24 Q. How do you know that you were the one who recovered
25 those items?

1 A. As is our policy, when we do an entry in a home and
2 everything -- you know, we get everything settled down for
3 a minute. Then we start the search. It's a systematic
4 search: top to bottom, bottom to top, left to right, what
5 have you. As you find things, we designate a central area
6 where there's someone recording these things. There's
7 someone taking pictures; there's someone writing things
8 down. But as you find it, the individual agent needs to be
9 able to say found this at such-and-such location. So, if
10 it's, like, in a closet, top-right shelf, bedroom, you
11 write: found closet, top-shelf, bedroom, and then you put
12 your name. In my case, Clarke. So as I found these items,
13 I would then write on the item, or however we were getting
14 ready to put it in the bag, where I found it and affix my
15 name to the side of that.

16 Q. Okay, and are those the items you found?

17 A. They are.

18 Q. Did you seal the bag yourself?

19 A. I'm not certain if I sealed them at the time. Mostly
20 what we're doing is collecting, and then we'll have someone
21 that will take it to headquarters and put it into evidence
22 per our policy there.

23 Q. Would that have been Investigator Smith in this
24 opportunity?

25 A. Possibly, more than likely.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 Q. I'm going to move to the next bag.

2 A. Sure.

3 Q. 47. What is that?

4 A. This would be a sharps container, for lack of a better
5 word. It's a syringe holder and we put things like -- put
6 knives in there. I've put other sharp objects. In this
7 particular case, we put hypodermic needles in here that
8 contained a liquid. And in particular, two of these do not
9 have the standard cap on hypodermic needle. We've all seen
10 those. Instead, they're the actual caps off of a ballpoint
11 pen. So, it's not very well secured, and they're actually
12 held together with a piece of tape. And we realized that
13 was a danger, so they stuck them in this container.

14 Q. And that was recovered by you?

15 A. It was.

16 Q. Did you write that on the bag?

17 A. Yes.

18 Q. And is that the item that you recovered that day?

19 A. It is.

20 MR. MATHEWS: Your Honor, at this time I'd offer
21 State's 46 and 47.

22 THE COURT: Any objection?

23 MR. HAWKS: Into evidence?

24 MR. MATHEWS: Yes.

25 MR. HAWKS: Yes, I would object, not only to my

1 motions pretrial, but also a new matter of law I'd like to
2 take up.

3 THE COURT: All right.

4 Ladies and gentlemen, just go to the jury room for a
5 minute. Let me try to get this straightened out. We're
6 going to take a lunch break after this witness. So, just
7 relax for a minute and I'll -- we'll be -- I'll call you.

8 (THE JURY EXITS AT 12:25 PM.)

9 THE COURT: Mr. Hawks, what's the problem?

10 MR. HAWKS: Your Honor, I believe, according to Rule
11 6, that unless they have every witness that touched the
12 evidence -- and one of those was Tara Kinney -- that they
13 cannot submit it without giving me a chain of custody
14 report not later than eleven days prior to the trial of the
15 case. I just got that this morning.

16 THE COURT: You're objecting to the chain?

17 MR. HAWKS: I'm objecting to the submission of the
18 evidence.

19 THE COURT: How about that, Mr. Foster?

20 (A PAUSE.)

21 MR. MATHEWS: I guess at this point, I -- it was
22 brought to my attention that the chain was just provided.

23 THE COURT: I'm sorry. I didn't hear you.

24 MR. MATHEWS: I apologize. It was brought to my
25 attention that the chain was provided this morning.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 However, I believe the case law is that the chain of
2 custody is to be proved as far as is practicable. Here
3 none of this evidence was tested, and I believe that we
4 proved that as far as practicable.

5 But if his objection is that Tara Kinney has not
6 testified as to her involvement with it, she'll be
7 testifying later. We can have it marked as a court's ID.
8 But it's my objection that we have proved chain as far as
9 we need to.

10 THE COURT: We'll just mark it for ID.

11 MR. HAWKS: Thank you, Your Honor.

12 MR. MATHEWS: Oh, and while the jury is out also,
13 briefly. I stepped back and stopped with the statement for
14 a minute so we could redact it.

15 THE COURT: I understood that.

16 MR. MATHEWS: With the firearm issue. I'm going to
17 show it to Mr. Hawks now.

18 THE COURT: All right. Go ahead.

19 MR. MATHEWS: And make sure he approves.

20 (COUNSELORS CONFER.)

21 MR. HAWKS: We don't have any problem.

22 THE COURT: All right. Good.

23 MR. HAWKS: Would you like to take up the other issue
24 now since the jury is out?

25 THE COURT: No. I want to get them -- the other

1 issues, which I will address, but let's wait until the jury
2 goes to lunch. There's no sense in keeping them out longer
3 than we have to at this point in time.

4 Ready for the jury?

5 (STATEMENT MARKED AS COURT'S EXHIBIT NUMBER 4.)

6 THE COURT: You ready for the jury, Mr. Mathews?

7 MR. MATHEWS: Yes, Your Honor.

8 THE COURT: All right, bring the jury.

9 (THE JURY ENTERS AT 12:30 PM.)

10 THE COURT: All right, Mr. Mathews, you may continue.

11 MR. MATHEWS: Thank you, Your Honor.

12 BY MR. MATHEWS:

13 Q. Investigator Clarke, I'm showing you State's Exhibits
14 24 and 25, which are already in evidence. Are those the
15 syringes you collected?

16 A. They are.

17 Q. Can you tell me a little bit about those again and
18 what stands out about them?

19 A. Well, they had fluid in them already; they'd been
20 loaded. They actually have -- and in two or three of the
21 cases, at least two that I'm looking at, they -- the
22 standard cap that goes on top of the syringe is missing,
23 and instead a ballpoint pen or a marker, if you will,
24 has been used to cover the tops of the syringes, the
25 exposed needle part of the syringes. But there's also

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 some tape that is holding those on that have the Batman
2 emblem on them. And I remember briefly just asking what's
3 the deal with the Batman thing, and he said that's just my
4 thing, and that's what he said.

5 Q. And did you ask him about what was in those syringes?

6 A. I did.

7 Q. What did he ---

8 A. I asked him and he said -- I said is that, is that
9 liquid methamphetamine and he said yes.

10 Q. Is that common for people to shoot up liquid
11 methamphetamine?

12 A. It's more common to smoke it and to lace it on
13 something, but it's not -- at least in our experience,
14 injectable methamphetamine is not that common in Richland
15 County.

16 Q. Showing you now what's been marked as State's Exhibit
17 45. Do you recognize that?

18 A. I do.

19 Q. What is that?

20 A. This is our standard form we use take a statement from
21 someone when we are asking for a statement.

22 Q. Whose statement is that?

23 A. That would be the statement of Fred J. Sanders, III.

24 Q. Is that the one you took from him on April 23, 2013?

25 A. It is.

1 Q. Did he sign that statement?

2 A. He did.

3 Q. Did he initial each page?

4 A. He did.

5 Q. And was this given after he signed a written waiver of
6 his rights?

7 A. That is correct.

8 MR. MATHEWS: At this time, Your Honor, I would offer
9 State's exhibit -- I forget. What number is that?

10 WITNESS: It's 45.

11 MR. MATHEWS: 45 into evidence as amended.

12 MR. HAWKS: Without objection.

13 THE COURT: Without objection.

14 (STATEMENT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 45.)

16 BY MR. MATHEWS:

17 Q. Investigator Clarke, would you publish Mr. Sanders's
18 statement to the jury?

19 A. Certainly:

20 Question: Do you reside at

21 Answer: Yes, sir.

22 And then I asked him in that same sentence how long he
23 estimated. Fifteen to eighteen years.

24 Question: Which bedroom do you stay and/or sleep
25 in?

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

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1 Answer: Back left bedroom.

2 Question: Do you reside with any other person at
3 this home?

4 Answer: Yes, my mother.

5 Question: Does your mother keep any of her
6 personal items in your bedroom?

7 Answer: No, sir.

8 Question: So, any illegal items, contraband in
9 your bedroom would be yours and yours alone,
10 correct?

11 Answer: Yes, sir.

12 Redaction there.

13 Question: We have found through our search
14 warrant cocaine, marijuana, Valium, and
15 methamphetamine in your bedroom. These are your
16 items, correct?

17 Answer: Yes, sir.

18 Question: How do you use or take meth?

19 Answer: Inject and/or smoke.

20 Question: The loaded syringes we found contain a
21 liquid in it. Is this meth?

22 Answer: Yes.

23 Do you have anything further you'd like to add?

24 Answer: I apologize.

25 And then at the bottom, as is my custom, I write:

1 Statement ends. I make some X marks, which is something
2 I've done over the years to fill in the blank. I put my
3 initials. This done in front of the person. Then they put
4 their initials, and basically what that means is at this
5 point, this statement is over and nothing is being added to
6 this statement.

7 Q. Can you describe Mr. Sanders's room when you went into
8 it, please?

9 A. Very -- a lot of stuff, a lot of personal items. A
10 lot of materials stacked. What's the word I'm looking for?
11 Disarray.

12 Q. And I know you took a verbal statement and then I
13 think you wrote -- you took a -- the written statement and
14 you wrote end of statement, but you also continued to speak
15 to him afterwards as you related?

16 A. That's correct, yeah.

17 Q. Okay.

18 MR. MATHEWS: Thank you. I have no further questions.

19 THE COURT: Cross-examination.

20 MR. HAWKS: Briefly, Your Honor.

21 CROSS-EXAMINATION BY MR. HAWKS:

22 Q. Investigator Clarke, there's no question in here about
23 the crack, right?

24 A. I'd have to look at it, but I don't remember asking a
25 crack question, no, sir.

W. GONZALES - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 MR. HAWKS: So, there's no curative instruction
2 either?

3 THE COURT: Well, I'll give a curative instruction if
4 you -- you'd better phrase it for me because it gets pretty
5 dicey. If you want to bring it, if you want to bring it
6 back to their attention, that's fine with me.

7 MR. HAWKS: I think I have to do it for the record.

8 THE COURT: Well, write it out.

9 (THE JURY ENTERS AT 2:08 PM.)

10 THE COURT: All right, Solicitor, call your next
11 witness.

12 MS. CAVANAUGH: State calls Investigator William
13 Gonzales.

14 WILLIAM GONZALES, BEING DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Have a seat in the witness box.
17 State your name for the record and spell it, please.

18 WITNESS: William Gonzales.

19 DIRECT EXAMINATION BY MS. CAVANAUGH:

20 Q. Good afternoon, Investigator Gonzales.

21 A. Good afternoon, ma'am.

22 Q. Where are you employed?

23 A. With the Richland County Sheriff's Department.

24 Q. And how long have you been employed with the sheriff's
25 department?

1 A. A little bit over thirteen years.

2 Q. And what is your current position at the sheriff's
3 department?

4 A. I worked the -- with the Richland County sheriff's
5 Narcotics Unit.

6 Q. When -- let me take your attention back to April 2013.
7 Were you in the Narcotics Unit?

8 A. Yes, ma'am.

9 Q. And what are some of your duties and responsibilities
10 as a narcotics investigator?

11 A. We follow up tips, conduct surveillance, try to, try
12 to build cases in narcotics cases.

13 Q. And is one of your roles to help execute search
14 warrants?

15 A. We execute search warrants, a lot of search warrants.

16 Q. Were you involved in the execution of the search
17 warrant at Road?

18 A. That's correct.

19 Q. And was that April 23, 2013?

20 A. I don't recall the date, but if you say so, yes.

21 Q. Do you have a copy of the ---

22 A. Yes, ma'am.

23 Q. --- of the search warrant?

24 A. That's correct, ma'am.

25 Q. Okay, and do you have -- do you remember this

W. GONZALES - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 occasion?

2 A. Yes.

3 Q. Okay, and what did you do upon entering the residence?

4 A. Upon entering the resident home, we secured the
5 residence. I went to the back left bedroom where the
6 defendant was sleeping.

7 Q. Where, where his bedroom was?

8 A. Located, right.

9 Q. And what did you observe upon entering the bedroom?

10 A. Well, at that time we went to execute the search
11 warrant, so we started searching the residence, the
12 bedroom. Upon entering the bedroom, you could see that he
13 had a lot of clutter, stuff. He had a workbench to the
14 right, Closet was to the right, and the bed was toward the
15 front, almost across from the, from the door of the
16 bathroom.

17 Q. And did you collect any items from his bedroom?

18 A. I did.

19 Q. Okay, and what did you collect? It's listed on
20 the ---

21 A. Yes, ma'am. From the workbench that he had towards
22 the right next to the closet, I collected several
23 batteries, lithium batteries. They were also -- I believe
24 that some of the batteries might have been shredded a
25 little bit, open. Some coffee filters, there was some,

1 some copy filters on top of the desk. There was no coffee
2 maker in the area. I also recovered some ingredients like
3 salt, some tubings, Coleman fuel, and I believe there was
4 a, a can of Drano, liquid Drano. There was a jar that was
5 kind of odd. It was a jar with cut-up straws, straws
6 inside the jar.

7 Q. And when you collected these items, were you wearing
8 gloves?

9 A. Yes, ma'am. That's normal SOP procedure. Any time we
10 enter a residence to search, they advise we wear gloves.

11 Q. And were these turned over to Investigator Chauncey
12 Smith at the sheriff's department?

13 A. Once, once we found the items, we take them to
14 whoever's scribing the search warrant, and they will
15 annotate that into the return of the search warrant.

16 Q. Now the items that you just mentioned -- in your
17 experience as a narcotics investigator, have you come into
18 contact with methamphetamine labs?

19 A. Yes, ma'am.

20 Q. And the items that you just mentioned, are those often
21 found in these labs?

22 A. Absolutely.

23 Q. Did you go to the living room area in this -- in the
24 residence?

25 A. Yes. At one point I walked into the living room area.

W. GONZALES - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 Q. And was anything located in the living room?

2 A. I don't believe I searched the living room area.

3 Q. Okay. Was that where the defendant's mom was ---

4 A. That's correct.

5 Q. --- during the search?

6 A. That's where the defendant's mom was sitting down on
7 the couch, correct.

8 MS. CAVANAUGH: Beg the court's indulgence.

9 (A PAUSE.)

10 BY MS. CAVANAUGH:

11 Q. And just to be clear, it is -- it wasn't your role to
12 determine what was potentially hazardous and what was not
13 hazardous. Is that correct?

14 A. That's correct. Everything, everything that I found,
15 I brought it over to the working area which was, I believe,
16 the desk in the living room area. And I'm assuming that
17 somebody else was making that determination of what, what
18 would be hazardous what would not be hazardous.

19 Q. But that wasn't you?

20 A. That's correct.

21 Q. Okay.

22 MS. CAVANAUGH: Thank you.

23 THE COURT: Cross-examination.

24 MR. HAWKS: Thank you, Your Honor.

25 CROSS-EXAMINATION BY MR. HAWKS:

W. GONZALES - CROSS-EXAMINATION BY MR. HAWKS

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1 Q. Investigator Gonzales, this was not a working meth
2 lab?

3 A. It was ingredients of a working meth lab.

4 Q. But it was not, in fact, a working meth lab?

5 A. Probably not active at the moment.

6 Q. Not operative?

7 A. Yes, sir.

8 Q. And Mr. Sanders's bedroom, pretty messy?

9 A. I wouldn't say too messy. It was just a lot of stuff
10 piled up.

11 Q. A lot of clutter?

12 A. A lot of clutter.

13 MR. HAWKS: I have nothing further for this witness.

14 THE COURT: Anything further?

15 MS. CAVANAUGH: Nothing further.

16 THE COURT: All right, you may come down, sir.

17 This witness be excused? Without objection.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Next witness.

20 MS. CAVANAUGH: State calls Investigator David Unger.

21 DAVID UNGER, BEING DULY SWORN,

22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness box.

24 State your name for the record, spelling your last name,
25 please.

D. UNGER - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 WITNESS: It's David Unger, U-n-g-e-r.

2 DIRECT EXAMINATION BY MS. CAVANAUGH:

3 Q. Investigator Unger, where are you employed?

4 A. I'm employed with the Richland County Sheriff's
5 Department.

6 Q. And how long if you been with the sheriff's
7 department?

8 A. Just over ten years.

9 Q. And what is your current position at the sheriff's
10 department?

11 A. I'm a polygraph examiner for the Richland County
12 Sheriff's Department.

13 Q. And in April of 2013, what was your position?

14 A. I was a narcotics agent with the sheriff's department.

15 Q. Did you have an occasion to assist in the execution of
16 Road?

17 A. Yes, ma'am, I did.

18 Q. I'm going to show you what's marked as State's Exhibit
19 46 and ask if you recognize your signature on this bag.

20 A. I do. That's my handwriting and my signature.

21 Q. Okay, and what does it indicate that you collected?

22 A. A yellowish, rock-like substance found by me in the
23 garage under a couch in an ashtray.

24 Q. Okay, and when you collected this evidence, were you
25 wearing gloves?

D. UNGER - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 A. Yes, ma'am.

2 Q. And upon collecting it, how do you, how do you
3 actually package it?

4 A. May I see that again just to see what I had?

5 (A PAUSE.)

6 A. This one was packaged in a small envelope, written on
7 the envelope what it is, and then it's been written on the
8 outside of the evidence bag itself.

9 Q. So it's separate from any other items that were
10 collected?

11 A. That's correct.

12 Q. I'm going to show you what's marked as State's Exhibit
13 42 and ask if you recognize that.

14 A. Yes, ma'am. That's the ashtray with yellowish, rock-
15 like substance.

16 MS. CAVANAUGH: Your Honor, at this time I'd move to
17 introduce State's Exhibit 42 into evidence.

18 MR. HAWKS: Without objection.

19 THE COURT: Without objection.

20 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 42.)

22 BY MS. CAVANAUGH:

23 Q. And this is a picture of the yellow, rock-like
24 substance that you collected?

25 A. Yes, ma'am.

W. GONZALES - DIRECT EXAMINATION / CROSS-EXAMINATION 271

1 Q. In the garage?

2 A. Yes, ma'am.

3 Q. Once you collected it, who did you actually turn it
4 over to?

5 A. Investigator Chauncey Smith.

6 Q. And how was that documented?

7 A. It's documented on the bottom of this evidence bag.

8 Q. And does he actually sign for it?

9 A. He does.

10 MS. CAVANAUGH: Beg the court's indulgence.

11 (A PAUSE.)

12 MS. CAVANAUGH: Thank you, Investigator. Please
13 answer any questions from the defense.

14 WITNESS: Yes, ma'am.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION BY MR. HAWKS:

17 Q. Just very briefly, Investigator. Did you happen to go
18 into Mr. Sander's room as well?

19 A. I do not remember if I went into his actual room or
20 not, but we cleared the entire house, the entry team. So,
21 there is a chance I probably went in that room.

22 Q. Do you remember it being very messy and cluttered?

23 A. I do not.

24 Q. How about the garage?

25 A. The garage was cluttered, yes. I remember that.

R. JAMES - CROSS-EXAMINATION BY MR. HAWKS

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1 Q. Would you say the bedroom was really messy, cluttered?

2 A. I'd say the bedroom had a lot of paraphernalia,
3 narcotics paraphernalia throughout the house and that room,
4 yes. It was cluttered with clothing and other items.

5 Q. Did you go in the garage, too?

6 A. I searched a little bit in the garage; I didn't do too
7 much in the garage. Mostly in the bedroom and the
8 residence kitchen area and such.

9 Q. Would you say the garage was also pretty cluttered?

10 A. Like I say, sir, I didn't say spend much time in the
11 garage. I may have walked in there for a few minutes, but
12 I didn't actually search through the garage.

13 MR. HAWKS: I have nothing further, Your Honor.

14 THE COURT: Anything further?

15 MS. CAVANAUGH: Nothing further, Your Honor.

16 THE COURT: All right, you may come down.

17 This witness be excused? Without objection.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Next witness.

20 MR. MATHEWS: State calls Sara Brassell.

21 SARA BRASSELL, BEING DULY SWORN,

22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness box.

24 State your name for the record and spell your first and
25 last, please.

S. BRASSELL - DIRECT EXAMINATION BY MR. MATHEWS

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1 WITNESS: Sara Brassell, S-a-r-a B-r-a-s-s-e-l-l.

2 DIRECT EXAMINATION BY MR. MATHEWS:

3 Q. Good afternoon, Ms. Brassell.

4 A. Good afternoon.

5 Q. My name is Foster Mathews. I work for the solicitor's
6 office. You and I have not spoken prior to today, have we?

7 A. No, we have not.

8 Q. We are here today in the interest of Fred Sanders. Do
9 you know Fred Sanders?

10 A. Somewhat, yes.

11 Q. And first tell me about yourself. How old are you?

12 THE COURT: Mr. Mathews.

13 A. Twenty-nine.

14 THE COURT: Hold on. Can you pull up a little closer
15 to that microphone so we can hear you? You're very
16 soft-spoken. We need to be able to hear you. Thank you
17 very much.

18 BY MR. MATHEWS:

19 Q. Twenty-nine?

20 A. Yes.

21 Q. And where do you live?

22 A. Currently nowhere.

23 Q. Okay. You're in jail right now?

24 A. Yes.

25 Q. For what?

1 A. For shoplifting.

2 Q. And that's already finished?

3 A. Yes.

4 Q. And while we're on the subject, you do have a prior
5 conviction in 2007 for fraud, don't you?

6 A. I do.

7 Q. Tell me how you know Mr. Sanders.

8 A. I just met him when I -- one day whenever I was going
9 to there for drugs.

10 Q. Was that the day that you were arrested?

11 A. It was the day before.

12 Q. The day before?

13 A. Uh-huh.

14 MR. HAWKS: I can't hear her, Your Honor.

15 THE COURT: I'm trying.

16 Can y'all hear her? Okay, lady on the back says they
17 can't hear.

18 WITNESS: Okay.

19 THE COURT: There we go.

20 BY MR. MATHEWS:

21 Q. Now I'm going to go to the date of April 23rd of last
22 year when you were arrested. What was going on on that
23 day?

24 A. Just using drugs and, I mean, nothing was going on and
25 cops came in and, you know, raided the place. I'd been

S. BRASSELL - DIRECT EXAMINATION BY MR. MATHEWS

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1 there all night, been up all night just getting high.

2 Q. What kind of drugs?

3 A. Just every kind. Heroin, Molly, which is also MDMA or
4 something like that, and crack cocaine, marijuana.

5 Q. Who provided these drugs?

6 A. Fred Jack Sanders.

7 MR. HAWKS: Objection, Your Honor. We have a matter
8 of law.

9 THE COURT: Approach the bench.

10 (OFF-THE-RECORD BENCH CONFERENCE.)

11 THE COURT: All right, ladies and gentlemen, go to the
12 jury room for just a minute. I've got lawyers talking in
13 both ears. Don't discuss the case among yourselves while
14 you're in the jury room.

15 (THE JURY EXITS AT 2:31 PM.)

16 THE COURT: Mr. Hawks, what's your objection?

17 MR. HAWKS: Your Honor, last week, Wednesday, March
18 12th, I received the jail list by email for Thursday, March
19 13. On it was Sara Ann Brassell. Obviously, I was alerted
20 by this. I then immediately sent the solicitor an email
21 asking her what was going on. She never replied.

22 There is nothing in the discovery whatsoever about
23 this woman giving a statement at the scene, giving a
24 statement afterwards at a time prior to this trial, or them
25 talking to her last week.

1 I renewed all my discovery motions both yesterday and
2 today. Her name was on the witness list, but this is
3 information that the defense should be provided.

4 THE COURT: What information?

5 MR. HAWKS: That she was going to testify and that
6 she had information about this case. We have been
7 preparing ---

8 THE COURT: Why else would she be on a witness list?

9 MR. HAWKS: Well, I did learn yesterday that she was
10 on the witness list but prior to that, I had no idea.
11 We've been preparing this, for this trial for weeks.

12 THE COURT: When was defense notified that this
13 witness was ---

14 MS. CAVANAUGH: Your Honor.

15 THE COURT: --- a potential witness?

16 MS. CAVANAUGH: Your Honor, her name was included in
17 the discovery that was provided to Mr. Hawks when the
18 initial discovery was turned over back in -- well, I don't
19 have the exact dates, but her name was provided in the
20 incident report to Mr. Hawks whenever initial discovery was
21 sent over.

22 Yes, he did notice that she was on the jail list. As
23 I stated, she coincidentally is in jail right now for
24 shoplifting. When we were looking for her as we were
25 preparing for this case, that is where we found her.

1 I brought her over. I told her exactly what I wanted
2 to talk to her about that -- about. She indicated that she
3 did not want to talk to me in any way related to this case
4 until she talked to her lawyer.

5 As soon as she said that, I ceased conversation with
6 her, and I did not hear anything further except that her
7 lawyer, who is sitting in the courtroom, Mr. Moak, informed
8 me that she was willing to testify.

9 So, her name was provided to Mr. Hawks well before
10 yesterday in the discovery because it, as has been stated
11 several times in this case, she is -- she was arrested at
12 the scene when they executed the search warrant.

13 And also she was on the jail list this morning. He
14 was -- she's been in the holding cell all day. He could
15 have talked to her at some point today or had someone else
16 talk to her.

17 THE COURT: When was he notified she was to be a
18 witness, potential witness in this case other than
19 discovery many months ago?

20 MS. CAVANAUGH: Well, Your Honor, when he was provided
21 the witness list yesterday morning. However, her name and
22 her address and her contact information has been available
23 to him as long as I've had the case.

24 THE COURT: Mr. Hawks.

25 MR. HAWKS: Well, I believe any conversation with her,

1 even if it's just her saying she wants to talk to her
2 lawyer, would be discoverable information that was not
3 handed over to us. And I find it very hard to believe that
4 they put her up here without any idea of what she was going
5 to say. Even if it came through her attorney, that's still
6 discoverable information. Just because I knew that she was
7 in the incident report, that's not putting me on notice for
8 what I'm supposed to be defending against.

9 MS. CAVANAUGH: Your Honor, my argument is that's what
10 cross-examination is for.

11 MR. HAWKS: I, I wasn't finished, Your Honor.

12 This is another thing of a long list of discovery
13 violations. This is trial by ambush, Judge.

14 THE COURT: How about it? It does seem a little late.
15 You talked to the -- to her counsel about her testimony?

16 MS. CAVANAUGH: Not about the substance of it. Just
17 that she was willing to testify.

18 THE COURT: Why? About what?

19 MS. CAVANAUGH: About the drugs that were located in
20 the garage that she was arrested for.

21 THE COURT: So, you did talk to him about her
22 knowledge of this case.

23 MS. CAVANAUGH: As referenced in the incident report
24 that the crack cocaine was located ---

25 THE COURT: As relates to this case.

1 MS. CAVANAUGH: Yes.

2 THE COURT: That's what I said.

3 MS. CAVANAUGH: Yes, because that's what her
4 involvement in this case was relating to ---

5 THE COURT: Well, I know.

6 MS. CAVANAUGH: --- as was related in the incident
7 report.

8 THE COURT: What's your motion, Mr. Hawks?

9 MR. HAWKS: I would again move for a mistrial.

10 THE COURT: Denied.

11 MR. HAWKS: Then I would move to suppress any
12 testimony from this witness.

13 THE COURT: All right, I'll grant it.

14 MR. HAWKS: Thank you. I guess we'll need a curative
15 instruction for what she's already said.

16 THE COURT: Well.

17 MR. HAWKS: And I believe she mentioned another prior
18 bad act.

19 THE COURT: Well, give me a proposed curative
20 instruction.

21 You can come down, ma'am.

22 (THE WITNESS EXITS THE STAND.)

23 (A PAUSE.)

24 THE COURT: You got another witness?

25 MS. CAVANAUGH: We do, Your Honor. Yes, sir.

1 THE COURT: Bring the jury, please.

2 (THE JURY ENTERS AT 2:39 PM.)

3 THE COURT: Ladies and gentlemen of the jury, let me
4 explain something. In any trial, we have adopted what are
5 called rules of evidence. Everybody has to play by the
6 rules, even if it's an individual pro se person that's in
7 court, and sometimes these rules are pretty strict about --
8 and I don't make the rules. I try to enforce the rules.
9 I'm sort of a traffic cop up here that tries to enforce the
10 rules.

11 I have ruled that that last witness that was on the
12 stand was brought in front of you improperly. Now, you may
13 have questions about that, and I'll be glad to discuss it
14 in more detail later, but I'm going to ask you -- I have
15 ruled that bringing her in front of you at this time is
16 improper, and that that deals with things like notice and
17 other issues. But I'm going to ask you to disregard her
18 testimony.

19 It was somewhat of a surprise to me, but based on the
20 objection of the defendant that rules had not been followed
21 with regard to this witness, I have agreed with the defense
22 and ruled that this witness was brought before you
23 improperly. And as I say, I'm going to ask you to
24 disregard her testimony, and we will now continue with the
25 trial.

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 Call your next witness, Solicitor.

2 MS. CAVANAUGH: Thank you. State calls investigator
3 Allison Ricard.

4 ALLISON RICARD, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Have a seat in the witness box.
7 State your name for the record and spell your last name,
8 please.

9 WITNESS: Allison Ricard, R-i-c-a-r-d.

10 DIRECT EXAMINATION BY MS. CAVANAUGH:

11 Q. Investigator Ricard, where are you employed?

12 A. With Richland County Sheriff's Department.

13 Q. And how long have you been with the sheriff's
14 department?

15 A. Approximately six years.

16 Q. And what is your current position with the sheriff's
17 department?

18 A. I work for the Drug Suppression Team.

19 Q. In April of 2013, what was your position?

20 A. I was an narcotics investigator.

21 Q. And as a narcotics investigator, what were some of
22 your responsibilities?

23 A. We follow up on tips. We execute search warrants,
24 follow up on basic drug complaints.

25 Q. And how long were you in the Narcotics Unit?

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 A. Approximately three years.

2 Q. Did you -- were you the lead investigator in the case
3 we're here about today, Fred Jack Sanders?

4 A. I was.

5 Q. Was a search warrant obtained for his residence?

6 A. It was.

7 Q. And where was this residence located?

8 A. At Road in Richland County.

9 MS. CAVANAUGH: Beg the court's indulgence.

10 (ENLARGED MAP MARKED AS STATE'S EXHIBIT NUMBER 49 FOR
11 IDENTIFICATION.)

12 BY MS. CAVANAUGH:

13 Q. Investigator Ricard, I'm going to show you what's
14 marked as State's Exhibit 49. Is that an overhead view of
15 Road?

16 A. It is.

17 MS. CAVANAUGH: Your Honor, at this time I'd move to
18 introduce State's Exhibit 49 into evidence.

19 MR. HAWKS: Without objection.

20 THE COURT: Without objection.

21 (ENLARGED MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 49.)

23 BY MS. CAVANAUGH:

24 Q. So, is that residence located in an actual
25 neighborhood?

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 A. It is.

2 Q. Okay. With other houses in close proximity to each
3 other?

4 A. It is..

5 Q. Can you describe where you went upon entry of the
6 home?

7 A. When our unit made entry, I helped secure Mr. Sander's
8 mother in the living room, and then once the residence was
9 secure, we began searching throughout the residence.

10 Q. And when you say secured his mother, what -- I mean,
11 what do you mean by that? She was elderly, right?

12 A. She was. She was not placed in handcuffs, I don't
13 believe. Once everything was under control and we made
14 sure there were no threats in the house, we began
15 searching.

16 Q. Okay, and did you go into the garage?

17 A. I did.

18 Q. And who was located in the garage?

19 A. Ms. Sara Ann Brassell and Joshua Johnson and Fred Jack
20 Sanders were all three located in the garage.

21 Q. Okay, and what were they -- what did it appear that
22 they were doing in the garage?

23 A. We noticed a white rock substance that was located in
24 an ashtray in plain view on the floor. It appeared that
25 they had been sitting on a couch located in the garage in

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 close proximity to this white rock substance.

2 Q. Okay, and in your experience, is that white rock
3 substance, was that believed to be drugs?

4 A. It was.

5 Q. Were they advised of their rights by Sergeant
6 Maldonado?

7 A. They were. They were all brought into the living room
8 area, and I believe that's where Sergeant Maldonado gave
9 Miranda to everybody.

10 Q. And specifically as it relates to the defendant, Mr.
11 Sanders, did he appear to understand his rights to you?

12 A. He did.

13 Q. Did he seem like he was incoherent or under the
14 influence of anything to where he couldn't understand them?

15 A. He did not.

16 Q. And did he acknowledge that he understood them?

17 A. He did.

18 Q. What were your primary responsibilities during the
19 search?

20 A. Once we discovered we had a potential meth lab at this
21 residence, based on my training and experience as a
22 certified meth lab, I put on a hazmat suit and full
23 respirator, breathing apparatus.

24 There was a very strong chemical smell coming from Mr.
25 Sander's bedroom, and at that point we started collecting

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 items: plastic bottles, plastic tubing.

2 Q. And I'll stop you there. You mentioned your training
3 and experience, and you said something about your
4 certification. Can you describe what kind of training
5 you've received as in meth lab specifically?

6 A. The training is put on through the DEA and SLED. It
7 basically ---

8 Q. What, what is the DEA?

9 A. The Drug Enforcement Administration.

10 Q. Okay.

11 A. And it basically informs you of what to look for in
12 meth labs. It explains what items and chemicals and
13 equipment are used to manufacture manufacture meth, how it
14 is smoked, how it's injected, the volatile chemicals that
15 are involved, the hazardous waste that comes off of the
16 product, and the proper techniques for cleaning up a meth
17 lab site.

18 Q. And is this a week-long course? How ---

19 A. It is. It is a week-long course.

20 Q. And when did you go to that training?

21 A. In 2013.

22 Q. Okay, and did you receive a certification?

23 A. I did.

24 Q. And what was that? What was that certification
25 called?

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 A. Basic, or Basic Clandestine Lab Investigations.

2 Q. Okay. So, what types of -- you, you've mentioned that
3 you put on a hazmat suit. What did you notice that caused
4 you to put on your suit?

5 A. There was a very strong chemical smell predominantly
6 in Mr. Sander's bedroom. Once we got in there, we located
7 numerous bottles and plastic tubing, batteries that been
8 stripped apart and the lithium removed out of them. And
9 this is where the majority of the chemical smell was coming
10 from, the biggest hazard at the moment, if you will.

11 Q. Why was that smell, the chemical smell that you
12 mentioned, why was that significant to you?

13 A. The distinct odor is consistent with a recent
14 manufacturing. Active meth lab is how we label it. There
15 was not an actual active cook in the room, but based on the
16 very strong odor, one had been cooked recently in the room.

17 Q. And the search warrant, this was executed around 7:45
18 that evening, right?

19 A. Yes, I believe so.

20 Q. Okay. You mentioned various items that were located
21 in his room. Was there plastic bottles with tubing?

22 A. There were.

23 Q. And were they located in the trash can?

24 A. Yes. That's what it looked like when we made entry.
25 This is untouched before we had started processing the

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 scene.

2 Q. Did you also locate pseudoephedrine, pseudoephedrine
3 in his room?

4 A. Yes. I believe that was located on a desk near his
5 bed. There were unopened blister packs of Sudafed; it said
6 on the back that it was Sudafed.

7 There was also in close proximity to that a pill
8 crusher with white residue consistent with the
9 manufacturing of methamphetamine. They will take the
10 Sudafed pills and put them in a pill crusher and crush it
11 prior to cooking the actual meth.

12 Q. And did you actually collect the grinder in this case?

13 A. We did. The blue pill crusher was collected, and I
14 believe was submitted in the paraphernalia.

15 (COLLECTION OF ITEMS MARKED AS STATE'S EXHIBIT NUMBER
16 50 FOR IDENTIFICATION.)

17 BY MS. CAVANAUGH:

18 Q. I'm going to ask you to look at this bag and see if
19 you recognize your signature on it.

20 A. I do.

21 Q. And what, what, what is in that bag?

22 A. This is various paraphernalia consistent with
23 manufacturing in the sale of narcotics, specifically the
24 blue pill crusher here that was located with the Sudafed
25 pills. There's various wax paper bags which are consistent

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 with the sale or the selling of methamphetamine and heroin,
2 the various pipes used to smoke methamphetamine.

3 Q. Now, none of these items were actually tested, right?

4 A. They were not.

5 MS. CAVANAUGH: Your Honor, at this time I'd move to
6 introduce State's Exhibit 50 into evidence.

7 MR. HAWKS: Again, Your Honor, my same objection about
8 not establishing chain.

9 MS. CAVANAUGH: They weren't tested, and she just did.

10 MR. HAWKS: Tara Kinney has not yet testified.

11 THE COURT: Just mark them for ID or separate them.

12 MS. CAVANAUGH: Your Honor, may we approach?

13 THE COURT: Well, the question is where did they go
14 from there from her.

15 BY MS. CAVANAUGH:

16 Q. Once you collected these items, where -- who did you
17 turn them over to?

18 A. Investigator Smith, where he documents in the search
19 warrant exactly what was collected and where.

20 Q. And do you -- are they already in this bag sealed when
21 you turn it over?

22 A. Yes.

23 MS. CAVANAUGH: Your Honor, at this time we move to
24 introduce State's Exhibit 50. Investigator Smith has
25 already testified.

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 THE COURT: Did what?

2 MS. CAVANAUGH: Investigator Smith has already
3 testified as to what he turned in, and this was part of
4 that.

5 THE COURT: Did he identify that?

6 MS. CAVANAUGH: Yes. He identified the pictures.

7 THE COURT: Just mark it for ID.

8 BY MS. CAVANAUGH:

9 Q. But again, this contains, that bag contains items that
10 are located in this picture?

11 A. Correct.

12 Q. And those are consistent with the manufacture of
13 methamphetamine in your experience as an investigator?

14 A. Yes, both the manufacturing and the wax paper bags
15 specifically are for the sale of the methamphetamine.

16 Q. Okay. Did you make a decision to contact Phillips
17 Recovery Incorporated in this case?

18 A. Yes. Based on the training and experience through the
19 DEA and SLED class or course that we got certified through,
20 we are required by OSHA, I believe, to contact a hazardous
21 cleanup crew.

22 Our laboratory in our evidence room is not allowed to
23 accept hazardous chemicals and items that have been
24 exposed, especially in clandestine labs. So, we contacted
25 a company called Phillips Recovery. They come out to the

1 scene, and this specific night they come out and collected
2 numerous items from this house.

3 Q. Okay, and how is that, how is that -- can you describe
4 that process as in it's in the house? I mean, how do y'all
5 transfer the evidence from the room and make the decision
6 to turn it over to Phillips?

7 A. Once we realized we had a meth lab, I put on the
8 hazmat suit, and I am responsible for taking the pieces and
9 equipment and the chemicals outside, and everything is
10 documented and photographed before we begin any of this
11 process. Then Phillips Recovery is contacted.

12 They arrive on scene. They make a documented list of
13 everything that they are taking into custody, and we also
14 get a receipt showing that this company has destroyed it.

15 Q. Okay, and do they classify the materials as hazardous
16 and nonhazardous?

17 A. They do based on the specific items, items like the
18 camp fuel, the stripped lithium batteries, the acetone.
19 All of this is what they consider hazardous. There is
20 other nonhazardous waste like the empty blister packs that
21 we may collect, the bottles, our actual hazmat suits. This
22 company takes all of this and disposes of it.

23 Q. And we've talked a lot about -- we've mentioned the
24 word meth lab. Are there different types of meth labs that
25 you've come in contact with in your experience?

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 A. There are. The one that we had this evening or the
2 evening in question was consistent with the one-pot method
3 of manufacturing.

4 Q. And is that, is that different from, for instance, a
5 car, what might be found in a car or what might be found in
6 perhaps a bigger laboratory?

7 A. The one-pot can -- it's very portable. One-pots can
8 be cooked in cars. They can be cooked in hotel rooms.
9 They can be cooked just about anywhere. There are a couple
10 other different types of meth labs. There's a red
11 phosphorus method. This is bigger, super labs more common
12 in Mexico.

13 Q. Okay. Was this lab considered operative?

14 A. There was not an active cook, and what we consider an
15 active cook is the chemicals were not in the bottle
16 actually producing meth when we made entry. That process
17 is -- lasts anywhere from thirty minutes to an hour, and --
18 but all of the equipment was found in his room and
19 throughout this house, showing us that he had cooked there
20 recently.

21 MR. HAWKS: Objection, Your Honor, based on the prior
22 bad act.

23 THE COURT: Overruled.

24 BY MS. CAVANAUGH:

25 Q. Were you the only one on scene that had the authority

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 to make a decision to call Phillips Recovery?

2 A. There are -- or were at the time, I believe, two
3 investigators that were on scene that are what we consider
4 clan-lab certified. This was my case, and I made the
5 determination. Once I saw enough evidence that we had an
6 actual meth lab, I made the call to Phillips Recovery, yes.

7 MS. CAVANAUGH: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MS. CAVANAUGH:

10 Q. You said that your training included information on
11 how to actually make meth using the one-pot method?

12 A. Correct.

13 Q. I'm going to go through the individual photographs,
14 and I've taken them out of order, so feel free to put them
15 in the proper order.

16 (A PAUSE.)

17 Q. And explain to me how each of these items are used in
18 the one-pot method, and if you could show the jury pictures
19 as ---

20 A. Okay.

21 Q. --- you explain it.

22 A. These are pictures of Sudafed pills located in Fred
23 Sanders's room. He -- or to manufacture meth, you will
24 take these Sudafed pills, crush them up in this pill
25 crusher here, and here's a picture of the pill crusher.

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 Q. And that was located beside the Sudafed, the pill
2 crusher?

3 A. This was, yes, beside the Sudafed. I believe it was
4 on his dresser or desk that was in his bedroom.

5 You'll crush the Sudafed. These are pictures of
6 instant cold packs. These are commonly used if you have a
7 injury, a sore muscle. The intended purpose for these cold
8 packs is you crush them, and they instantly turn cold.

9 This is a photograph of an opened cold pack consistent
10 with manufacturing meth. What they will do is cut the pack
11 open and there is -- I believe it's ammonium nitrate beads
12 in the bottom of this, also with the water bladder. They
13 will discard the water bladder and pour the chemicals
14 inside of this into a plastic bottle.

15 Then they will add the Coleman camp fuel. This is a
16 gallon size, I believe, bottle of Coleman camp fuel that we
17 located in Fred's room. They will add this, the Sudafed,
18 the ammonium nitrate from the cold packs, combine all of
19 these in a large plastic bottle.

20 And then these are pictures of batteries. These are
21 unopened. However, these are located in his trash can. He
22 has actually taken the metal battery, cut it, and pulled it
23 apart. The white strips that you see here, when they come
24 out of the battery, they have black strips of lithium on
25 them. He takes the lithium off of the strips and cuts them

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 up in these little pieces and puts this in the plastic
2 bottle as well.

3 MR. HAWKS: Objection, Your Honor. She's speculating
4 about what he did, what he would do.

5 WITNESS: I'm explaining the process.

6 THE COURT: Overruled.

7 BY MS. CAVANAUGH:

8 A. And then they add basically a cap full of water. This
9 lithium is highly reactive with water; it immediately
10 starts the reaction. It's actually flammable if it comes
11 in contact with water, which is why a lot of times these
12 meth labs will explode and catch fire. So, this starts the
13 process of extracting the meth from the Sudafed in the
14 Sudafed tablets.

15 They let that cook, as we say. At that point, it's an
16 active bottle. It cooks anywhere from thirty minutes to an
17 hour, basically a tornado. We call it rolling. It starts
18 rolling.

19 Once all of that action stops, they pour off or
20 extract the liquid out of the bottle. Commonly put it in
21 glass jars like these that were located on the desk in Mr.
22 Sanders's room. And with this liquid, they will create an
23 acid gas generator. These are consistent -- bottles used
24 to make the gas generators, and they will poke a hole in
25 the top and run a plastic tube and basically run the tube

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 from this bottle into this that has the liquid in it.

2 After the -- it's gassed, as we call it, the white
3 solid meth will fall to the bottom of the glass jars. He
4 then pours the liquid from these jars through a coffee
5 filter and let's that dry, and that's the finished meth
6 product.

7 Q. And can they be -- can the finished meth product be
8 stored in liquid form?

9 A. It can. Basically prior to salting it out, prior to
10 gassing it, this is meth liquid. Commonly after they
11 convert it and dry it in the filters, users will liquefy it
12 and put it in syringes to sell to use, to shoot. It's just
13 a form of using the meth.

14 Q. And can it also be placed in powder form in these wax
15 papers?

16 A. Yes. That is a hundred plus small, tiny wax paper
17 bags. This box was located in Jack Sanders's room as well.
18 This is consistent with packaging to sell the drugs. The
19 wax paper isn't used for any of the actual use of the drug.

20 Q. But in fairness, it also can be used for use, for
21 personal use?

22 A. True, yes.

23 Q. And users can also be dealers, is that correct, in
24 your experience?

25 A. Absolutely, absolutely,

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

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1 Q. What is your interaction with the representatives from
2 Phillips Recovery Incorporated on the scene?

3 A. Once they arrived on the scene, we basically produced
4 an inventory of all the items that I removed out of the
5 house, all of the items that -- they were taken into
6 custody, and they give us an itemized list of everything
7 that they take and that they destroy.

8 Q. And their company is responsible for the disposal of
9 hazardous and nonhazardous waste seized from this home?

10 A. They, they are. They are responsible for basically
11 all of the meth labs in the state at this point.

12 Q. So, Phillips Recovery Incorporated is used for most
13 meth labs in this state?

14 A. Yes.

15 MS. CAVANAUGH: Beg the court's indulgence.

16 (A PAUSE.)

17 BY MS. CAVANAUGH:

18 Q. As a result of your investigation and the drugs seized
19 from this home, did you take out the appropriate warrants?

20 A. I did.

21 Q. And those were for possession with intent to
22 distribute crack cocaine, possession with intent to
23 distribute methamphetamine, possession of a controlled
24 substance, manufacturing methamphetamine?

25 A. Yes.

A. RICARD - REDIRECT EXAMINATION BY MS. CAVANAUGH 309

1 Q. Mr. Hawks was asking you about this particular report.

2 A. Yes.

3 Q. And whether the lab was operational or not. What is,
4 what is checked on this report?

5 A. There are multiple boxes. The actual box that is
6 checked says: Operational, not in production. So, the --
7 that means that all of the equipment and chemicals were
8 there, but there was not an active cook when we made entry.

9 Q. And there's a box for abandoned?

10 A. There is.

11 Q. And that was not checked, correct?

12 A. Correct. I believe there's also a box for operational
13 cooking. I'm not sure what this -- what the other one is.

14 Q. Operation -- operational and production?

15 A. Yes. That is not checked.

16 Q. And in production just means that thirty minute period
17 that you described?

18 A. Correct.

19 Q. Where ---

20 MR. HAWKS: Objection, Your Honor. She's leading.

21 THE COURT: Sustained.

22 BY MS. CAVANAUGH:

23 Q. And what does in production mean?

24 A. It's there thirty minutes to an hour that the bottom
25 is actually rolling and cooking the meth product.

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1 State your name for the record, and spell your last name,
2 please.

3 WITNESS: My name is Tara Kinney, K-i-n-n-e-y.

4 VOIR DIRE EXAMINATION BY MS. CAVANAUGH:

5 Q. Tara, where are you employed?

6 A. I work for the Richland County Sheriff's Department.

7 Q. And how long have you been employed with the sheriff's
8 department?

9 A. I've been there about five and a half years.

10 Q. And what is your position at the sheriff's department?

11 A. I work in the Forensic Sciences Laboratory in the drug
12 identification section. I'm a drug chemist.

13 Q. And could you describe your education background for
14 us?

15 A. Sure. I have a bachelor of science degree in forensic
16 chemistry from Eastern Washington University. I did an
17 internship with the Washington State Patrol Crime
18 Laboratory conducting a research project on methods of
19 manufacturing methamphetamine. That research was also
20 published in a scientific journal.

21 I have training from the Richland County Sheriff's
22 Department, whom I received my competency in drug
23 identification from. I've also had training with the DEA,
24 Drug Enforcement Administration, Special Testing and
25 Research Laboratory. I'm also certified to respond to and

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1 process clandestine laboratory scenes. That certification
2 is through National Environmental Systems. I'm also a
3 member of Clandestine Laboratory Investigating Chemists
4 Association and the Clandestine Laboratory Investigators
5 Association, CLIC and CLIA.

6 Q. And what is meant by the term clandestine,
7 clandestine?

8 A. Clandestine lab usually refers to a homemade or
9 improvised laboratory set up. Around here, the term is
10 usually used to refer to methamphetamine manufacture.

11 Q. And are -- can you describe the Richland County
12 laboratory? Is it certified? Is it recognized by any
13 outside agencies?

14 A. Yes. The Richland County Sheriff's Department
15 Forensic Sciences Laboratory is an accredited laboratory.
16 Our accreditation is through ASCLD/LAB. They're an
17 international accrediting body. We have been accredited
18 for approximately five years.

19 Q. And as you just went over your education and your
20 training as a chemical analyst, that -- does that include
21 the study of methamphetamine labs and precursor chemicals
22 used to make methamphetamine?

23 A. Yes. The clandestine laboratory certification that I
24 have, in order to be able to respond to those processes,
25 those scenes, requires week-long training, a specified

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1 number of hours. And they go over all of the safety
2 factors, the processes, the methods that are employed to
3 make the methamphetamine, as well as other labs also.

4 Q. And you're also certified by the sheriff's department
5 as a chemist and an analyst qualified to perform forensic
6 testing on certain drugs?

7 A. Yes, I am.

8 Q. Or controlled substances is the correct term?

9 A. Yes.

10 Q. Have you testified as an expert in court before?

11 A. Yes.

12 Q. And how many times approximately?

13 A. Approximately ten times.

14 Q. And in a general sessions court?

15 A. In general sessions, civil, magistrate, and federal
16 court.

17 MS. CAVANAUGH: Your Honor, at this time I'd ask that
18 Ms. Kinney be qualified as an expert in chemical analysis
19 and clandestine laboratory investigations.

20 THE COURT: Any objections or voir dire?

21 MR. HAWKS: No, Your Honor.

22 THE COURT: So admitted.

23 DIRECT EXAMINATION BY MS. CAVANAUGH:

24 Q. Tara, what is methamphetamine? What is, what is that?

25 A. Methamphetamine is a stimulant, meaning that it will

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1 increase your heart rate, blood pressure. It's essentially
2 what they refer to as an upper.

3 Q. And it's an illegal substance. Is that correct?

4 A. It is. It's a schedule II substance.

5 Q. And is methamphetamine also known as crystal meth?

6 A. There are a lot of street names that are used to refer
7 to methamphetamine; that's one of them.

8 Q. Does the manufacturing of methamphetamine differ from
9 the manufacturing of other type of drugs?

10 A. Yes. There are different processes to manufacture
11 different types of substances.

12 Q. And is the process of making methamphetamine
13 potentially dangerous?

14 A. Yes, very dangerous.

15 Q. What about the process makes it dangerous?

16 A. The chemicals that are used in the process have a lot
17 of safety concerns and factors. There are a lot of strong
18 acids and bases; they're very corrosive. They can cause
19 chemical burns to the skin, the eyes, nose, and throat,
20 cause respiratory irritation.

21 Flammable liquids are also involved in the process,
22 which can be an inhalation hazard as well in addition to
23 the flammability. Reactive metals are used. Some of them
24 are so sensitive that they can react just with the humidity
25 in the air and ignite and burn.

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1 Q. And is methamphetamine -- can it be made by using --
2 by combining legal substances?

3 A. Yes. A lot of the materials used in the clandestine
4 manufacture of methamphetamine are common household
5 chemicals that can be purchased at a lot of the retail
6 outlets: Walmart, Targets, et cetera.

7 Q. When these -- and there's been pictures shown several
8 times. The household goods that you mentioned that are
9 legal that can be used to manufacture methamphetamine, what
10 are those?

11 A. Some examples of those would be drain openers, your
12 drain cleaners that you would use to unclog a drain, your
13 Red Double Eye, et cetera. Coleman fuel or camp fuel, also
14 called white gas, can be used in the process. Starter
15 fluid, which is ether. Lithium batteries, just the regular
16 batteries that you would buy at the store are employed in
17 the process as well.

18 Q. When methamphetamine is actually manufactured, does it
19 create a distinct smell?

20 A. Often time there's a strong chemical odor associated
21 with the manufacture.

22 Q. The items that you described, lithium, the Drano, the
23 camp fuel, is that -- can that be used in the one-pot
24 method to manufacture meth?

25 A. Yes.

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1 Q. You mentioned lithium from batteries. How do you
2 actually get the lithium from the batteries when
3 manufacturing meth?

4 A. The batteries, if you would picture a typical battery,
5 has a plastic casing around it. If you remove that casing,
6 the lithium is actually rolled up inside and you can unroll
7 it. It's kind of a ribbon-like tape inside, and that's
8 what they remove and then tear it to pieces to be able to
9 use in a one-pot.

10 Q. And is the stripping of the lithium from the batteries
11 itself, by itself dangerous as well?

12 A. Yes, very dangerous. As I said before, lithium is a
13 very reactive metal, which means that it reacts very
14 violently with water. Even the humidity in the air, the
15 moisture from your skin sometimes is enough to cause it to
16 start burning or catch fire.

17 Q. Materials associated with meth labs, can they be
18 stored in the Richland County evidence room?

19 A. No. Once we go to the scene and determined that it is
20 a meth lab, the chemicals that we find at that site are,
21 are considered hazardous waste. The Richland County
22 Sheriff's Department is not recognized as a storage
23 facility for hazardous waste. So, we can't accept those
24 chemicals into our facility for storage.

25 Q. So, if there was any meth residue left on any of those

1 items that you described that were located in his bedroom,
2 would you have tested those items?

3 A. It depends on the item. The bottles that contain the
4 used chemicals would be disposed of by the disposal
5 recovery team. Sometimes items that they suspect may
6 contain a finished product are collected as evidence and
7 submitted. For example, a coffee filter with white powder
8 in it, that, that could be collected and submitted as
9 evidence.

10 Q. Were you responsible for testing the drugs, most of
11 the drugs that were seized in this case that were able to
12 be transferred to the Richland County evidence room?

13 A. Yes. I did test a number of items associated with
14 this case.

15 Q. Okay, and we'll go through each of those items
16 individually. I'm going to show you what's marked as
17 State's Exhibit 43, which I believe has already been
18 admitted into evidence. Can you -- did you actually test
19 this box?

20 A. Yes, I did.

21 Q. Okay, and how can you tell that you -- how is it
22 documented that you tested the box?

23 A. On each item that we receive into the laboratory for
24 testing, we label it with the case number, the individual
25 item number, and then our initials.

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1 Q. Okay, and what is the item number associated with the
2 actual box itself?

3 A. This item is labeled as item 9.

4 Q. And once you -- did you receive the box from the
5 evidence room?

6 A. I did.

7 Q. And was it properly sealed and packaged in the bag?

8 A. It was. We have as a laboratory policy established
9 that when we go down to the evidence room to collect
10 evidence to take back to the lab to test, if anything is
11 not properly sealed, we don't accept it into the
12 laboratory.

13 Q. And why is it important that it's properly sealed?

14 MR. HAWKS: Objection, Your Honor. She's leading.

15 THE COURT: Don't lead your witness.

16 BY MS. CAVANAUGH:

17 Q. Why does it need to be sealed?

18 A. Making sure that the evidence is properly sealed helps
19 us to maintain the integrity of the evidence and show the
20 chain of custody.

21 Q. Once you retrieved the box when the evidence room,
22 what did you do with the individual items in that box?

23 A. This item contains a number of segregated
24 compartments. So, I sub-itemed each compartment as its own
25 item number and then tested the contents that were in each

1 section.

2 Q. And did you assign each compartment within that box a
3 number?

4 A. I did.

5 Q. And it was just based on how the -- was that based on
6 how the box was kept ---

7 MR. HAWKS: Objection, Your Honor. She's leading
8 again.

9 Q. How did you ---

10 THE COURT: Just ask her the question.

11 MS. CAVANAUGH: I'm sorry.

12 BY MS. CAVANAUGH:

13 Q. Did you assign a number to each compartment?

14 A. I did.

15 Q. I'll direct you to your report. What -- first of all,
16 can you describe the testing that you used for that box,
17 for the drugs in that box?

18 A. For items that come to us for laboratory confirmation,
19 we do essentially two parts to the analysis. The first is
20 a presumptive screening type test, and then we do a
21 confirmatory test, which is instrumental analysis.

22 So, on these items I would have done a chemical test,
23 which is a color test. Essentially we add a small portion
24 of each of the substances to a chemical, and it produces a
25 distinctive color reaction depending on what may be

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1 present. Then we'll take a small sample and run it on one
2 of our instruments, and that's considered confirmation for
3 the presence of the substance. We also run the certified
4 reference materials on the instrument to compare those
5 samples to.

6 Q. And what did your testing reveal as far as item number
7 9.1?

8 A. Item number 9.1, that compartment contained a small
9 metal-type screw and a piece of paper napkin containing a
10 white, rock-like substance. That white, rock-like
11 substance was confirmed to be cocaine base, which is crack
12 cocaine. It's a schedule II substance, and it had a weight
13 0.18 grams.

14 Q. And go on to item 9.2.

15 A. 9.2 in that green box was an empty compartment, so
16 there was no analysis for that sub-item.

17 Q. And the compartment that was labeled item number 9.3,
18 what did that contain?

19 A. Item 9.3 contained a blue Ziploc bag containing a tan
20 or brown rock-like substance.

21 Q. Go ahead.

22 A. That substance was confirmed to be heroin, which is a
23 schedule I substance, and it had a total weight of 0.94
24 grams.

25 Q. Continue to item number 9.51.

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1 A. Item 9.51 was a clear Ziploc bag containing a tan or
2 brown rock-like substance. That was also confirmed to be
3 heroin with a weight of 0.26 grams.

4 Q. And item number 9.61, what is that? What was that
5 confirmed to contain?

6 A. 9.61 were two glassine bags. Glassine bag is what we
7 refer -- it's essentially like a wax paper-type consistency
8 and it's folded into a small sort of envelope. That's what
9 we refer to as a glassine bag.

10 There were two of those rubber banded together, and
11 each contain a tan brown powder. Both of those bags were
12 confirmed to contain heroin with a total net weight of 0.05
13 grams.

14 Q. And so part of your testing -- does part of your
15 testing include getting the weight of the drug?

16 A. Yes. Before we perform any testing on it, each item
17 is weighed. We removed all of the outer packaging. So,
18 the weight reflected on the report where it says net weight
19 means that it's just the weight of the substance itself.
20 It does not include any of the packaging.

21 Q. And why is important to get the weight?

22 A. A lot of the state statutes have a threshold value.
23 Essentially, a weight limit determines whether it's a
24 simple possession, for example, or ---

25 MR. HAWKS: Objection, Your Honor. She's improperly

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1 stating the law.

2 THE COURT: You can call her on it, but that's her
3 interpretation. I'm going to allow her to testify.

4 BY MS. CAVANAUGH:

5 Q. You can continue.

6 A. As I was saying, some of the substances have a weight
7 associated with a certain charge.

8 Q. So, it takes it from simple possession to possession
9 with intent to distribute as far as ---

10 A. Correct.

11 Q. --- charging decisions?

12 A. Correct.

13 Q. And what was the total amount of heroin that was found
14 in that green box?

15 A. I don't have a total weight of all the items summed
16 together. Just for the heroin?

17 Q. Yes.

18 A. I believe 1.25 grams.

19 Q. Okay.

20 A. If my math is correct.

21 Q. Did you test other drugs in this case?

22 A. I did. There were other items.

23 Q. Oh, actually I apologize. Before we continue, I'm
24 going to show you what's marked as State's Exhibit 47.

25 A. Okay.

1 Q. And these -- what does this bag contain?

2 A. It appears to contain a sharps container with some
3 syringes or hypodermic needles.

4 Q. Okay, and did you test any of the syringes in this
5 case?

6 A. No.

7 Q. And why was that?

8 A. That's also part of our laboratory policy. Sharps
9 obviously present a hazard. So, if we have other evidence
10 in the case, those remain untested.

11 Q. Because of the safety concerns? Is that what you just
12 said?

13 A. Yes.

14 Q. I'm going to show you what's been marked as State's
15 Exhibit 48. Did you test any items in this bag?

16 A. Yes.

17 Q. And what were the results of those tests? First of
18 all, what are those items?

19 A. There are a number of items contained within this bag.
20 I'd have to look at the front. This appears to be my item
21 number 8. It was a clear Ziploc bag labeled: Found in
22 subject's room-Sanders. And it contained four metal spoons
23 with white residue.

24 Q. And what were the results of your -- of those tests?

25 A. These spoons, the residue was scraped from the spoons

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1 which -- and confirmed to contain methamphetamine.

2 Methamphetamine is a schedule II substance, and the net
3 weight of that powder was 0.08 grams.

4 Q. And did you do any testing on the straws that were
5 located in the bag?

6 A. Yes, I did. There were a number of straws in this
7 Ziploc bag. I removed one and tested one of the straws.

8 Q. And what were the results of that test?

9 A. The one straw that I tested was also confirmed to
10 contain methamphetamine, and there was no weight obtained.

11 Q. Did you test other drugs in this case?

12 A. There were additional items that I tested in this
13 case.

14 Q. And which item numbers were -- did you test?

15 A. Item number 4, 5, 6, and 7.

16 Q. I'm going to show you what's marked as State's Exhibit
17 46 and ask you if that corresponds with what you tested.

18 A. It appears to be the items that I tested.

19 Q. And is that based on the packaging and the label?

20 A. Based on the case number and written item number and
21 my initials on the item inside.

22 Q. And again, how was this package -- what condition was
23 this in when you checked it out of the evidence room?

24 A. The evidence was sealed.

25 MS. CAVANAUGH: Your Honor, at this time move to

1 introduce State's Exhibit 46 into evidence.

2 MR. HAWKS: Without objection.

3 THE COURT: Without objection.

4 (PILLS AND POWDER SUBSTANCES MARKED INTO EVIDENCE AS
5 STATE'S EXHIBIT NUMBER 46.)

6 BY MS. CAVANAUGH:

7 Q. And what was item number 4 labeled as?

8 A. Item number 4 was a purple Ziploc bag labeled: Garage
9 ashtray under couch. And it contained a white, rock-like
10 substance.

11 Q. And what was that confirmed to contain?

12 A. The rock-like substance was confirmed to be cocaine
13 base, which is crack cocaine, with a net weight of less
14 than 0.02 grams.

15 THE COURT: With what? I didn't hear you.

16 WITNESS: A net weight of less than 0.02 grams.

17 BY MS. CAVANAUGH:

18 Q. And did you test item number 5?

19 A. I did.

20 Q. And what was the label on item number 5?

21 A. Item number 5 was a clear plastic corner bag
22 containing a chunky white powder. That was confirmed to be
23 cocaine base, or crack cocaine, with a net weight of 0.04
24 grams.

25 Q. And what was item number 6 labeled?

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1 A. Item number 6 was a clear Ziploc bag with a black
2 panda bear logo containing five round, green tablets. All
3 those tablets were visually consistent with the same logo.

4 Q. And what were the results of that test?

5 A. I tested one of the five tablets. That one tablet was
6 confirmed to contain diazepam, which is a schedule IV
7 substance.

8 Q. Is that -- is it commonly known as -- by another name?

9 A. It is. It's also called Valium.

10 Q. And that is a controlled substance?

11 A. Schedule IV.

12 Q. And is a prescription required for that substance?

13 A. Yes.

14 Q. And item number 7?

15 A. Item number 7 was a clear Ziploc bag with an eight-
16 ball logo containing two round, green tablets. Both were
17 visually consistent with the same logo, and it also had
18 multiple pieces of broken tablets. Again, from that one
19 tablet was confirmed contained -- to contain diazepam.

20 Q. And is that -- is it usual for you to only test one if
21 there's additional pills found?

22 A. For legitimate pharmaceutical tablets, we identify
23 them with published literature, and then we'll select one
24 tablet to confirm.

25 MS. CAVANAUGH: Beg the court's indulgence.

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1 (A PAUSE.)

2 BY MS. CAVANAUGH:

3 Q. Earlier you testified that there was over 1 gram of
4 heroin found throughout his bedroom.

5 A. Correct.

6 Q. Is -- what is the significance of there being over a
7 gram found in one, in one area?

8 A. Heroin is a very potent drug. So, there are a lot of
9 factors that go into determining what a dosage is for a
10 specific person. So, that varies quite a bit.

11 Q. Do you -- are you familiar ---

12 MR. HAWKS: Objection, Your Honor. She's not a
13 doctor.

14 THE COURT: Overruled. Go ahead.

15 BY MS. CAVANAUGH:

16 Q. What is -- is a dosage unit classified by statute?

17 A. Not for heroin.

18 MS. CAVANAUGH: Beg the court's indulgence. No
19 further questions.

20 THE COURT: Go ahead.

21 MR. HAWKS: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. HAWKS:

23 Q. Good afternoon, Ms. Kinney.

24 A. Hello.

25 Q. Going to take you back to the beginning of direct.

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1 make it even smaller?

2 A. Yes.

3 Q. Did you have a chance to test any pseudoephedrine in
4 this case?

5 A. No: I did not receive any tablets that contained
6 pseudoephedrine..

7 Q. But you would have gone through the same process if
8 you had? Figure out what it is in your literature, then
9 test one of the tablets?

10 A. Correct.

11 Q. Or pills?

12 A. Correct.

13 Q. I'm going to go back and talk about the crack. Can
14 you get high on such small amounts like .02, .04?

15 A. I think that's beyond my area of expertise. I'm not a
16 toxicologist.

17 Q. And as for the heroin, the purity of that heroin,
18 would it be important to the user as far as how much he or
19 she could take without overdosing?

20 A. It could be, yes.

21 Q. And so not only the weight of the heroin is important
22 but also the purity?

23 A. For the user.

24 Q. So, if the total amount, 1.25, was let's say not very
25 potent, that would sort of qualify that amount?

1 THE COURT: Mr. Hawks, you have something for the
2 court?

3 MR. HAWKS: Yes, Your Honor. I allowed Ms. Cavanaugh
4 to read this. If you'd like to take a look?

5 THE COURT: I assume she objects.

6 MR. HAWKS: I don't know, and it's just the top one.
7 You actually already did the bottom one.

8 MS. CAVANAUGH: I, I don't object to this. I'm
9 confused about when he wants you to read that.

10 THE COURT: Oh, I'll read it in the morning when they
11 come back refreshed.

12 (A PAUSE.)

13 THE COURT: Okay, that's fine.

14 MR. HAWKS: Thank you, Judge.

15 THE COURT: 9:30.

16 (WHEREUPON, THE CASE IS AT EASE.)

17 WEDNESDAY, MARCH 19, 2014

18 (COURT RESUMES AT 9:35 AM.)

19 THE COURT: State ready to proceed?

20 MS. CAVANAUGH: We are, Your Honor.

21 THE COURT: Defense ready to proceed?

22 MR. HAWKS: We are, Your Honor.

23 THE COURT: Any housekeeping matters that need to be
24 taken up before we bring the jury?

25 MS. CAVANAUGH: None from the state, Your Honor.

1 MR. HAWKS: None from the defense.

2 THE COURT: All right, bring the jury.

3 (THE JURY ENTERS AT 9:37 AM.)

4 THE COURT: Good morning, ladies and gentlemen.

5 One matter I want to mention to you. As I told you
6 yesterday from the bench, that we operate by certain rules
7 called the Rules of Civil Procedure and the Rules of
8 Evidence, Criminal Procedure, the Rules of Evidence.

9 I want to call to your attention to the fact that any
10 -- this defendant is on trial for, as you know, what the
11 charges are in this indictment, and any reference to any
12 prior conduct of the defendant is not admissible. And you
13 are to disregard any and all mention made by any of the
14 witnesses in this case which make reference to the prior
15 conduct on the part of the defendant.

16 As I say, the defendant is to be tried on the issues
17 in front of you, five indictments in front of you, not on
18 any past behavior, all right?

19 MR. HAWKS: And, Your Honor, just for the record, I am
20 objecting to the curative instruction being the appropriate
21 remedy, and I'm basing that on all my prior objections and
22 motions regarding its incorporation.

23 THE COURT: All right. Thank you very much.

24 Solicitor, call your next witness.

25 MR. MATHEWS: State calls William Lindsey.

1 we've recovered right now nearly, I would say, 1000 in the
2 state of South Carolina.

3 Q. So, now with every meth lab in the state, you go out,
4 your group goes out?

5 A. There is one other group that is under contract; they
6 run pretty much in the upstate and in a two-county area.
7 The majority of the time, at least for two years, we were
8 the sole agency that did, did respond in this state. We
9 ran 455 calls in 2011. We did 430 -- excuse me, that would
10 be 455 in 2012. We did 430 last year in 2013. This year
11 we are looking at number 95.

12 Q. And this process of removal and destruction, is that
13 common nationwide with meth labs?

14 A. Absolutely. It is imminent danger, and one of the
15 things that is our job is to remove that imminent danger
16 and protect the public. So, the seizing agency cannot do
17 an arrest or, or do this processing and just leave the
18 materials there. That would, that would take a chance of
19 children or elderly or other people that wanted to use it
20 for bad reasons to come by and take these materials and
21 actually use them again.

22 Q. And now if you go into a one-pot meth lab -- are you
23 familiar with those?

24 A. Absolutely.

25 Q. Tell me some common items that, if you went on to a

W. LINDSEY - DIRECT EXAMINATION BY MR. MATHEWS

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1 scene, you would see and take.

2 A. The hundreds and hundreds of recoveries that I have
3 done, the typical items for a one-pot would be ammonium
4 nitrate, which the trend now is to get it from cold packs.
5 Number two would be crystal drain opener, which is nothing
6 but lye, which is crystallized lye. That is used in the
7 process. Coleman or some type of camp fuel. It could be
8 liquefied ether. It could be lighter fluid, any flammable
9 or Naptha product that is used to actually dissolve or cut
10 the pseudoephedrine pills that is in there.

11 And then probably the most dangerous of that would be
12 the lithium strips, and lithium is required as a part of
13 that process. And lithium is stripped from batteries that
14 we commonly buy at Home Depot, Walmart, wherever you buy
15 lithium batteries. And they literally take a pipe cutter,
16 and they open that battery up and remove the lithium
17 strips, strip it from the magnesium oxide, and then ball it
18 up and put it into this vessel. The only thing they need
19 to start that process would be to add a small amount of
20 water. Once that water is added into that bottle, then
21 that reaction takes place. And at that time, you can have
22 failure of a bottle, which is very common. When you read
23 about individuals being burnt, that is a result of usually
24 the vessel over pressurizing or the container failing.

25 Q. All right. I'm going to go specifically to this

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1 incident now. Did you have indication to go on to scene at
2 Road in Columbia, South Carolina, on April
3 the 23rd of 2013?

4 A. Yes, sir.

5 Q. Can you tell me how you got the call and what you did?

6 A. We were dispatched through SLED. I received a call,
7 one of many probably that day. We've run as many as eight
8 labs in a day all over the state. So, they're very
9 prevalent. We average at least one and a half calls per
10 day if you do the math.

11 That particular call there, we were notified. Told
12 that Richland County ---

13 MR. HAWKS: Objection, Your Honor.

14 A. --- had just been in that area.

15 MR. HAWKS: That's hearsay.

16 THE COURT: All right, just kind of what he did when
17 he got the call.

18 BY MR. MATHEWS:

19 Q. Just, just say what you did once you got a call.

20 A. Oh. Okay. Once we responded to that call, we arrived
21 on the scene. Got with the officer in charge. They
22 notified us of the materials that were there. They had
23 segregated those into a given area. And at that time, once
24 we said if you're done with the evidence gathering,
25 whatever is pertinent to your investigation, once it's

W. LINDSEY - DIRECT EXAMINATION BY MR. MATHEWS

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1 released to us, we get their permission to go ahead and
2 start profiling and packaging the materials.

3 Q. And the materials that you took that day, packaged,
4 were any of those uncommon or something you don't normally
5 take when you go out to a lab?

6 A. No, sir.

7 Q. The materials that you collected and seized that day,
8 in your experience and training, were those consistent with
9 a meth lab?

10 A. I've seen it hundreds of times, yes, sir.

11 Q. And do you have a copy of your report?

12 A. I do.

13 Q. In it, it shows that you took some waste materials?

14 A. Yes, sir.

15 Q. Can you explain to me what that is and the
16 significance of that?

17 A. And we're talking about the nonhazardous, nonregulated
18 materials that ---

19 Q. Yes.

20 A. Yes, sir. That has to do with the materials that are
21 used in conjunction with the manufacture of meth, and that
22 can be empty containers. It can be tubing. It can be
23 scales. It can be coffee filters that they use to actually
24 dry the meth out. It can be a variety of materials but --
25 that are common or associated with the meth lab.

F. SANDERS - DIRECT EXAMINATION BY MR. HAWKS

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1 MS. CAVANAUGH: Yes, Your Honor.

2 THE COURT: Defense ready for the jury?

3 MR. HAWKS: Yes, Your Honor.

4 THE COURT: All right, bring the jury, please.

5 (THE JURY ENTERS AT 10:56 AM.)

6 THE COURT: Mr. Hawks, you may proceed.

7 THE COURT: The defense calls Fred Jack Sanders.

8 FRED JACK SANDERS, BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat the witness box. State
11 your name for the record, please.

12 WITNESS: My name is Fred Jack Sanders.

13 DIRECT EXAMINATION BY MR. HAWKS:

14 Q. Jack, I'm going to take you back to the night of the
15 incident that has given rise to this trial. You remember
16 that night?

17 A. Yes, sir.

18 Q. When the search warrant was executed, were you
19 manufacturing methamphetamine?

20 A. No, sir.

21 Q. Did you have in your possession some drugs?

22 A. Yes, sir.

23 Q. Crack cocaine?

24 A. Yes, sir.

25 Q. Heroin?

F. SANDERS - DIRECT EXAMINATION BY MR. HAWKS

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1 A. Yes, sir.

2 Q. Methamphetamine?

3 A. Yes, sir.

4 Q. Did you intend to distribute those drugs?

5 A. No, sir.

6 Q. Did you intend to use those drugs?

7 A. Yes, sir.

8 Q. Are you addicted to heroin?

9 A. Yes, sir.

10 Q. Are you addicted to methamphetamine?

11 A. Yes, sir.

12 Q. Are you addicted to crack cocaine?

13 A. Yes, sir.

14 Q. Have you ever received treatment for these addictions?

15 A. No, sir.

16 Q. Do you want to receive treatment for these addictions?

17 A. Yes, sir.

18 MR. HAWKS: May I approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 MR. HAWKS: May I ask him to stand?

21 THE COURT: Certainly.

22 BY MR. HAWKS:

23 Q. I'm going to ask you to lift your sleeve on your right
24 arm.

25 A. (THE WITNESS COMPLIES.)

F. SANDERS - DIRECT EXAMINATION BY MR. HAWKS

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1 Q. That mark there, is that a track mark?

2 A. Yes, sir.

3 Q. You can sit down. Do you inject heroin?

4 A. Yes, sir.

5 Q. Do you inject methamphetamine?

6 A. Yes, sir..

7 Q. Is that what is those -- that track mark is from?

8 A. Yes, sir.

9 Q. Do you also use other methods to consume heroin and
10 methamphetamine?

11 A. Yes, sir.

12 Q. You told police that on the night you arrested?

13 A. Yes, sir.

14 MR. HAWKS: Beg the court's indulgence.

15 (A PAUSE.)

16 BY MR. HAWKS:

17 Q. I'm just going to ask you one more time. Were you
18 manufacturing method?

19 A. No, sir.

20 Q. Did you intend to distribute the drugs that were
21 found?

22 A. No, sir.

23 MR. HAWKS: Thank you, Your Honor. That's all I have.

24 THE COURT: Cross-examination.

25 MS. CAVANAUGH: Beg the court's indulgence.

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 (A PAUSE.)

2 CROSS-EXAMINATION BY MS. CAVANAUGH:

3 Q. Good morning, Mr. Sanders.

4 A. Good morning.

5 Q. You just stated to your lawyer that you never received
6 treatment before. Have you not, in fact, been to Charter
7 Rivers and received treatment before?

8 A. I was an adolescent then. I went for alcohol abuse.

9 Q. So, you have received some treatment before for
10 substance abuse?

11 A. Yes, ma'am.

12 Q. So, what you said to your lawyer earlier was
13 inaccurate?

14 A. Well, actually I was an adolescent. I believe I was
15 fifteen years old then, and I didn't go there willingly. I
16 wasn't seeking any help.

17 Q. But you did go for treatment?

18 A. Yes, ma'am, I did.

19 Q. And you've been convicted before. In fact, as
20 recently as 2011 for giving false information to law
21 enforcement, haven't you?

22 A. Yes, ma'am, I have.

23 Q. And you've also been convicted for crimes involving
24 dishonesty as recently as 2009, 2010 for shoplifting ---

25 A. Yes, ma'am.

1 Q. --- right?

2 A. Yes, ma'am.

3 Q. On three different occasions?

4 A. Yes, ma'am.

5 Q. You admitted to several of the investigators that the
6 crack cocaine located was yours. Isn't that correct?

7 A. Yes, ma'am.

8 Q. And there was crack cocaine in between you and Sara
9 and Joshua when the investigators entered the garage.
10 Isn't that correct?

11 A. Yes, ma'am.

12 Q. And that was yours?

13 A. Yes, ma'am.

14 Q. And were y'all intending to use that crack cocaine?

15 A. I was.

16 Q. Were they going to use it?

17 A. I don't know if they were or not.

18 Q. Were you going to allow them to use it?

19 A. I wasn't going to give them any of my drugs.

20 Q. But it was sitting in the middle of all of y'all.

21 A. It was sitting at my feet.

22 Q. So that that -- so, it wasn't in between y'all?

23 A. I was sitting in between both of them.

24 Q. So, while you were going to use the crack cocaine,
25 they were just going to sit there?

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 A. I don't know what they were going to do.

2 Q. They were at your house?

3 A. They were at my house.

4 Q. Where your drugs were located, right?

5 A. My drugs were in my possession.

6 Q. Well, they went in various locations in your house,
7 but they were yours?

8 A. Yeah.

9 Q. And they weren't going to use any of those?

10 A. No.

11 Q. Okay. Investigators with the Richland County
12 Sheriff's Department came to your home on the evening of
13 April 23, 2013, right?

14 A. Yes, ma'am.

15 Q. And you told your lawyer that you were not
16 manufacturing methamphetamine at that time?

17 A. Yes, ma'am. I, I told him I was or wasn't?

18 Q. You told the -- you told your lawyer that you were
19 not?

20 A. I told my -- yeah, I was not.

21 Q. I'm going to show you a picture of this plastic bottle
22 and the tubing that was located in your trash can in your
23 room. What is that?

24 A. It looks like trash to me.

25 Q. And what did you use it for?

1 A. It's bottled water.

2 Q. What about the tubes that are in the bottle?

3 A. I did, I did not use any of that stuff.

4 Q. No? In your room?

5 A. No, ma'am.

6 Q. In your room that had a padlock on the door?

7 A. No, ma'am.

8 Q. This Coleman, this gallon of Coleman camp fuel that
9 was located in your bedroom, is that yours?

10 A. Yes, ma'am.

11 Q. And why is that in your bedroom?

12 A. It's lighter fluid.

13 Q. You need a gallon of it in your bedroom?

14 A. I have a lamp that I put it in. It's a wick lamp.

15 Q. These AA batteries that all contain lithium and
16 different size batteries also lithium, multiple packs in
17 your bedroom, stripped batteries in your bedroom, what were
18 those for?

19 A. The batteries themselves, the big ones were for a
20 camera. The other batteries were for flashlights.

21 Q. You didn't do this to those?

22 A. Where were those located?

23 Q. In your room.

24 A. I, I have no knowledge of those.

25 Q. Salt that was in your bedroom near where all the other

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 materials used to manufacture methamphetamine, what -- you
2 keep salt in your bedroom for what purpose?

3 A. I drink alcohol. I drink lemon drops. I drink
4 tequila. I use it for shooting alcohol, taking shots.
5 Bite the lemon.

6 Q. Didn't see any pictures of the shot glass in your room
7 or alcohol.

8 A. There was none. There was none there at the time.

9 Q. But you keep the salt in there?

10 A. Yeah. It doesn't take but a few minutes to go to the
11 liquor store and get a bottle of liquor.

12 Q. The cold packs that were located in your bedroom,
13 aren't those usually kept in the freezer?

14 A. Freezer?

15 Q. The cold pack, an ice pack.

16 MR. HAWKS: Objection, Your Honor. It's in evidence
17 that those are the ones found in the room.

18 THE COURT: Cross-examination. I'll allow it.
19 Overruled.

20 BY MS. CAVANAUGH:

21 Q. Those were located in your bedroom as well, weren't
22 they?

23 A. Yeah.

24 Q. Okay. Not in the freezer?

25 A. No, they weren't in the freezer.

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 Q. And a punctured cold pack also located your bedroom
2 close to all the other materials we just went over, what
3 was that used for?

4 A. I didn't puncture it.

5 Q. Who did?

6 A. I don't know.

7 Q. Don't you just live at that house with your mom?

8 A. I did.

9 Q. Well, if you didn't puncture it, who did?

10 A. I don't know. Wasn't it in the trash?

11 Q. It was in your bedroom.

12 The Sudafed tablets that are that box, not in the
13 Sudafed box, but in that box next to a -- next to the
14 grinder. You can see the grinder next to this?

15 A. Yes, ma'am. Yes, ma'am.

16 Q. What is that for. What were they for?

17 A. Well, I have, I have major sinus problems.

18 Q. Uh-huh.

19 A. And I also use Sudafed at times to get high. If I
20 don't have what I need to get high on, then I will crush it
21 and snort it. I've even tried to inject it.

22 Q. And these syringes that have the Batman Band-aids on
23 them.

24 A. Yes, ma'am.

25 Q. Who put the Batman Band-aids on those?

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 A. I did.

2 Q. Why did you do that?

3 A. I would load the syringes so that they would be
4 readily available for me to use, and I would put the caps
5 on top of them and put the Batman tape so that it would
6 hold the cap on there so that the plunger wouldn't get
7 plunged down as I was pushing the drawer open and shut so
8 that it wouldn't waste any of the drugs.

9 Q. That you just made with all those materials?

10 A. No, ma'am.

11 Q. But you just said you loaded the syringes.

12 A. I did load the syringes. The drugs that I had, I
13 purchased.

14 Q. This box of large amounts of wax paper.

15 A. Yes, ma'am.

16 Q. That was located next to all these materials.

17 A. Yes, ma'am.

18 Q. What was the purpose of these?

19 A. I'd use heroin, and whenever I -- rather than taking
20 the risk of overdosing on heroin, because heroin is a very
21 lethal drug and it's very dangerous to use, although I was
22 hooked on it -- I couldn't function without using it. So,
23 I would take my heroin, and I would divide it up evenly,
24 and I would put the amount for one use into each one of
25 those bags, and I used it so often that I needed multiple

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 bags. I would use every one of those bags right there
2 within, like, maybe two weeks.

3 Q. Is there a fence in your backyard?

4 A. Yes, ma'am.

5 Q. In this bottle that you can see the lithium batteries
6 in, or the open -- the stripped lithium batteries and then
7 the finished product, that was located in your backyard.
8 Didn't you admit to the investigator that you buried that?

9 A. No, ma'am.

10 Q. You didn't say that to him?

11 A. No, ma'am.

12 Q. So, this was in your backyard?

13 A. That was actually found after I was arrested. I
14 didn't put it there.

15 Q. But it was in your backyard?

16 A. From my knowledge, the investigator came back to the
17 house a couple of days later.

18 Q. Or could have been the next day?

19 A. I don't, I don't know. Maybe the next day. Maybe. I
20 don't know. I thought it was a couple days later. I'm not
21 sure.

22 Q. After your mom called them ---

23 A. They ---

24 Q. --- to tell them it was there?

25 A. They asked me if there was anything like that. That

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 was the first thing they asked me, and I told them no.

2 There's nothing like that here. I didn't understand what
3 they were asking me at first.

4 Q. This green box, you tried to hide this when the
5 investigators entered the garage. Isn't that right?

6 A. I didn't try to hide it.

7 Q. You hid it by the refrigerator. They had to dig
8 behind the refrigerator ---

9 A. It was on a ---

10 Q. --- to find it.

11 A. It was on a shelf. It was on a shelf in a, in a box
12 in the -- beside the -- there's a refrigerator in the
13 garage. There's also a shelf right beside the
14 refrigerator. I just had it sitting down in there.

15 Q. The doesn't look like a shelf. That's where it was
16 located.

17 A. Can, can I see that?

18 (A PAUSE.)

19 A. I don't even recognize where that is in the house. I
20 actually believe that that is the box that was on the shelf
21 itself.

22 Q. But you didn't try to hide it when ---

23 A. No. No, ma'am.

24 Q. --- the investigators entered?

25 A. I just had it sitting in there. It was in there

1 before they busted in the -- busted open the door.

2 Q. So, what you're telling us today is that all of these
3 items, the stripped batteries, you don't know why they're
4 in your bedroom?

5 A. No, ma'am, I don't.

6 Q. You had nothing to do with that?

7 A. No, ma'am, I did not.

8 Q. You have no idea what -- how the Dasani water bottle
9 with the tubing got in your trash can and in your bedroom?

10 A. No, ma'am. They were in the trash. I mean, I'm not
11 -- I don't make it a habit of looking through the trash to
12 see what's in the trash.

13 Q. And you keep a gallon of camp fuel you use ---

14 A. I have a lamp.

15 Q. --- for your lighter?

16 A. I have a wick lamp that I use that for. It's actually
17 a lamp that has three hanging wick lamps.

18 Q. And even though there was no alcohol, no shot glasses,
19 no empty bottles except for ones with tubing in them, the
20 salt was for your tequila shots?

21 A. And lemon drops. I use them in the bottle as well.

22 Q. And the Drano that was located in your room, what was
23 that for because there was no bathroom or no sink in your
24 bedroom.

25 A. There is a bathroom and a sink and a shower in my

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 bedroom.

2 Q. Do you usually keep the Drano outside of the bathroom?

3 A. I keep it under the, under the counter because we did
4 have major problems with backing up sewage, which my mother
5 just had fixed approximately about three weeks ago. They
6 had to come out and redo the whole line, and I was pouring
7 Drano and the other -- I don't, I don't know the name of
8 it. I don't know the -- I went to the hardware store and
9 asked them what's the best stuff to use for clearing out
10 drain, and they gave me this stuff that was called -- I
11 don't remember. It was -- they told it was highly toxic.
12 It was in a plastic bag; it was in a big, red bottle. I
13 asked them did I need to pour the whole bottle, and they
14 said no. They said just pour a little bit down each drain
15 and if it doesn't clear up, try it again. Go through every
16 drain, and I did, and I just had it up under the ---

17 Q. In the bedroom?

18 A. Under the sink in the, in the bathroom in the bedroom,
19 yes, ma'am.

20 Q. So, even though you admitted to Investigator Clarke
21 that all the items, all the illegal substances, all the
22 contraband located in your bedroom were yours and yours
23 alone, you now say that you have no idea how any of these
24 items got into your room?

25 A. I didn't say that.

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

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1 Q. So any items, contraband or otherwise, in your
2 bedroom could be yours and yours alone, correct?

3 Yes, sir.

4 A. Didn't I just tell you that everything in there was
5 mine?

6 Q. Except for the stripped lithium, except for the cold
7 packs that you have no idea how they got in there.

8 A. I didn't say that.

9 Q. You just told this jury that you have no idea how the
10 stripped lithium got in your trash can.

11 A. I don't. I don't know how the stripped lithium got in
12 my trash can. As far as the lithium batteries, yes, I do
13 have knowledge of owning those. They tend to last longer
14 than the other batteries.

15 MS. CAVANAUGH: Beg the court's indulgence.

16 BY MS. CAVANAUGH:

17 Q. Why did your room have a strong odor of chemicals
18 coming from it?

19 A. I don't recall a strong odor of chemicals coming from
20 it.

21 Q. So, that was also a lie?

22 A. I didn't say that.

23 Q. But you never noticed any strong chemical smell coming
24 from your room?

25 A. No, ma'am, I did not.

1 THE COURT: All right, any reply?

2 MS. CAVANAUGH: No, Your Honor.

3 THE COURT: All right.

4 All right, ladies and gentlemen, that's it. That
5 conclude all -- that concludes all the evidence you will
6 hear in this case. The remaining portion of the trial will
7 consist of the final summation or argument of counsel and
8 my instructions to you on the law of the State of South
9 Carolina as it applies to this case.

10 Now, we've ordered lunch for you, but it's not going
11 to be here for about an hour. There are several matters,
12 again several matters I need to take up with the attorneys
13 before we do the final arguments. So, I'm going to ask you
14 to go to your jury room for a few minutes. Well, you've
15 probably learned by now when I say a few minutes, it
16 probably doesn't always mean a few minutes. But I do have
17 to take up some legal matters with them before the case is
18 presented, turned over to the jury.

19 So, if you'll go to your, just go to your jury room,
20 relax. If we can speed that lunch up, I'll do it to try to
21 get it here a little early. Don't discuss the case among
22 yourselves while you're in the jury room, please.

23 (THE JURY EXITS AT 11:22 AM.)

24 THE COURT: All right, any request to charge on behalf
25 of the state?

1 MS. CAVANAUGH: Your Honor, we submitted the two that
2 we ask that you charge, as well as any -- the constructive
3 possession charge, Your Honor, related to the crack cocaine
4 that was located in the garage when investigators entered.

5 THE COURT: What were the other two? What was the
6 other one?

7 MS. CAVANAUGH: The other one was section
8 44-53-375(d), which is the applicable law for manufacturing
9 methamphetamine. We substituted prima facie, the prima
10 facie burden gives rise to permissive inference. And then
11 the other charge was the inference, was from Ralph King
12 Anderson's book as far as the inference weight for the
13 heroin since it was over ten times the inference weight for
14 possession with intent to distribute.

15 THE COURT: Heroin, just the heroin?

16 MS. CAVANAUGH: Just the heroin. That's the only one
17 that was over the inference weight.

18 THE COURT: Right. I think that's right. That's the
19 1.2, 1.25 grams?

20 MS. CAVANAUGH: Yes, sir.

21 THE COURT: From the defense?

22 MR. HAWKS: Your Honor, the first one she's speaking
23 about, possession of equipment and paraphernalia, the
24 statute actually reads that there's a prima facie showing
25 of intent, and this one reads permissive inference of a

1 violation. I would just request that it be changed to
2 gives rise to a permissive inference of an intent to
3 manufacture because I don't want the jury to think having
4 the equipment is a crime.

5 THE COURT: I know what you mean.

6 Any objection to that?

7 MS. CAVANAUGH: No, Your Honor. That's how the
8 statute reads. No objection.

9 THE COURT: Okay.

10 MR. HAWKS: And does Your Honor already have one about
11 attempt?

12 THE COURT: A what?

13 MR. HAWKS: Attempt.

14 THE COURT: Attempt to what?

15 MR. HAWKS: To manufacture.

16 THE COURT: No.

17 MR. HAWKS: We would like to submit this charge. I
18 apologize.

19 THE COURT: Give it to the state.

20 MR. HAWKS: I don't have any copies. I apologize. I
21 just ran them off.

22 THE COURT: They can't -- you have to let them look at
23 it at least so they can object to it.

24 (A PAUSE.)

25 THE COURT: What's the evidence of attempt?

1 possession with intent to distribute, a lesser-included
2 offense of those charges. In other words, there are three
3 of them: possession with intent to distribute
4 methamphetamine, possession with intent to distribute crack
5 cocaine, possession with intent to distribute heroin.
6 Those three charges will have a lesser-included offense,
7 and that is possession.

8 In other words, if you do not find -- as I say, I'm
9 giving you a little preview of what I think you're going to
10 hear from the lawyers. If you do not find that there is an
11 intent to distribute, you can still find the defendant
12 guilty or innocent of possession. So, I wanted to just
13 kind of alert you to the fact that you, I'm pretty sure
14 you're going to hear some discussion about possession as
15 opposed to possession with intent to distribute of those
16 three drugs.

17 Now as to manufacturing, it's either manufacturing or
18 not, and he's only charged with possession of Valium, not
19 possession with intent to distribute Valium.

20 So, with that little preview, Mr. Hawks, you may begin
21 with your final argument.

22 MR. HAWKS: Thank you, Your Honor. May it please the
23 court?

24 Good morning, ladies and gentlemen. I would like to
25 start by apologizing for objecting so much, sending y'all

1 out of the room so much, and disrupting this trial so much,
2 but I assure you every time I did that, it was in order to
3 make sure my client, Jack Sanders, had a fair trial. And
4 that is what you're here for today. What we're all here
5 for today is to make sure that he is proven beyond a
6 reasonable doubt that he is guilty of every element of the
7 charges that are facing him.

8 And I know we haven't had a chance to speak very much.
9 I'm been talking with the judge, talking to my co-counsel,
10 my client, the state. Haven't been able to address you at
11 this point, but I'm very excited to do so, and I am very
12 excited to be here.

13 I'm going to introduce a concept to you. Some of you
14 may already be familiar with it. It's from a very famous
15 book written by George Orwell called 1984, and that concept
16 is called doublespeak. And if you've read that book or
17 seen the movie, heard about this phrase before, you
18 probably already know what it means, but I'm going to
19 explain it to you in very simple terms here.

20 Perhaps the most used example is this one right here:
21 war equals peace. Now, why is that doublespeak? Well, we
22 know that the word war certainly doesn't mean speak. But
23 doublespeak is when politicians, government officials, they
24 use a word over and over, and they try to change the
25 definition over and over, so much that the people hearing

1 that word and hearing that definition begin to believe that
2 it actually means what they're saying, war equals peace.
3 And there are plenty of examples in this trial of that
4 being done.

5 The first, Mr. Shipman told you about it in his
6 opening: user equals dealer. The state wants you to
7 believe that a drug addict, Jack Sanders -- a junkie if you
8 prefer to call him that -- is a dealer. That because he
9 has certain amounts of drugs or certain quantities of drugs
10 or certain different types of drugs, that he must be a drug
11 dealer. Well, ladies and gentlemen, user does not equal
12 dealer. We know that. We know that war does not equal
13 peace no matter how many times it's said to us, no matter
14 how many times that definition is attempted to be changed.
15 We know that a user is not a dealer, okay?

16 And I'm going to give you a further example of this.
17 Going to break it down a little bit. Some evidence has
18 been shown in this trial so far, one piece of that
19 evidence, syringes. We know that a user of heroin,
20 methamphetamine, especially an intravenous user of those
21 drugs -- which means directly into the vein -- is going to
22 use syringes. Throughout this trial, the state has
23 attempted to tell you that syringes points to this, dealer.
24 So, syringes equal paraphernalia for a dealer. I'm not
25 going to try to spell paraphernalia right now. I'm just

1 going to do P for dealer.

2 Now, there's been some other evidence shown to try to
3 prove that Mr. Sanders is a dealer: straws, jars, grinders,
4 other, other equipment used to consume drugs. But the
5 problem is they have never actually shown that Mr. Sanders
6 is a dealer or that he intended to distribute any of those
7 drugs. So, no matter how many times they tell you that a
8 dealer would have a syringe, that he would load that
9 syringe up for his clients so that they could use them, we
10 know that a user would have a syringe, not a dealer. That
11 the end user of narcotics is going to load that syringe
12 himself or herself.

13 The state would have you believe that Jack Sanders is
14 such a thoughtful and nice dealer that he even cooks the
15 meth and heroin down to spoons, loads it up for his
16 clients. Not only that. He removes the cap that comes on
17 a basic syringe and he replaces it with a pen cap. And the
18 reason he does that, so that it won't come off. He even
19 tapes it, and you saw that some of those pictures.

20 Now, I find it hard to believe that a drug dealer
21 would go through all that time and effort to make sure that
22 a syringe was not accidentally punctured for his clients. I
23 think, however, that a user would absolutely take that time
24 to make sure, as Mr. Sanders told you himself, that none of
25 those drugs which he so desperately needed would come out

1 of that syringe.

2 Not only when he's opening and closing a drawer, which
3 he told you, but also if he takes those syringes anywhere
4 with him because he does that. That's the type of addict
5 Mr. Sanders is. He is so addicted that he cannot go
6 anywhere without having what he needs because he will go
7 through physical withdrawals that will make him physically
8 sick. Can't go to work, can't go anywhere without the
9 drugs that he needs to not become sick.

10 Now, when I first met Jack last summer -- last fall,
11 excuse me -- I inherited this case from another attorney,
12 so I did not meet him when he was initially arrested. But
13 I met him some time later in the fall, and for a while
14 there, there was only one thing that we talked about, and
15 that was getting him treatment. And that's the only thing
16 that he has ever wanted as soon as this whole case began,
17 treatment.

18 And he told you during his testimony that although he
19 did receive some treatment when he was a youth for alcohol
20 abuse, he has never received any treatment for his current
21 addictions, which are many, and they are very serious.

22 What the state wants you to do today is put him in
23 prison, not ---

24 MS. CAVANAUGH: Objection.

25 THE COURT: Can't talk about those things,

1 consequence.

2 That's up to the court, ladies and gentlemen, whatever
3 penalty may be incurred. Just -- that's not relevant final
4 argument.

5 MR. HAWKS: I apologize.

6 Let's move on. The reality here is that Jack Sanders
7 was overcharged. When they executed that warrant, they
8 found a lot of evidence, a lot of evidence of a drug
9 addict, extremely addicted man. A man who doesn't really
10 have a preference for any specific drug. He takes whatever
11 he can get his hands on. That's why they found crack,
12 heroin, methamphetamine, prescription drugs.

13 And the state would have you believe that the fact
14 that there was a smorgasbord, if you will, of narcotics,
15 that he must be a dealer. He provides services to several
16 different kinds of addicts, several different kinds of
17 users. In reality, many dealers do not operate that way.
18 They focus on one drug, and they have large quantities of
19 it.

20 Mr. Sanders didn't have large quantities of any
21 specific drug, and let's talk about quantities here. A lot
22 has been made about the amount of heroin found in this
23 case. There's been talk about inference weight, which the
24 judge is going to instruct you on, and that inference
25 weight simply is an arbitrary number decided by a group of

1 men many years ago in our legislature. It does not take
2 into account the purity of those drugs. It does not take
3 into account the tolerance of the user, the level of the
4 user's addiction. It does not take into account the height
5 and weight of the user. As you can tell, Jack's a pretty
6 big guy. That number -- again, arbitrarily decided by the
7 legislature -- does not take into account the individual
8 user. It certainly did not take into account Jack Sanders.

9 Now, from watching law shows on TV, and I don't know
10 if any of you do, but I'm sure one of you has at least seen
11 one or two law shows in the past, crime shows, cop shows,
12 whatever you want to call them. Those shows make you
13 believe or make you think perhaps that law enforcement
14 agencies are constantly investigating cases that they
15 charge. That they are repeatedly going over the evidence
16 and trying to figure out for sure if they're doing the
17 right thing because the goal of law enforcement should not
18 be to charge as much as possible or to get as many
19 convictions as they possibly can. The goal should be to
20 fight crime, to stop crime, to make sure that they are
21 charging the right people for the right things, and to make
22 sure that they are doing what's right for society in
23 general.

24 In Mr. Foster's opening, the state's opening, he, he
25 asked you to convict Mr. Sanders because it would help get

1 these drugs off the street. Now, you and I know that is
2 not going to happen whether or not you convict Mr. Sanders.
3 And I'm going to argue that Mr. Sanders, the only place he
4 wanted those drugs to go was inside his own body, and he
5 told you that himself.

6 Now this, this case started back in April 2013. It is
7 now March, so we're on about eleven months. During that
8 whole time, Investigator Ricard, Investigator Smith,
9 Investigator Clarke, they have not done any more work on
10 this case besides the original execution of the warrant.

11 And when I was cross-examining Investigator Ricard, I
12 was trying to show you guys that throughout that
13 eleven-month period, that whole time she had the
14 opportunity all the way up until Monday when we started
15 this case to amend her incident report, which she told me
16 is very, very important because when law enforcement gets
17 on a crime scene, they want to get everything as it is
18 accurately as possible. But throughout that period, they
19 can amend their reports. They can add things, especially
20 something as important as the smell.

21 Now, I was not there; I was not at Road
22 in April 2013. I don't know what the house smelled like,
23 and I'll never know. But I can tell you that if it was
24 that important at the time, if the smell was that pungent,
25 that strong, that overwhelming, that it should have been in

1 the incident report. Or it should have been added because
2 again, eleven months they've had to amend that incident
3 report.

4 All of these suggestions that you've heard in this
5 case are simply that: suggestions. They are suggesting
6 that he is a drug dealer. They are suggesting that he
7 intended to distribute those drugs, and let's talk about
8 each drug in general -- or specifically. I'm sorry.

9 Let's talk about the crack. You have not heard any
10 direct evidence Jack Sanders actually intended to
11 distribute the crack. In fact, he told you himself that he
12 intended to use it, and that was a very small amount of
13 crack. So, it doesn't even meet that inference weight.
14 So, you don't even have to consider that. But again, the
15 only thing we have to go as far as intent to distribute is
16 the state's suggestions, their conjecture, their
17 speculation. What we do have is Jack Sanders's own
18 testimony. He was going to use that crack for himself.

19 Let's talk about the meth. .08 grams found on four
20 separate spoons. Residue scraped off of a spoon. I'm not
21 sure how he could have intended to distribute resin on a
22 spoon, but that is what the state is suggesting.

23 Now, they also told you that he had some syringes full
24 of liquid methamphetamine that he was intending to
25 distribute. We'll never know if that was actually

1 methamphetamine because it was not tested. But even if it
2 were, we go back to our original discussion. Syringes are
3 for a user, not what the state would have you believe, but
4 paraphernalia for a drug user.

5 Jack told you himself on the stand that he is addicted
6 to meth. You saw his track marks from injecting that drug.
7 He verbally and written -- in a written statement admitted
8 on the scene that he uses those drugs. Those are his. He
9 injects and smokes methamphetamine. Again, no direct
10 evidence that Jack Sanders intended to distribute that
11 methamphetamine to anyone but himself.

12 Let's talk about the heroin. This is the big elephant
13 in the room, I think. It does meet the inference weight,
14 the permissive inference weight, and that's reasonable.
15 The reason I discussed that with you in the beginning
16 because you must understand that you don't have to take
17 that weight to mean anything. It is permissive. So, you
18 can take it or leave it.

19 The state would have you believe that that's all that
20 matters, you have the statutory amount. No way any heroin
21 addict could ever have that much heroin, but of course that
22 ignores simple rules of economics. That ignores the size
23 and weight of the individual. That ignores the purity of
24 the narcotic. But again, to no fault of their own, state
25 admitted that they do not test.

1 Again, Jack Sanders showed you his track marks.
2 They're a little faded because he's been clean for quite
3 some time, and I'm very happy for that, but they're still
4 there.

5 Now, heroin is a very, very, very powerful drug. It
6 can kill you, and tolerance for heroin develops very
7 quickly. And when the user develops a tolerance, they need
8 more and more of the drug. Just like an alcoholic who
9 drinks every day, eventually they're going to need more
10 alcohol. A smoker who smokes cigarettes, they're going to
11 smoke more and more and more. Maybe eventually they come
12 to a resting point at some amount, some average amount, but
13 when that tolerance is building, the user in pretty much --
14 all drugs, not just heroin -- is going to need more and
15 more and more, especially again when you take into account
16 the purity. For all we know, this was very weak heroin.
17 For all we know, it was very strong heroin. The main point
18 is that we don't know the purity of this heroin.

19 The other thing about heroin that's important to keep
20 in mind, and Jack told you this on the stand. You can
21 overdose. It's not one of those drugs where if you take a
22 little too much, it will all be okay. You can die if you
23 take too much, and he knows that, and Jack may be an
24 addict, but he does not want to die. And that is why he
25 explained how he packaged the drugs for himself: so that it

1 would be premeasured to avoid any risk taking too much.

2 Let's talk about some other things to do with user vs.
3 dealer. They found scales. They found pipes, baggies,
4 other implements for taking drugs. Syringes, spoons,
5 straws, we've been over those. Let's talk about what they
6 didn't find. Large amounts of money, any money at all.
7 Cell phones, multiple cell phones, cell phones with text
8 messages about dealing drugs, emails, written letters about
9 dealing drugs. They didn't find any ledgers, and what I
10 mean by ledger is a log: the client, amount, price,
11 quantity, names, numbers, anything of that nature.

12 So, again remember doublespeak. On one hand, we have
13 a lot of evidence that Jack Sanders is a sick man, an
14 addict who needs help, who takes a large amount of drugs on
15 a daily basis, multiple kinds of drugs, daily basis. On
16 the other hand, we have the state's assertion that that
17 makes him a dealer, but remember. User does not equal
18 dealer. War does not equal peace.

19 Just one final point on the PWID charges. In order to
20 find Fred Sanders guilty, Fred Jack Sanders guilty, you
21 must actually find that he intended to distribute those
22 drugs: crack, heroin, methamphetamine. Not that he must
23 have intended to distribute because he had them, but that
24 he actually intended to distribute those drugs.

25 Let's talk about the manufacturing now. I think we

1 know what the state's theory on this is. Although we did
2 get them to admit that it was not an active cook, they're
3 trying to tell you that it was a very recent cook based on
4 the smell that just came up Monday, based on the equipment
5 found. But that equipment was not found in any order and
6 set up in any way that would make it look like a lab. Most
7 of it was found in the garbage. A lot of it was common
8 household items found in the room.

9 State wants you to believe that he's a meth cook, that
10 he had a lab set up in his bedroom. But in reality, all
11 they found was a bunch of garbage, and most of that garbage
12 was destroyed. So, we don't get to look at it here today.
13 We don't get to determine at what stage this alleged meth
14 cook was in, or if it was in any stage at all.

15 Now, I understand that this evidence looks bad.
16 Certainly looks like someone may have been cooking
17 methamphetamine at some point, but we don't know when that
18 was done. We don't know who did it. There was no
19 fingerprints taken, any of these items. No testimony given
20 that directly connects Jack to the items other than the
21 fact they were in his bedroom. No direct evidence linking
22 Jack to the manufacture of again the .08 that was found on
23 four separate spoons.

24 The state wants you to convict Jack because of
25 something that may have happened in the past. My partner

1 and I tried very hard to keep past events out of this
2 trial, but unfortunately they leaked their way in here and
3 there, but I urge you. Listen to the judge's instructions
4 that he's already given you and that he will give you. You
5 are not to consider prior bad acts or any prior acts, bad
6 or good.

7 For all we know and for all the state knows, if there
8 was a cook at some time, could have been weeks ago. Could
9 have been months ago. We're never going to know that, and
10 there was a lot of confusing testimony about how recent the
11 cook was.

12 Investigator Chauncey Smith on the stand admitted he
13 didn't know how old it was, but he said it could have been
14 just a few minutes old. And I specifically asked him if it
15 was a few minutes old, Investigator Smith, how could there
16 possibly be only .08 found on a spoon, four spoons? And he
17 sort of dodged my question a bit, but I think even he would
18 have to admit that those two things just don't add up. If
19 it's a recent cook, where's the product?

20 Well, he would have you believe that Jack Sanders is
21 the fastest drug dealer in the history of the world. As
22 soon as that cook is complete, he's distributed all but
23 .08. That was his explanation for why there was no yield
24 or a very small yield, if there was a yield at all.

25 Ladies and gentlemen, I would argue that the evidence

1 is overwhelming that if there was a cook, it was extremely
2 old. In the garbage. They want to talk about bottles
3 found in the yard days later, one day later. There's some
4 confusing testimony about that as well, but it was not
5 found on that night. And I'm not sure the state has shown
6 any connection between that bottle found days later to the
7 equipment found at the night of the arrest.

8 Now, the other theory I predict Ms. Cavanaugh will
9 submit to you is that even if he didn't cook the meth
10 found, and even if it was not an active cook or a recent
11 cook, that he attempted to cook methamphetamine. The
12 problem with that is simple. There is no evidence
13 whatsoever that at the time this search warrant was
14 executed, this meth lab was operating, active, set up,
15 ready to use, or a meth lab at all. Again garbage. The
16 bag of destroyed batteries, garbage.

17 He had not taken any overt steps to begin that
18 process. He has not stripped new lithium to use in a new
19 cook. He had not set up bottles, tubes. He had not begun
20 any criminal -- or excuse me, any chemical reactions
21 whatsoever. Most of that stuff, again, was either in the
22 trash or common household items that Jack Sanders explained
23 to you he himself had uses for.

24 Now, I have a majority of those things in my house. I
25 even have the tubing, and it even has a little resin in it

1 because I recently tried to do a home-brew kit for beer.
2 Unfortunately, it didn't turn out too well. Didn't taste
3 very good, but I had the tubing, had a large jar. Of
4 course I had a water hose. Who doesn't? I don't have any
5 pseudoephedrine at the moment, but I'm sure at some time my
6 fiancée or I had pseudoephedrine in our home. Who doesn't?
7 I have camp fuel. I have lighter fluid for a Zippo. Of
8 course I have batteries; batteries go in everything. Of
9 course I have salt. Of course I have coffee filters. Make
10 it every day.

11 But that -- those items together, even if I told you
12 here today that I intend to manufacture methamphetamine,
13 those items and my intent do not create an intent. That
14 must come with some overt act. And I can assure you I have
15 never taken an overt act to set those things up as a meth
16 lab even if I had the intent. And I don't believe in this
17 case there was any overt act to set up a meth lab.

18 Garbage, batteries that had already been stripped in
19 the garbage. You can't see in these pictures where the
20 salt and the camp fuel was actually located or the cold
21 packs. State would have you believe they were all set up
22 nice and neat ready to cook. The only testimony we've
23 heard about where those items were actually located is Jack
24 Sanders.

25 Ladies and gentlemen, this was not an active cook.

1 The meth that they found, well, we don't know where that
2 comes from, but I don't believe that it came from any cook.
3 This was not a meth lab set up, turnkey operation. No
4 overt act had have been made to manufacture
5 methamphetamine.

6 And in this country, and hopefully no other countries,
7 do we criminalize thought. You can think about doing
8 whatever you desire. If you think about doing something,
9 you are not a criminal. You may have criminal intent, but
10 that is not enough to be found guilty of a crime.

11 Now, I'm almost through, but I'd like to talk to you a
12 little bit about what I think reasonable doubt is.

13 MS. CAVANAUGH: Objection.

14 THE COURT: Overruled.

15 MR. HAWKS: I really liked Mr. Shipman's description
16 with the football field and what he said about hesitating
17 to act. I just want to break that down a little bit.

18 Anything that makes you hesitate about whether or not
19 Jack Sanders was manufacturing meth at this time,
20 reasonable doubt. Anything that makes you hesitate that he
21 is a drug dealer, that he intended to distribute those
22 drugs is reasonable doubt. And I think there is plenty of
23 reasonable doubt in this case because we know that he is a
24 drug addict. He told you himself. We know what he
25 intended to do with those drugs: use them to feed his own

1 addiction.

2 I think there's more than enough reasonable doubt on
3 all three PWID charges and on the manufacturing, and I
4 would ask you to find not guilty on those charges.

5 Now the possessions, we're not arguing those. Jack
6 told you himself: his drugs, even the crack. The state's
7 trying to tell you that the crack might not be his. Jack's
8 not even saying that. His crack. Nobody else's. His
9 heroin. Nobody else's. His meth. Nobody else's. His
10 Valium. Nobody else's. So, go ahead. Find him guilty of
11 the possessions; we want you to do that. He possessed
12 these drugs. That's it. He did not intend to distribute
13 them, and he was not manufacturing meth. Thank you.

14 THE COURT: Solicitor.

15 MS. CAVANAUGH: Your Honor, I need a few minutes to
16 set up the ---

17 THE COURT: Go ahead.

18 (A PAUSE.)

19 MS. CAVANAUGH: Ladies and gentlemen, if there has
20 been one thing that's been made clear to you during this
21 trial, it's that meth labs are dangerous. They can blow
22 up. They are toxic. Chemicals that come from a meth lab,
23 even the one-pot meth lab that were located in Mr.
24 Sanders's bedroom can be fatal.

25 You've heard from each of the investigators in this

1 case and the chemist in this case and William Lindsey from
2 Phillips Recovery Incorporated about how hazardous these
3 materials are. There is an agency that exists for the sole
4 purpose of removing these materials from the meth labs, no
5 matter how small they are, no matter if they're in
6 someone's bedroom, and the materials that have come into
7 contact have to be shipped to Ohio. That's how dangerous
8 meth labs are. That is why we are here today.

9 William Lindsey testified he had seen -- he sees meth
10 labs every day, and the materials he had to remove from Mr.
11 Sanders's bedroom was two times the amount he's used to
12 seeing. So, ladies and gentlemen, despite what defense
13 counsel stated in their opening, we are not making a
14 mountain out of a molehill. Meth labs are simply
15 dangerous, and that's exactly what was located in Mr.
16 Sanders's bedroom on April 23, 2013.

17 However, what we are not saying, and what we never
18 implied, is that Fred Sanders is the biggest drug deal in
19 Columbia. We are absolutely not saying that .08 plus .18
20 plus .02 grams of crack cocaine demonstrate that he is the
21 biggest dealer of crack cocaine in Columbia. We are not
22 trying to imply that all. We are not trying to imply that
23 he is the biggest heroin dealer in Columbia.

24 But the truth and the reality of the situation is that
25 he had some of the hardest drugs possible in his home that

1 he admitted he had, and yes. He did have wax papers that
2 are commonly seen in the sale of drugs, a few boxes of
3 those that can be used to package crack, heroin, meth. And
4 yes, he did have a scale that is also commonly used to sell
5 and package drugs. But again, we are not trying to say
6 that he is not a user.

7 And I think the more appropriate diagram in this case
8 would be a Venn diagram. He might very well be more of a
9 user than he is a dealer. However, these two intersect,
10 and they often do, and can also be a -- I'm going to say
11 maker, meaning short for manufacturing. We are not trying
12 to say that he is not each of these. However, they
13 intersect.

14 And I'd like to go ahead and apologize if myself or
15 co-counsel or any of the investigators that testified
16 offended you in any way. I realize that some of my
17 questions were very inarticulate, and they might have been
18 confusing. However, as the defense told you and the judge
19 will tell you, we do have the burden in this case, and we
20 have to prove each element of the crime he is charged with
21 beyond a reasonable doubt.

22 And as Mr. Hawks said, this is not a courtroom drama
23 like you see on *Law and Order*. This is not -- Richland
24 County does not have a lab like you see on *CSI*. In fact, I
25 would submit that no lab in reality is like *CSI*. I think

1 everyone knows that.

2 And even though Mr. Hawks tried to instruct you on
3 what he believes is the law in this case as far as it
4 relates to reasonable doubt, the judge will do that at the
5 very end of this case, and that is the law that applies in
6 this case, not what Mr. Hawks says and not what I say.

7 But as a result of what the investigators located in
8 the defendant's home on April 23, 2013, he was charged with
9 several crimes, and the first is manufacturing
10 methamphetamine. I'll come back to this later. However,
11 that section reads, and this is what he's charged under:

12 Person who manufactures, distributes, dispenses,
13 delivers, purchases, or otherwise aids, abets,
14 attempts, or conspires to manufacture,
15 distribute, dispense, deliver, or purchase, or
16 possess with the intent to distribute, dispense,
17 or deliver methamphetamine or cocaine base is in
18 violation of this law.

19 So, evidence of an intent to manufacture is violation
20 of that law.

21 Defense would have you believe that the only time you
22 can ever arrest anyone for manufacturing methamphetamine is
23 that thirty-minute window where investigators just so
24 happen to be lucky enough to execute their search warrants
25 when there's an active cook. So, the only way that you

1 could ever arrest someone for attempting to manufacture
2 methamphetamine or manufacturing methamphetamine is when
3 that active cook is going on, and all of the ingredients
4 that were found in his room are cooking.

5 That's just simply unreasonable, and the legislature
6 has recognized that. And within the law for manufacturing
7 methamphetamine, they added an additional section, and I
8 apologize if you can't see that, but the judge will read
9 this to you as well:

10 Possession of equipment or paraphernalia used in
11 the manufacturing of cocaine, cocaine base, or
12 methamphetamine gives rise to a permissive
13 inference of intent to manufacture.

14 And what does giving rise to a permissive inference
15 mean? That means that there's evidence that will establish
16 a fact or sustain a judgment unless contradictory evidence
17 is produced.

18 MR. HAWKS: Objection, Your Honor. That's burden
19 shifting, the last part.

20 THE COURT: Overruled.

21 MS. CAVANAUGH: And, ladies and gentlemen, I submit
22 the only evidence that you have to contradict that every
23 single item in that room was not used to manufacture
24 methamphetamine is Fred Sanders's own testimony where he
25 said that he has -- he had an excuse for most of those

1 items that just so happened to, all combined together, be
2 able to manufacture methamphetamine in that one-pot method,
3 as you heard several times. But he had no excuse for the
4 things that didn't make sense.

5 He just so happens to have no idea how distressed
6 batteries were in his trash can because he is has no other
7 explanation for that. There is no other explanation for
8 stripping batteries that can potentially burn your fingers
9 other than to manufacture methamphetamine. But yet that
10 seems to be, coincidently, the one thing that he had no
11 idea about.

12 Also the bottles with the tubing. Sure, you can
13 explain away empty water bottles, but with plastic tubing
14 coming from them? And there weren't just one. There were
15 several located in his bedroom, but yet he doesn't know how
16 those got there.

17 Ladies and gentlemen, Fred Sanders admitted to --
18 himself on the stand that he repackaged the liquid
19 methamphetamine that I submit he'd just made. He admitted
20 himself to a form of manufacturing by repackaging the meth
21 that he had in those syringes. And I submit if he is just
22 an addict, how was he so organized to be able to weigh each
23 of his drugs, to package each of those drugs separately in
24 that box? He is such an addict, and addicts don't usually
25 have impulse control like that. They're not going to take

1 the time to separate it into individual syringes,
2 repackage. And if it's just for his use, why does he need
3 so many syringes? There are some that aren't used, some
4 that are used. There's some that he admitted that he
5 repackaged himself. I don't know.

6 I'll move on to the heroin that was located in several
7 different compartments in that green box Investigator Smith
8 testified the defendant tried to hide upon entering into
9 the garage. The heroin was for personal use. Why is it
10 packaged in different compartments and packaged separately
11 in that box? Why wasn't it in his room where the drugs
12 were located, the methamphetamine was located?

13 And again, the heroin that was located is 1.25 grams,
14 which might not sound a lot, but as you heard, heroin is a
15 very potent drug. And the legislature has included in the
16 laws of our state that prohibit possessing heroin, but also
17 they provide that the possession of more than 2 grains of
18 heroin give rise -- gives rise to a permissive inference of
19 a violation of subsection (a) of this section, and 2 grains
20 equals .13 grams.

21 Fred Sanders in three different compartments packaged
22 separately in those wax papers had 1.25 grams total, which
23 is ten times over the inference weight, simple possession
24 of heroin. So, in addition to the packaging in a different
25 -- in addition to the scales, in addition to the different

1 compartments, you have the weight there to support he had
2 intent to distribute.

3 And I do want to be clear. He's also charged,
4 indicted for possession with intent to distribute
5 methamphetamine, which is separate from the actual
6 manufacturing. The equipment, the tools, the chemicals,
7 the precursor -- precursors that were found in his home,
8 that is the evidence of the manufacturing.

9 The possession with intent to distribute
10 methamphetamine is separate and distinct from that. There
11 was methamphetamine that was tested from his room. You can
12 see it all over the spoon that again, if it's for personal
13 use only -- you will have the pictures -- why is there meth
14 all over the counter on different spoons? And he also had
15 it loaded in syringes. However, we don't know how much
16 meth he actually had in that room. It all -- most of it
17 had to be taken away because of the hazardous nature of
18 meth labs.

19 And he freely admits in his statement and I believe on
20 the stand that the Valium that he had was a controlled
21 substance he did not have a prescription for. I don't
22 think there's any argument as it relates to possession of a
23 controlled substance.

24 Part of your role as the jury is to consider the
25 credibility of the witnesses, and you can do that by

1 determining believability of witnesses who have testified
2 in the case. You may believe one witness over several
3 witnesses, or several witnesses over one witness. You may
4 believe a part of the testimony of a witness and reject the
5 remaining part of the testimony of that same witness. You
6 may believe the testimony of a witness in its entirety or
7 reject the testimony of a witness in its entirety. You may
8 consider whether any witness exhibited to you any interest,
9 bias, prejudice, or other motive in this case. You may
10 also consider the appearance or demeanor of a witness while
11 on the witness stand.

12 Ladies and gentlemen, when you think about credibility
13 of the witnesses -- law enforcement, William Lindsey with
14 Phillips Recovery -- what bias, what motive do they have in
15 this case? Mr. Hawks talked about how their goal is to
16 overcharge, or how they know it should be for protection of
17 the community. That's exactly what they did in this case.
18 They removed a meth lab from a residence in a neighborhood.

19 They have no reason to make up the chemical smell.
20 No. Was it included in her incident report? No, it
21 wasn't. However, it was so distinct that she and each of
22 the other investigators clearly remember a smell coming
23 from his room and from his trash can, which is indicative
24 of a recent meth cook.

25 Who might have a motive to lie or a bias in this case?

1 Mr. Sanders, because he knows manufacturing methamphetamine
2 is a serious crime. He hide -- he admits that the items,
3 you know, the camp fuel, usually isn't located in the
4 bedroom. The cold packs, yeah, they were in his bedroom.
5 The open cold pack, though, he has no idea about that.
6 That is up to you to determine his credibility. The things
7 that don't make sense, he has no excuse for because he
8 knows there is no other excuse for.

9 Ladies and gentlemen, I also want you to use your
10 common sense. Mr. Hawks wanted to break everything down
11 very technically, but I want to go through each of these
12 photos. All -- not all of them, but all of these items are
13 located in his bedroom. Think about the typical bedroom.
14 There is a bed. There is a dresser. There is clothes.
15 There might be some lotion. There might be some batteries
16 somewhere in the bedroom, but I want you to think about and
17 use your common sense about what was located in Mr.
18 Sanders's bedroom, and compare that with what is typically
19 found in a bedroom. Use your common sense. Remember the
20 evidence in this case, but also use your common sense.

21 The first thing that's used in the one-pot method:
22 cold pack. Now, cold packs by themselves might not raise
23 an eyebrow. However, they're supposed to be in a freezer,
24 not in the bedroom. They're certainly not supposed to be
25 opened or punctured in any way. In fact, and you can see

1 this when you go back there, on the warning label it says:
2 Induce vomiting if accidentally swallowed. Not supposed to
3 be opened and usually found in a freezer, not in a bedroom.

4 The salt, he had an explanation for that. He used the
5 salt when he takes shots of tequila or vodka in his
6 bedroom. However, you have pictures of everything that was
7 located in his bedroom. There was no liquor bottles; there
8 is no empty liquor bottles. There was no shot glasses.
9 There were jars with meth residue. There were spoons with
10 meth residue. There are no shot glasses because it doesn't
11 make sense to have salt in the bedroom, but that's his
12 reason for it.

13 The camp fuel, the 64-gallon bottle of camp fuel,
14 that's for his lights that I'm not sure we have a picture
15 of, but I'll take his word that there is a light in his
16 bedroom somewhere that he uses that 64-gallon bottle of
17 fuel for.

18 The next product that's used to manufacture
19 methamphetamine in the one-pot method is batteries. Okay,
20 batteries by themselves aren't necessarily unusual in a
21 bedroom. Maybe not in a bedroom, but there are multiple --
22 twenty, at least twenty batteries, all different sizes that
23 were located in his bedroom close to the other materials
24 used to manufacture meth. And again, by themselves not
25 necessarily usual. However, stripped? Very unusual. I

1 submit there's no other reason to strip batteries unless
2 you're manufacturing methamphetamine.

3 There's testimony of the finished product in the other
4 bottle that was located in the backyard. You see the black
5 lithium stripped from those batteries located in his
6 bedroom in that bottle.

7 Sudafed by itself, I mean, other than the fact that
8 it's not in a box that's, you know, labeled Sudafed but
9 it's separate from the box and it's by the grinder. Other
10 than those two factors -- oh, yeah, located by the liquid
11 syringes full of that, and by the jars of residue. Sudafed
12 by itself, not necessarily unusual. However, when it's
13 found with all those other things, very usual.

14 And again, he can't get around the plastic water
15 bottles with the tubing clearly coming from the bottles.
16 He says he has no idea how that got there because, again,
17 it can't be explained in any other way other than
18 manufacturing meth.

19 Ladies and gentlemen, I realize that this trial was
20 tedious and not what you probably expected when you came to
21 the courthouse Monday morning. However, what it's not been
22 about is the state making a mountain out of a molehill.
23 What is has been about is removing a meth lab from a
24 residence that was in the neighborhood that Mr. Sanders was
25 responsible for on April 23, 2013.

1 And again we are not saying that he is the biggest
2 drug dealer in Columbia. However, we are saying that there
3 is plenty of evidence in his home, in his room to indicate
4 that he had attempted to distribute some of his drugs.
5 We're not saying he's not a user. I certainly believe that
6 he is a user. That doesn't mean that he's also not a
7 dealer; that doesn't mean that he also didn't manufacture
8 methamphetamine.

9 Methamphetamine are dangerous. They are toxic; they
10 can be potentially fatal. Please hold Mr. Sanders
11 responsible for having that meth lab in his bedroom on
12 April 23, 2013. Please hold him responsible for having
13 serious drugs -- heroin and crack cocaine -- and intending
14 to distribute those to others. Whether it was one person
15 or the whole neighborhood, we don't know, but there is
16 evidence of more than just a user in this case. Please
17 hold him accountable and find him guilty of all five of
18 these charges. Thank you.

19 THE COURT: All right, ladies and gentlemen, your
20 lunch is here. I'm going to ask you to go ahead and eat
21 your lunch. I'm going to -- we will reconvene at 2:00.

22 After you eat your lunch, if you wish to take a walk
23 around the courthouse or something, just to get a little
24 exercise and to look out the window, see if it's finally
25 sunny, ask the bailiffs, and I'm sure they'll be glad to

1 come to accompany you if you want to walk around.

2 You can't, you can't disperse now that the case is
3 going to be handed over to you. So, just relax, eat your
4 lunch, and if you wish to take a little walk, then talk to
5 the bailiffs about it. If you got any problems, let me
6 know.

7 Don't start, don't start, don't start discussing the
8 case until after I have a chance to talk to you about the
9 law in South Carolina as it applies to this case. Thank
10 you very much. Please retire to the jury room.

11 (THE JURY EXITS AT 1:04 PM.)

12 THE COURT: All right, stand at ease until 2:00.

13 (A PAUSE.)

14 THE COURT: Renew all you want.

15 MR. HAWKS: At this time, I would renew any and all
16 prior objections and motions. I'd also move for a mistrial
17 again for burden shifting, improper statement of the law in
18 the close.

19 Also, the solicitor mentioned that taking the meth
20 into the syringes was part of the manufacturing statute.
21 However, there's an exception that says that that is done
22 in the interest of personal use, but that does not make
23 it ---

24 THE COURT: I'll give the law.

25 MR. HAWKS: Thank you, Judge.

1 THE COURT: Overruled. Thank you very much. 2:00.

2 (OFF THE RECORD)

3 (ATTORNEYS REVIEW EVIDENCE WITH COURT REPORTER.)

4 THE COURT: All right, that state ready for the jury?

5 MS. CAVANAUGH: Yes, Your Honor.

6 THE COURT: Defense ready for the jury?

7 MR. HAWKS: Yes, Your Honor. We just want to make
8 sure that there will be some explanation about use,
9 personal use, that part that she mentioned.

10 THE COURT: Tell me what, tell me what you're talking
11 about.

12 MR. HAWKS: In her close, she mentioned that the
13 actual cooking and putting into the syringe could be
14 manufacture. I thought that's what she said.

15 THE COURT: Well, I'm not going to parse your argument
16 or hers. They know it's just argument. I'm going give
17 them the law as I understand it, and that's all I can do.

18 MR. HAWKS: Thank you.

19 THE COURT: Bring in the jury.

20 (THE JURY ENTERS AT 2:06 PM.)

21 THE COURT: All right, ladies and gentlemen, I hope
22 you enjoyed your lunch.

23 JURY CHARGE

24 THE COURT: We now come to what are called the final
25 instructions by the court. I want to just say again with

1 -- although I know I'm going to go through these
2 instructions I hope slowly enough that you can follow me,
3 and in some states, the judge is allowed to hand these
4 instructions over to the jury at the end of the
5 instructions to take back to the jury room, but that's not
6 the practice in South Carolina. So, I'm going to ask you
7 to hopefully pay close attention so we won't have to go
8 through it again, but if we have to, we have to.

9 All right, now, as you know, the indictments in this
10 case allege several different offenses against the
11 defendant. The charges are manufacturing methamphetamine,
12 possession with intent to distribute methamphetamine,
13 possession with intent to distribute crack cocaine,
14 possession with intent to distribute heroin, and possession
15 of a controlled substance -- in this case identified as
16 Valium -- without a prescription.

17 Now, each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on the
19 evidence and the law applicable to it uninfluenced by your
20 decision as to any other indictment. The defendant may be
21 convicted or acquitted on any or all of the offenses
22 charged. You'll be asked to write a separate verdict of
23 guilty or not guilty on each indictment.

24 And as I told you earlier today, you will also have
25 the option of -- on the three possession with intent cases

1 to find, in your judgment, a lesser-included offense of
2 possession and not the intent to distribute, but that's up
3 to you.

4 Now, the defendant has pled not guilty to these
5 indictments, and that plea puts the burden on the state to
6 prove the defendant guilty. A person charged with
7 committing a crime in South Carolina is never required to
8 prove himself or herself innocent. I charge you that that
9 is an important rule of law: that the defendant in a
10 criminal case, no matter what the seriousness of the charge
11 may be, will always be presumed to be innocent of the
12 charges or crimes for the indictments were issued unless
13 guilt has been proved to you beyond evidence satisfying you
14 of that guilt beyond a reasonable doubt.

15 This presumption of innocence does not end when you
16 begin your deliberations, but it accompanies the defendant
17 throughout the trial and until you reach a verdict of guilt
18 based on evidence satisfying you of that guilt beyond a
19 reasonable doubt. In other words, the presumption of
20 innocence is like a robe of righteousness placed about the
21 shoulders of the defendant, which remains with the
22 defendant until that has been stripped from the defendant
23 by evidence satisfying you of the defendant's guilt beyond
24 a reasonable doubt.

25 The presumption of innocence, as I told you earlier,

1 is not a mere legal theory; it's not just a legal phrase.
2 It's a substantial right to which every defendant is
3 entitled unless you, the jury, are satisfied from the
4 evidence of the defendant's guilt beyond a reasonable
5 doubt.

6 The state has the burden of proving the defendant
7 guilty beyond a reasonable doubt. Some of you may have
8 served as jurors in civil cases where you were told that
9 it's only necessary to prove that a fact is more likely
10 true than not, or such by -- such as by the greater weight
11 or preponderance of the evidence. In criminal cases,
12 however, the state's proof must be more powerful than that.
13 It must be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that leaves
15 you firmly convinced of the defendant's guilt. There are
16 very few things in this world that we knew with absolute
17 certainty, and in criminal cases the law does not require
18 proof that overcomes every possible doubt.

19 If, based on your consideration of the evidence, you
20 are firmly convinced that the defendant is guilty of the
21 crime charged, you must find the defendant guilty. If, on
22 the other hand, you find -- if, on the other hand, you
23 think there's a real possibility that the defendant is not
24 guilty, you must give the defendant the benefit of the
25 doubt and find him not guilty.

1 Well, what is reasonable doubt at law? A reasonable
2 doubt is the kind of doubt that would cause an ordinary
3 person, a reasonable person to hesitate to act or to
4 hesitate to do something. Let me repeat that. A
5 reasonable doubt is the kind of doubt that would give an
6 individual, a reasonable person cause to hesitate to act in
7 some circumstance or another.

8 Now, I remind you that during this trial, you and I
9 have certain duties to perform. As the trial judge, it's
10 my responsibility to preside over the trial of the case. I
11 also had the duty to rule on the admissibility of evidence
12 offered during the trial. You are to consider only the
13 competent evidence that's before you. If there was any
14 testimony that I ordered stricken from the record, you must
15 disregard the testimony. You are to consider only the
16 testimony which has been presented from the witness stand,
17 any exhibits which may have been made a part of the record,
18 and any stipulations of counsel. I don't think we had any
19 of those.

20 I have the additional duty to charge you the law
21 applicable to this case. As the presiding judge, I am the
22 sole judge of the law of this case. It's your duty to
23 accept and apply the law as I now state it to you. If you
24 have any -- already have any idea as to what the law is or
25 what the law ought to be and it does not agree with what I

1 now tell you the law is, you must abandon this idea because
2 you were sworn to accept the law and apply the law exactly
3 as I state it to you.

4 As I told you in my opening, in every case tried
5 before this court, before a jury, the jury becomes the sole
6 and exclusive judge of the facts in the case. I cannot
7 intimate, state, comment on, or make any statement to a
8 trial jury about the facts in the case. Since you, the
9 jury, are the sole judges of the facts, you are not to
10 infer from anything that I may have said or done during the
11 progress of this trial in ruling on the admissibility of
12 the evidence, or anything else that I may have done, or
13 anything that I say now in the course of this instruction
14 that I have any opinion about the facts in this case. The
15 law does not allow me to have an opinion about the facts in
16 this case. That's solely a matter for you, the jury, to
17 determine. As jurors, it's your duty to determine the
18 effect, value, weight, truth of the evidence presented
19 during the trial.

20 Now, ladies and gentlemen, there are two types of
21 evidence which are generally presented during a trial:
22 direct evidence and circumstantial evidence. Direct
23 evidence directly proves the existence of a fact and does
24 not require deduction.

25 Circumstance, deduction. Circumstantial evidence is

1 proof, proof of a chain of facts or a series of facts and
2 circumstances indicating the existence of some fact.

3 Crimes may be proven by circumstantial evidence.

4 The law makes no distinction between the weight or
5 value to be given to either direct or circumstantial
6 evidence. However, to the extent the state relies on
7 circumstantial evidence, all the circumstances must be
8 consistent with each other and when taken together, point
9 conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray
11 the defendant's behavior, behavior as suspicious, the proof
12 has failed.

13 The state has the burden of proving the defendant
14 guilty beyond a reasonable doubt, and this burden rests
15 with the state regardless of whether the state relies on
16 direct evidence, circumstantial evidence, or a combination
17 of the two.

18 Now, necessarily you must determine the credibility of
19 witnesses who've testified in this case. Credibility
20 simply means believability. It becomes your duty as jurors
21 to analyze and evaluate the evidence and determine which
22 evidence convinces you of its truth, determining the
23 believability of witnesses who've testify in this case.
24 You may believe one witness over several, or several over
25 one. You may believe a part of the testimony of a witness,

1 and reject the remaining part of the testimony of the same
2 witness. You may believe the testimony of a witness in its
3 entirety, or reject the testimony of a witness in its
4 entirety.

5 You may consider whether any witness has exhibited to
6 you any interest, bias, prejudice, or other motive in this
7 case. And you may also consider the appearance and manner
8 of a witness while on the stand.

9 Now in any case, to establish criminal liability,
10 criminal intent is required. For example, the mental state
11 required to be proven by the state for a particular crime
12 might be some purpose or knowledge or recklessness or
13 criminal negligence. Criminal intent must be proven by the
14 state beyond a reasonable doubt.

15 Criminal intent is always a matter that must be
16 determined by the jury from the circumstances surrounding
17 the situation. There's no way to prove intent to a
18 mathematical certainty. That's no way medical science can
19 dissect a person's brain and determine what the person had
20 in mind. So, the law says criminal intent may be inferred
21 from the circumstances shown to have existed at the time
22 and place of the crime.

23 This is how you make a determination of whether or not
24 the element requiring intent was present. It's not
25 necessary to establish intent by direct and positive

1 evidence, but intent may be established by inference in the
2 same way as any other factor: by taking into consideration
3 the acts of the parties and all the facts and circumstances
4 of the case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It's up to you to determine what the defendant
7 intended to do based on the circumstances shown to have
8 existed in this case.

9 Criminal intent can arise from some action or even a
10 failure to act. It may arise from negligence or
11 recklessness or indifference to duty or consequence that is
12 considered by the law to be the equivalent of criminal
13 intent.

14 Now let's get into the specific charges. The
15 defendant is charged that he did manufacture, aid, abet,
16 attempt, or conspire to manufacture a quantity of
17 methamphetamine. Manufacture means to produce or prepare
18 or process or to plant, cultivate a drug naturally or
19 chemically. Attempt means an act done in part execution of
20 a design to commit a crime. There must be intent that the
21 act shall be committed and an act done, not in full
22 execution but in pursuance of the intent.

23 In order to constitute an attempt to commit a crime,
24 it is essential that, coupled with the intent to commit the
25 offense, there must be some sort of overt act beyond mere

1 preparation in furtherance of the attempt. And there must
2 be an actual or a present ability to complete the crime.

3 Manufacturing includes any packaging or repackaging of
4 the drug or labeling or relabeling of drugs contained.

5 Now, our law provides under section 44-53-375(d) that
6 possession of equipment or paraphernalia used in
7 manufacture of methamphetamine gives rise to what is called
8 a permissive inference of a violation of manufacturing
9 methamphetamine.

10 Now, possession with intent to distribute, intent to
11 distribute methamphetamine is a separate indictment in this
12 case. Defendant is also charged with possession with
13 intent to distribute methamphetamine. The state must prove
14 beyond a reasonable doubt that the defendant possessed
15 methamphetamine with the intent to distribute it. To prove
16 possession, the state must prove beyond a reasonable doubt
17 the defendant had both the power and intent to control the
18 disposition or use of the methamphetamine.

19 Possession may be either active -- actual or
20 constructive. Actual possession means that the
21 methamphetamine was in the actual physical custody of the
22 defendant. Constructive possession means that the
23 defendant had what's called dominion and control or the
24 right to exercise dominion or control over either the
25 methamphetamine itself or the property on which the

1 methamphetamine was found.

2 Mere presence at the scene where drugs are found is
3 not enough to prove possession. The defendant's knowledge
4 and possession may be inferred when a substance is found on
5 the property under the defendant's control. However, this
6 inference is simply an evidentiary fact to be taken into
7 consideration by you, along with other evidence in the
8 case, and to be given the weight you decide it should have.

9 The state must also prove beyond a reasonable doubt
10 that the defendant intended to distribute the
11 methamphetamine. Distribute means to deliver other than by
12 administering or dispensing a drug. Intent may be shown by
13 acts and conduct of the defendant and other circumstances
14 from which you may naturally and reasonably infer intent,
15 intent.

16 In determining whether the defendant had the intent to
17 distribute the methamphetamine, you may consider the
18 circumstances surrounding defendant's alleged possession.
19 You may consider the amount of the substance alleged to
20 have been possessed, the manner in which it was actually
21 possessed, the place where it was allegedly possessed, and
22 other factors you would consider to be important. You must
23 find the defendant did not intend to have the
24 methamphetamine solely for his own use.

25 As I told you, a lesser-included offense of possession

1 with intent distribute methamphetamine would be the
2 possession, possession of methamphetamine. If you find the
3 state has failed to prove beyond a reasonable doubt the
4 defendant is guilty of possession with the intent to
5 distribute methamphetamine, you may consider whether the
6 state has proved beyond a reasonable doubt that the
7 defendant is guilty of simple possession of
8 methamphetamine.

9 Possession does not require intent to distribute the
10 drug. To prove possession, the state must prove beyond a
11 reasonable doubt the defendant had both the power and
12 intent to control the disposition or use of the
13 methamphetamine. Possession may be actual or constructive,
14 as I just instructed you with regard to possession with the
15 intent to distribute.

16 Actual possession means the drug was in the actual
17 physical custody of the defendant. Constructive possession
18 means the defendant had dominion and control or the right
19 to exercise dominion or control over either the
20 methamphetamine itself or the property on which the
21 methamphetamine was found.

22 Mere presence at the scene where the drugs are found
23 is not enough to prove possession. The defendant's
24 knowledge of possession may be inferred when a substance is
25 found on the property under the defendant's control.

1 However, this inference is simply an evidentiary fact to be
2 taken into consideration by you, along with the other
3 evidence in the case, and to be given the weight you decide
4 it should have.

5 Knowingly means with knowledge and consciously, not
6 accidentally. Intentionally means willfully, intending the
7 result which actually occurs, not accidentally or
8 involuntarily. Intent may be shown by acts and conduct of
9 the defendant and any other circumstances from which you
10 may naturally and reasonably infer intent.

11 Next indictment is possession with intent to
12 distribute crack cocaine, and as you will see, the
13 possession with intent statute is very similar.
14 Defendant's charged with possession with the intent to
15 distribute crack cocaine, and the state must prove beyond a
16 reasonable doubt the defendant possessed crack cocaine with
17 the intent to distribute it.

18 To prove possession, the state must prove beyond a
19 reasonable doubt defendant had both the power and intent to
20 control the disposition or use of the crack cocaine.
21 Possession maybe either actual or constructive. Actual
22 possession means the crack cocaine was in the actual
23 physical custody of the defendant, or constructive
24 possession means the defendant had dominion and control or
25 the right to exercise dominion or control over either the

1 crack cocaine itself or the property on which the drug was
2 found.

3 Mere presence at the scene where the drugs were found
4 is not enough to prove possession. Defendant's knowledge
5 and possession may be inferred when a substance is found on
6 property under the defendant's control. However, this --
7 however, this inference is simply an evidentiary fact to be
8 taken into consideration by you, along with the other
9 evidence in the case, and to be given the weight you decide
10 it should have.

11 The state must also prove beyond a reasonable doubt
12 that the defendant intended to distribute the crack
13 cocaine. Distribute means to deliver other than by
14 administering or dispensing a drug. Intent may be shown by
15 acts and conduct of the defendant and other circumstances
16 from which you may naturally and reasonably infer intent.

17 In determining whether the defendant had intent to
18 distribute the crack cocaine, you may consider the
19 circumstances surrounding the defendant's alleged
20 possession. You may consider the amount of the substance
21 alleged to have been possessed, the manner in which it was
22 allegedly possessed, the place where it was allegedly
23 possessed, and other factors which you consider to be
24 important. You must find that the defendant did not intend
25 and have the crack cocaine solely for his own use.

1 And again, the lesser-included possession of crack
2 cocaine, if you find the defendant -- failed to prove
3 beyond a reasonable doubt that the defendant is guilty of
4 possession with intent to distribute crack cocaine, you may
5 consider whether the state has proven beyond a reasonable
6 doubt the defendant is guilty of possession of crack
7 cocaine. Possession not require an intent to distribute
8 the drug.

9 To prove possession, the state must prove beyond a
10 reasonable doubt the defendant had both the power and
11 intent to control the disposition or use of the crack
12 cocaine. Possession may be either actual or constructive.
13 Actual possession means the drug was in the actual physical
14 custody of the defendant. Constructive possession means
15 the defendant had dominion and control or the right to
16 exercise dominion or control over either the crack cocaine
17 itself or the property on which the crack cocaine was
18 found.

19 Mere presence at the scene where the drugs were found
20 is not enough to prove possession. The defendant's
21 knowledge and possession may be inferred when a substance
22 is found on the property under the defendant's control.
23 However, this inference is simply an evidentiary fact to be
24 taken into consideration by you, along with the other
25 evidence in the case, and to be given the weight you decide

1 it should have. And again, knowingly means with knowledge,
2 consciously and not accidentally.

3 And the next indictment, possession with intent to
4 distribute heroin, the defendant is further charged with
5 possession for the intent to distribute heroin. The state
6 must prove beyond a reasonable doubt that the defendant
7 possessed heroin with the intent to distribute it. To
8 prove possession, again the state must prove beyond a
9 reasonable doubt the defendant had both the power and the
10 intent to control the disposition or use of the heroin.

11 Possession may be either actual or constructive.
12 Actual means that the heroin was in the actual physical
13 custody of the defendant, and constructive possession means
14 the defendant had the dominion and control or the right to
15 exercise dominion or control over either the heroin itself
16 or the property on which the drug was found.

17 Mere presence at the scene where drugs are found is
18 not enough to prove possession. Defendant's knowledge and
19 possession may be inferred when the substance is found on
20 the property under the defendant's control. However, this
21 inference is simply again an evidentiary fact to be taken
22 into consideration by you, along with the other evidence in
23 the case, and to be given the weight you decide it should
24 have.

25 The state must also prove beyond a reasonable doubt

1 the defendant intended to distribute the heroin. Again,
2 distribute means to deliver other than by administering or
3 dispensing a drug. Intent may be shown by facts -- acts
4 and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent.

6 In determining whether the defendant, the defendant
7 had the intent to distribute heroin, you may consider the
8 circumstances surrounding the defendant's alleged
9 possession. You may consider the amount of the substance
10 alleged to have been possessed, the manner in which it was
11 allegedly possessed, place where it was allegedly
12 possessed, and other factors which you consider to be
13 important. You must find that the defendant did not intend
14 to have the heroin solely for his own use.

15 Now, there's a provision in our law with regard to
16 possession with intent to distribute heroin. Again,
17 although it's a different section, 44-53-375(b), the South
18 Carolina Code of Laws creates what's called again a
19 permissive inference that possession of 2 grains or .13
20 grams of heroin constitute, constitutes possession with
21 intent to distribute. This section provides that
22 possession of 2 grams or 1.3 -- 2 grains or .13 grams or
23 more of heroin gives rise to this permissive inference of a
24 violation of the statute. The inference of a violation of
25 the law by possession of 2 grams or more of heroin may be

1 drawn from proof of the quantity of the drug.

2 The resulting implication only permits rather than
3 requires the jury to infer a violation of the law. This is
4 another piece of evidence for you to consider and evaluate.
5 This permissive inference does not relieve the state from
6 actually proving beyond a reasonable doubt the element of
7 intent to distribute.

8 This permissive inference is of an evidentiary nature,
9 and the permissive inference does not require the jury to
10 infer a violation of the law for possession of this
11 quantity of heroin. But it is simply an evidentiary fact
12 to be taken into consideration by you, the jury, along with
13 the other evidence in the case, and to be given such weight
14 as the jury determines it should have. You are free to
15 accept or reject the permissive inference depending on your
16 view of the evidence.

17 And once again we have the lesser-included offense,
18 simple -- or rather possession of heroin. If you find the
19 state has failed beyond a reasonable doubt that the
20 defendant was guilty of possession with intent to
21 distribute heroin, you may consider whether the state has
22 proved beyond a reasonable doubt the defendant is guilty of
23 simple possession of heroin.

24 Possession does not require an intent to distribute
25 the drug. To prove possession, the state must prove beyond

1 a reasonable doubt the defendant had both the power and
2 intent to control the disposition or use of the heroin.
3 Possession again may be either actual or constructive.
4 Actual possession means the drug was in the actual physical
5 custody of defendant. Constructive possession means the
6 defendant had dominion and control or the right to exercise
7 dominion or control over either the heroin itself or the
8 property on which the heroin was found.

9 Again, mere presence at the scene where the drugs were
10 found is not enough to prove possession, but defendant's
11 knowledge and possession may be inferred when a substance
12 is found on the property under the defendant's control.
13 However, this inference is, again, is simply an evidentiary
14 fact to be taken into consideration by you, along with the
15 other evidence in the case to be given the weight you
16 decide it should have. Again, knowingly means with
17 knowledge and conscientiously, not accidentally.

18 And finally, the defendant is charged with possession
19 of what's called a schedule IV controlled substance.
20 Substance in this case, that substance is diazepam, more
21 commonly known as Valium. To prove possession, the state
22 must prove beyond a reasonable doubt defendant had both the
23 power and the intent to control the disposition or use of
24 the Valium.

25 Possession may be either actual or constructive.

1 Actual possession means the drugs were in the actual -- was
2 in the actual physical custody of the defendant.

3 Constructive possession means the defendant had dominion
4 and control or the right to exercise dominion or control
5 over either the Valium itself or the property on which it
6 was found.

7 Mere presence at the scene where the drugs were is not
8 enough to prove possession. The defendant's knowledge of
9 possession may be inferred when a substance is found on the
10 property under the defendant's control. However, again,
11 this inference is simply an evidentiary fact to be taken in
12 consideration by you, along with the other evidence in the
13 case, and be given weight you decide it should have. And
14 again, knowingly means with knowledge, consciously and not
15 accidentally.

16 All right, ladies and gentlemen, there are two
17 possible verdicts for each indictment which you may find in
18 this case: not guilty or guilty. There's no significance
19 whatsoever in the order in which I state these possible
20 verdicts. It's just that one has to be stated first.

21 Ladies and gentlemen, your verdict must be a unanimous
22 one. During your deliberations, you may only discuss the
23 case in the jury room with your fellow jurors because they
24 have heard and seen the same evidence that you have.
25 However, you must not discuss the case with anyone else

1 until you return a verdict and the case has been ended.

2 Mr. Foreperson, when the jury agrees on the verdict,
3 you will write the verdict on this verdict form that I'm
4 going to hand to you. Sign your name as foreperson, and
5 then knock on the jury room, inform the bailiff that you
6 have reached a verdict. At this -- at that time, we will
7 receive your verdict in the courtroom.

8 Again, I must emphasize to you that your verdict on
9 each one of these charges must be unanimous. In other
10 words, every juror must agree for a, for a guilty verdict
11 to be found on any one of the indictments.

12 Mr. Foreman, the verdict form, I think, is fairly
13 simple. I hope fairly simple. With respect to the
14 indictment on manufacturing methamphetamine, we find,
15 unanimously find the defendant not guilty or guilty on
16 manufacturing. On possession with intent to distribute,
17 you have the option of finding possession with intent to
18 distribute or simple possession or merely possession, and
19 the same is true with crack cocaine and heroin, and finally
20 the controlled substance, not guilty or guilty. If you
21 have any questions, please let the bailiff know, and I'll
22 try to answer your questions.

23 In the meantime, I'm going to ask you now return to
24 the jury room. Do not begin your deliberations until you
25 have the actual verdict form and the evidence. They'll

1 bring the evidence to you, and once you see all the
2 evidence ---

3 Are the drugs here?

4 MS. CAVANAUGH: Yes, Your Honor.

5 THE COURT: They going in?

6 MS. CAVANAUGH: Yes, Your Honor.

7 THE COURT: Be careful. All right. When you get the
8 evidence, when you get the verdict form, you can begin your
9 deliberations. All right, you may now return to the jury
10 room. Thank you very much.

11 (THE JURY EXITS AT 2:35 PM.)

12 THE COURT: Any exceptions for the charge from the
13 state?

14 MS. CAVANAUGH: None for the state, Your Honor.

15 THE COURT: From the defense?

16 MR. HAWKS: Yes, Your Honor. You still read the part
17 about inference of the violation of the law instead of
18 inference of intent, and then you read the part about the
19 repackaging, but not the exception for the personal use.

20 MS. CAVANAUGH: I don't, I don't believe that we
21 agreed to the second part of it.

22 (A PAUSE.)

23 THE COURT: I read on each drug charge you must find
24 the defendant did not have, did not have -- you must find
25 -- well, that one's -- you must find the defendant did not

1 intend to have the drug solely for his own use on each
2 drug.

3 MR. HAWKS: Yeah. It was on the manufacturing, the
4 part about the equipment giving rise to a permissive
5 inference of the violation. We had agreed to make that
6 giving rise to a permissive inference of intent, and then
7 you read the part about the manufacturing statute defining
8 as repackaging, and -- but you didn't read the exception
9 for personal use.

10 THE COURT: What exception? What are you talking
11 about?

12 MR. HAWKS: There is an exception. I don't have the
13 statute.

14 MR. SHIPMAN: Your Honor, it's a 44-53.10 in the
15 definition section.

16 THE COURT: Oh.

17 MR. SHIPMAN: In the manufacturing it says -- it, it
18 goes through language about packaging or repackaging, and
19 then it says: With the exception of compounding or
20 preparing for personal use.

21 THE COURT: All right. Just let me read it.

22 (A PAUSE.)

23 THE COURT: Solicitor, do you understand?

24 MR. SHIPMAN: Excuse me?

25 THE COURT: I asked the solicitor.

1 MS. CAVANAUGH: I do understand their objection. I'll
2 just state that they were given the jury charges an hour
3 ago and didn't have any objections at that time.

4 And as far as the second argument that they have that
5 -- are far as the manufacturing definition is concerned,
6 you addressed that in each of the simple possession or each
7 of the charges about personal use.

8 THE COURT: I did. I did that.

9 MS. CAVANAUGH: Right. So, I don't have any -- I
10 mean, other than the fact that they had -- I don't have any
11 objection to the first issue regarding reading the law.

12 THE COURT: I'll read the manufacturing statute.

13 MR. HAWKS: Thank you, Your Honor.

14 THE COURT: I'll read the definition.

15 MR. HAWKS: Thank you.

16 MR. SHIPMAN: Thank you, Your Honor.

17 THE COURT: All right, bring, bring the jury back.
18 Let me just read this statute to them.

19 (THE JURY ENTERS AT 2:40 PM.)

20 THE COURT: Thank you, ladies and gentlemen. Let me,
21 let me repeat something or clarify it. One of the
22 attorneys said I left out part of the statute when I read
23 it. I'm going to read you the statute as it -- exactly as
24 it says, and this is with regard to the manufacturing of
25 methamphetamine.

1 To manufacture means the production, preparation,
2 propagation, compounding, conversion, or processing of a
3 controlled substance either directly or indirectly by
4 extraction of substance -- substances of natural origin or
5 independently by means of chemical synthesis, or by a
6 combination of extraction and chemical synthesis, and
7 includes any packaging or repackaging of the substance or
8 labeling or relabeling of its container except that this
9 term does not include the preparation or compounding of a
10 controlled substance by an individual for his own use, or
11 the preparation, compounding, packaging, or labeling of a
12 controlled substance.

13 That's it. Thank you very much.

14 (THE JURY EXITS AT 2:42 PM.)

15 THE COURT: Anything further?

16 MS. CAVANAUGH: Your Honor, I would just object to
17 that statute, the definition of manufacturing being read
18 separate from the actual statute of 375(b) because (b)
19 doesn't include -- it's still a violation of the law to
20 manufacture methamphetamine regardless of whether you do it
21 for your own personal use or for others. And reading the
22 definition of manufacturing by itself takes it out of the
23 context of section (b) because the -- for personal use is
24 referred to only as a repackaging or dispensing.

25 THE COURT: Well, they got it now.

1 MS. CAVANAUGH: I would just ask that it be reread in
2 conjunction with section (b) under 375.

3 THE COURT: What are you asking now?

4 MS. CAVANAUGH: It's -- I would just -- it's --
5 reading the definition of manufacturing by itself makes it
6 sound as though as long as you manufacture methamphetamine
7 for your own personal use, it's not illegal when, in
8 actuality, the for your own personal use is talking about
9 the repackaging of material. So, I think by reading that
10 definition outside the context of subsection (b), it makes
11 it sound like as long as you manufacture meth for yourself,
12 you're okay. That's not accurate.

13 So, I would ask that it be -- ask for you to reread
14 that manufacturing definition. That you read it in
15 conjunction with 375(b).

16 THE COURT: All right, you ask me to reread it? Is
17 that what you said?

18 MS. CAVANAUGH: Yes, sir.

19 THE COURT: All right. That will be fine. I'll be
20 glad to. Anything further?

21 MR. MATHEWS: Yes, sir. There's still the matter of
22 -- I don't know if it's intentional or not, but the, the
23 370(d) language involved possession of the equipment and
24 permissive inference of intent to violate. I believe you
25 stated permissive inference of a violation of the statute

1 rather than of an intent to commit manufacturing.

2 (A PAUSE.)

3 THE COURT: Well, I'm going to leave it like it is.

4 Thank you very much.

5 All right, give them the evidence and verdict form.

6 Any objection to dismissing the alternate?

7 MS. CAVANAUGH: None, Your Honor.

8 THE COURT: Any objection?

9 MR. HAWKS: No.

10 THE COURT: Come check the evidence, please.

11 MR. HAWKS: We did.

12 MS. CAVANAUGH: We already did, Your Honor.

13 THE COURT: All right. Good.

14 (JURY DELIBERATIONS BEGIN AT 2:47 PM.)

15 THE COURT: Stand at ease until we hear from the jury.

16 (OFF THE RECORD. ALTERNATE JUROR DISMISSED BY THE
17 COURT.)

18 THE COURT: All right, the bailiff informs the court
19 the jury has reached a verdict. You ready to receive the
20 verdict?

21 MS. CAVANAUGH: Yes, Your Honor.

22 THE COURT: Defense ready?

23 MR. HAWKS: Yes, Your Honor.

24 THE COURT: Bring the jury.

25 (THE JURY ENTERS AT 4:26 PM.)

1 THE COURT: Mr. Foreman, has the jury reached a
2 verdict?

3 FOREPERSON: We have.

4 THE COURT: All right. Will you hand it to the
5 bailiff, please?

6 (A PAUSE.)

7 THE COURT: All right, Madame Clerk, read the verdict.

8 VERDICT

9 CLERK OF COURT: The State of South Carolina, County
10 of Richland, vs. Fred Jack Sanders, with respect to
11 indictment number 2013-GS-40-5845 for manufacturing
12 methamphetamine, we, the jury, unanimously find the
13 defendant guilty.

14 With respect to indictment number 2013-GS-40-5846 for
15 possession of methamphetamine with intent to distribute,
16 we, the jury, unanimously find the defendant not guilty.
17 With respect to possession of methamphetamine, guilty.

18 With respect to indictment 2013-GS-40-5848 for
19 possession of crack cocaine with intent to distribute, we,
20 the jury, unanimously find the defendant not guilty. We,
21 the jury, find the defendant with respect to possession of
22 crack cocaine guilty.

23 With respect to indictment number 2013-GS-40-5851 for
24 possession of heroin, heroin with intent to distribute, we,
25 the jury, find the defendant guilty.

1 With respect to indictment number 2013-GS-40-5850 for
2 possession of a controlled substance, we, the jury, find
3 the defendant guilty, signed by the foreperson on March 19,
4 2014.

5 Are these the verdicts of the entire jury?

6 FOREPERSON: Yes.

7 THE COURT: Any desire to poll the jury?

8 MR. HAWKS: Yes, Your Honor.

9 THE COURT: Please poll the jury.

10 CLERK OF COURT: Ladies and gentlemen of the jury, I'm
11 going to ask -- going to call your number and ask you two
12 questions. Answer yes or no to each question.

13 Number 154, was this your verdict?

14 JUROR: Yes.

15 CLERK OF COURT: Is it still your verdict?

16 JUROR: Yes.

17 CLERK OF COURT: Number 278, was this your verdict?

18 JUROR: Yes.

19 CLERK OF COURT: Is it still your verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Number 80, was this your verdict?

22 JUROR: Yes.

23 CLERK OF COURT: Is it still your verdict?

24 JUROR: Yes.

25 CLERK OF COURT: Number 21, was this your verdict?

1 about it, approach you about it one way or the other, but
2 if you don't feel like talking to anybody, you don't have
3 to talk to anybody about it. If anybody were to be
4 persistent, you just let the bailiff know, and they'll let
5 me know or let law enforcement know. We'll make sure that
6 doesn't happen. If you need an escort to your cars or
7 anything -- I don't know where you're parked. It may be
8 across the street. We'll give you an escort to your car if
9 you'd like that, too.

10 So, with that in mind, thank you very much for your
11 service. You've done good work this week, and good luck to
12 all of you. Thank you very much.

13 (THE JURY EXITS AT 4:33 PM.)

14 THE COURT: All right, any motions?

15 MS. CAVANAUGH: None from the state, Your Honor.

16 MR. HAWKS: Yes, Your Honor. May it please the court?
17 At this time, I would renew all my pretrial motions and all
18 of my objections during trial, specifically my motion to
19 suppress the introduction of the pseudoephedrine, all of
20 the evidence that was destroyed, specifically the
21 pseudoephedrine because it was never tested.

22 I would renew all my prior mistrial motions, motions,
23 specifically the mention of a search warrant in the
24 opening, which violated both your ruling not to mention it
25 and your ruling not to mention prior bad acts.

1 Specifically also my mistrial motion referring to
2 Investigator Chauncey Smith's testimony regarding prior bad
3 acts, Sara Brassell's testimony regarding prior bad acts,
4 and the discovery violations associated with that witness.

5 I would renew my cumulative mistrial motions which I
6 made at the end of the state's case, review my mistrial
7 motion made after our case and after the closings when the
8 solicitor misstated the law and burden shifted,
9 specifically that there is a presumption that evidence to
10 rebut has been made by defense.

11 I would now make a new motion again for a new trial
12 based on cumulative mistrial motions and all the discovery
13 violations in this case, case. And I also renew my
14 objection to the misstatement of the law during the jury
15 charges and would ask for a mis -- new trial based on that.
16 And I would also like to supplement this with a written
17 motion within the allotted ten days.

18 THE COURT: All right. I'll let you supplement. I'll
19 let you do that in ten days.

20 MR. HAWKS: Thank you.

21 THE COURT: Sure. All right, we will proceed to
22 sentencing in about ten minutes.

23 MS. CAVANAUGH: I will get those sentencing sheets
24 prepared.

25 (OFF THE RECORD.)

1 THE COURT: I want to try to get straight what his
2 record consists of, Solicitor.

3 MS. CAVANAUGH: Yes, Your Honor.

4 THE COURT: So, what are we dealing with?

5 MS. CAVANAUGH: We're dealing -- they're all third
6 offenses. Do you want to ---

7 THE COURT: What do you mean all third defenses? All
8 what? All six indictments?

9 MS. CAVANAUGH: Well, except for the firearm charge,
10 Your Honor. I don't understand the question.

11 THE COURT: Well, explain yourself.

12 MS. CAVANAUGH: Okay. Well, he has -- do you want me
13 to read his entire record to you or just the prior drug
14 convictions?

15 THE COURT: Yes, the prior drug convictions and what
16 he's facing now with these convictions. You say these are
17 thirds?

18 MS. CAVANAUGH: Yes, Your Honor, they are.

19 THE COURT: So, manufacturing third?

20 MS. CAVANAUGH: Yes, Your Honor.

21 THE COURT: And possession third?

22 MS. CAVANAUGH: Yes, Your Honor.

23 THE COURT: And that's possession methamphetamine
24 third?

25 MS. CAVANAUGH: Yes, Your Honor.

1 THE COURT: Possession of crack third?

2 MS. CAVANAUGH: Yes, Your Honor.

3 THE COURT: And PWID heroin third?

4 MS. CAVANAUGH: Yes, Your Honor.

5 THE COURT: And possession of?

6 MS. CAVANAUGH: Controlled substance. Just -- I don't
7 believe that's an enhanced crime. It's just...

8 THE COURT: Just what it is?

9 MS. CAVANAUGH: Just what it is.

10 THE COURT: All right, Mr. Hawks, you disagree with
11 that?

12 MR. HAWKS: No, Your Honor.

13 THE COURT: Okay.

14 (A PAUSE.)

15 THE COURT: All right, I think I'm ready. Bring your,
16 bring your client.

17 All right, solicitor, you may proceed.

18 MS. CAVANAUGH: Thank you, Your Honor. As far as the
19 facts are concerned in this case, you heard the trial. I'm
20 not going to repeat any of the facts.

21 His prior record is fairly lengthy. Begins in 1990,
22 malicious injury to personal property. 1991, burglary
23 second and grand larceny. 1992, simple assault. 1992,
24 grand larceny and assault and battery of a high and
25 aggravated nature. Looks like in 1994 he had a Youthful

1 when he was -- looks like he was sentenced under the
2 Youthful Offender Act for the ABHAN and was revoked under
3 his YOA sentence. 1998, false information to police.
4 2000, driving under suspension times two convictions for
5 driving under suspension, reckless driving, failure to stop
6 for a blue light. 2001, driving under the influence.
7 2002, driving without a license and open container. 2002,
8 another DUI. 2002, a probation revocation. 2004, another
9 failure to stop for a blue light, two counts of possession
10 of crack cocaine, an open container, and driving under
11 suspensions, two convictions. 2005, another conviction for
12 possession of crack cocaine. 2005, he actually had another
13 trial and was convicted for trafficking of crack cocaine
14 over 10 grams, less than 28. He received a minimum three
15 years on that sentence, Your Honor. 2008, driving under
16 suspension, reckless driving, public disorderly, and open
17 container. Looks like he also had a probation revocation
18 in 2008. 2008, failure to stop for a blue light second
19 offense. 2009, open container, public disorderly conduct,
20 false information to police. 2010, shoplifting, reckless
21 driving, open container. 2010, shoplifting third or
22 subsequent. And 2011, driving under suspension.

23 THE COURT: All right. Who's going to speak for Mr.
24 Sanders?

25 MR. HAWKS: Just me, Your Honor.

1 THE COURT: All right.

2 MR. HAWKS: And his sister as well -- stay back here
3 -- when I'm done.

4 THE COURT: Okay.

5 MR. HAWKS: And I believe he would like to address the
6 court as well.

7 THE COURT: Sure. Be glad to hear from you.

8 MR. HAWKS: Thank you, Your Honor. I'd like to start
9 by reading some passages from his mental health evaluation.
10 I believe you have a copy of it. He was born in Columbia.
11 He's lived here his whole life.

12 His father was a veteran of the Vietnam War. When he
13 was four years old, he witnessed his father pull a pistol
14 on his mother. His parents were then separated when he was
15 about six. When he was seven, his father died from a
16 self-inflicted gunshot wound; he killed himself.

17 He eventually went on to get married himself.
18 Marriage lasted about six years. He had one daughter, who
19 lives in Mississippi with his ex-wife.

20 As came out in the trial, he's currently been living
21 with his mother, which he's lived on and off for many
22 periods of his life at Road.

23 When he was in high school, he was enrolled in several
24 advanced courses, wherein he quit high school in the
25 eleventh grade basically because he was already an addict

1 at that point. He eventually did get his GED at Broad
2 River Correctional in 1991. He also completed a welding
3 course at that time.

4 Throughout his life he's worked in HVAC, heating and
5 air. He's done that on and off since he was seventeen.
6 He's also worked in landscaping and done some welding.

7 At the time of this arrest, he had -- he was working
8 two jobs. During the day he was doing HVAC; at night he
9 was a line cook. Just did general work at Fatz Café. I
10 believe every single dollar he earned from those two jobs
11 was probably going into his drug habit. He has never
12 received any sort of welfare of any kind to my knowledge.

13 He has a severe history of substance abuse, himself
14 and his family. He started using marijuana at age nine.
15 Started drinking alcohol regularly at age eleven. By
16 eighth grade, he was drinking every single day. Tried LSD
17 when he was twelve and cocaine around that time. Used to
18 inhale butane when he was in high school.

19 He actually quit drinking 2012, and that's when he was
20 introduced to morphine, and since 2012 he went to heroin.
21 He's been using that and methamphetamine ever since.

22 This also came out in trial, but he has had some
23 treatment as an adolescent. When he was sixteen he went to
24 Charter Rivers, and he also, I think, did a detox program
25 at Richland Springs for a few days. He has had some mental

1 health treatment. He did some outpatient program in '98,
2 '99. Was diagnosed with anxiety that stemmed from use of
3 these drugs. He was prescribed an antidepressant and an
4 antianxiety treatment at that time.

5 He was again diagnosed with a polysubstance dependence
6 disorder, which I believe simply means he's dependant upon
7 many substances. That was diagnosed, I believe, when he
8 was arrested after this charge. And again when he went for
9 this mental evaluation, she had the same thing to say, that
10 he was polysubstance dependant.

11 Your Honor, he's forty-one years old. As has become
12 clear in this trial, he suffers from extreme addiction
13 issues that have, as far as I can tell, been going on since
14 he was nine years old. I think the lengthy record that the
15 solicitor just read, either he was on drugs when he
16 committed those crimes, or he committed those crimes in
17 order to obtain drugs. By no means is that an excuse, but
18 I do believe it went into those decisions.

19 Your Honor, if he was, in fact, cooking meth, I
20 believe he was doing it for his own use, and all the drugs,
21 even though he was found guilty of one of the PWIDs, I
22 still believe firmly that those drugs were for his own use.

23 He has been incarcerated up to this point, I believe,
24 254 days.

25 THE COURT: He was arrested on the date of the

1 warrants?

2 MR. HAWKS: April 13th, yes and he spent ---

3 MS. CAVANAUGH: But he bonded out fairly soon after
4 that.

5 MR. HAWKS: Yeah. I think he did thirty-four days
6 originally. Then he was rearrested. Was it August?

7 MS. CAVANAUGH: I have September the 4th Judge Barber
8 revoked his bond.

9 MR. HAWKS: He was in jail a little bit prior before
10 that, and he's been in jail since that September 4th date,
11 Your Honor.

12 THE COURT: You think it -- you disagree with 254?

13 MR. HAWKS: I think it's at least 254.

14 THE COURT: Go ahead.

15 MR. HAWKS: Your Honor, I believe at this time his
16 sister would like to address the court.

17 THE COURT: Yes, ma'am, and your name, please.

18 MS. SANDERS-HOLLIS: My name is Kathy Sanders-Hollis.

19 THE COURT: Ms. Hollis, I'll be glad to hear from you.

20 MS. SANDERS-HOLLIS: My brother is my whole world.

21 He, he has been since, since that, that he, he was born.

22 It's always just really been the two of us. My mom worked
23 really hard. It all started at a young age. We've both
24 gone through a lot of trials and tribulations.

25 And Jackie is not a bad person. He's not a drug

1 dealer; he's not a menace to society. He means no harm on
2 anybody, anybody. We just -- so often it's, it's me who
3 veered off on the wrong course and got caught up in, in
4 things that we shouldn't have and have to suffer the
5 repercussions for that.

6 But I would ask that you please have mercy because my
7 mom is elderly now, and she and I both need him at home.
8 Just please, please, please, I need to signify what person
9 he is. He's a strong man, solid man. He's not a drug
10 dealer. He's his own worst enemy and he just, he needs
11 help.

12 MR. HAWKS: Thank you.

13 THE COURT: All right. Thank you, ma'am.

14 MR. HAWKS: I believe Jack would also like to address
15 the court.

16 THE COURT: Yes, sir.

17 DEFENDANT: Yes, I would.

18 THE COURT: You've been down a long road.

19 DEFENDANT: Yes, sir, I have.

20 THE COURT: Mr. Sanders.

21 DEFENDANT: Ultimately, Your Honor, everybody I know
22 in some form or fashion are drug addicts or alcoholics:
23 mother, father, my sister has problems with drugs and
24 alcohol. We all have. That's not an excuse.

25 Ultimately, I found God years ago, and this is all,

1 this is a ripple effect of my disobedience to God because I
2 have an anointing that is far greater than the average
3 person. I, I hear God when he speaks to me.

4 When I was in prison last time, I was sent to work
5 release, and because I was obedient, I didn't want to hear
6 the radio. I didn't want to watch television. I didn't
7 want my mind poisoned by anything. I wanted to get on the
8 right track and do the right thing. So, all I did was
9 study the Bible. I wrote a ministry, and they sent me a
10 study Bible.

11 I started going in depth, and they sent me to Campbell
12 workplace, and they gave me a job there, Fatz Café. And
13 the first thing I did when I was assigned a job was I went
14 to a quiet place, and I thanked God for giving me that
15 avenue for, as far as doing time, giving me the privilege
16 of being able to make some money at a regular job and work
17 on the streets while I'm doing time.

18 I thanked God for that privilege, and I heard him tell
19 me go down there and tell that lady you don't want that
20 job. He spoke directly to my heart, and I didn't
21 understand why, but he specifically -- I heard him. He
22 said go down there and tell the lady you don't want the job
23 at Fatz Café. I didn't understand why. I should have
24 listened, but now I know why. It's because God knew that I
25 wasn't, I wasn't stable enough yet to handle money, okay?

1 I was, I, I was, I was totally -- a week before I got
2 out, I had a flashback of smoking crack and a feeling came
3 over me that was so terrible that I asked God. I said
4 please don't let me fall back in that rut. Even though I
5 was disobedient and I didn't go down there and tell that
6 lady that I didn't want that job at Fatz, I asked him to
7 let me prosper and everyone around me prosper, and everyone
8 did.

9 After I was working at Fatz two months, I mastered my
10 job. The owner opened up the door to let us in at 7:00 in
11 the morning. He said I don't know what it is, but we've
12 never had a week like we had last week. Our profits were
13 through the roof. Whatever y'all are doing, keep on doing
14 it, and I knew what it was. That was God's anointed
15 working through me just as I asked him to help me prosper
16 and everyone around me, okay? Even though I was
17 disobedient, and I didn't go down there and tell that lady
18 I didn't want that job, he was still working with me,
19 letting the blessings flow through me.

20 And I got out of prison with all that money, and I
21 took my eyes off of God, and I felt like I had conquered.
22 I had gone -- I had achieved so much because that, that --
23 Fatz Café was, like, whatever, whatever -- they helped me
24 find a place over there near them because they wanted to
25 make sure I stayed there with them, working with them when

1 I got out of prison because I did such a great job, you
2 know. Not, I'm not trying to pat myself on the back. I'm
3 just stating facts.

4 And I took my eyes off of God and I got, I got a
5 little overly confident. I guess I let pride get the best
6 of me, and I wasn't drinking alcohol. I was not smoking
7 crack. Just like I told you, I had that flashback about a
8 week before I got out. That was the worst feeling I've
9 ever felt. I did not want to go back down this road
10 because I knew what was going to happen if I did.

11 And I relapsed. I relapsed. I relapsed during
12 Christmas. It lasted -- it didn't even last 120 days.
13 Well, January, February, March. I mean, it didn't, and,
14 and I couldn't do anything. I didn't know what to do. I,
15 I couldn't believe that I had fallen back into that rut,
16 and I was injecting drugs, and I was, like, what happened,
17 you know. I mean, and I couldn't -- I was so far down the
18 road at that point that I couldn't, I couldn't shake, okay?

19 Ultimately, Richland County Sheriff's Department
20 busted into the house and taking me to jail, they saved my
21 life. I strongly believe that because I was, I was so
22 stripped because I slipped back into that old life, same
23 one that killed my father. Same one that everyone I love,
24 everybody's suffering.

25 Your Honor, I hold the key, I hold the key to their

1 direction, and I don't deny that. I know that things
2 around me have not changed because I didn't change. I did.
3 I changed but I backslid, okay? I don't deny that.
4 Regardless of what doorways I have to walk through from
5 this point forward, I will not take my eyes off of God, and
6 if it's prison that I've got to go to, then evidently
7 somebody in there needs God, and I will deliver that to
8 them.

9 When I started this trial Monday, the guy that's my
10 roommate at Richland County detention center, Alvin S.
11 Glenn, I told him. I said I don't understand what's going
12 on, but I'm really not stressing. I'm not, I'm not
13 stressing, you know, the outcome of this trial because I
14 didn't, I mean, I didn't, I didn't understand what it --
15 you know, I mean, I said I, I'm just not stressing it, and
16 it wasn't that I don't care. And I opened up my daily
17 devotional at about 12:30 for the -- as soon as it struck
18 midnight because I was only going to get a couple hours
19 sleep before I was headed down this way. I opened it up,
20 and it spoke directly to me. It said regardless of the
21 trials and sorrows that you are going through, take heart.
22 Jesus take me was -- that was the message Jesus spoke.
23 Take heart. I have overcome the world.

24 And I will be back in these courtrooms. I will be
25 back in these courtrooms. Not for criminal charges. I, I

1 strongly -- there's no doubt about it. I'm going to use my
2 past, the road of destruction that I've left behind me.
3 I'm going to use that to help other people that are
4 suffering the same way that I have and my sister has, my
5 entire family. I'm going to do everything that I can to
6 try to help others.

7 And eventually I -- my goal is to become a drug
8 counselor, and I will be back in these courtrooms to work
9 with the judges and solicitors to help in whatever way that
10 I can to keep people from harming themselves and the ones
11 that they love and other innocent bystanders for their drug
12 use because drug abuse is, is -- drugs in America, they're
13 -- it's not just America. It's all over the world. It's
14 an epidemic. It's an epidemic.

15 And, Your Honor, I mean, I'm, I'm not, I'm a bad
16 person. Now, from my record, yeah, I've, I've wreaked a
17 lot to havoc in my life. But if I saw you or her or him
18 out in the streets and you needed -- I mean, I'm not trying
19 to pat myself on there again. If you needed anything that
20 I had and it was in my grasp, you'd have it. And I didn't
21 have it, I would go get it for you if, if I could help you,
22 you know. If I was going to hurt you, I wouldn't, I
23 wouldn't help you at all. I mean, I wouldn't help you hurt
24 yourself.

25 Ultimately, I do want to say I do apologize for the --

1 I apologize for, for the time that, that Richland County
2 Sheriff's Department has had to spend. I apologize for the
3 time that you, y'all have had to spend. I thank y'all. I
4 thank all of y'all for the opportunity to have a fair
5 trial.

6 And I just ask that -- God knows my heart. He knows
7 each and every one of our hearts; we can't hide from that.
8 We're all going to be held accountable one of these days,
9 and each of them, every one of you will see me again. If
10 it's not in this lifetime, it will be when we walk through
11 the gates of heaven, and that's all I have to say.

12 THE COURT: All right, sir.

13 Anything further?

14 MR. HAWKS: I don't think so, Your Honor. I'd ask
15 that you'd consider the minimum, and anything over the
16 minimum, I'd ask that you consider suspending perhaps to
17 give this man some inpatient-drug treatment. And I would
18 ask that you recommend ATU while he is in prison. That's
19 all I have to say.

20 MS. CAVANAUGH: Your Honor, I would just like to put
21 on the record that his original offer was zero to ten
22 years, a cap of ten, and he rejected that. And while I
23 empathize with what he's been through and his wife, it is a
24 misstatement that he has not put others in danger. He has
25 numerous reckless driving offenses, numerous failure to

1 stop for a blue lights, which could put other people in
2 danger. The manufacturing of methamphetamine could have
3 put multiple people in danger.

4 He has had an opportunity in 2005 when he went to
5 trial on a crack cocaine trafficking charge. He received
6 the minimum sentence on that. We have been in court for
7 three days because he turned down a very reasonable offer.
8 So, I would just like to point those things out, and it's
9 not in disrespect to what he's been through or his
10 addictions.

11 MR. HAWKS: Your Honor, he does want to add one more
12 thing.

13 THE COURT: All right.

14 DEFENDANT: Excuse me. On two different occasions, it
15 was in 2008 and also in 2009, I ended up in jail two
16 different times, and I wrote Frank Graham at Morris Village
17 on two different occasions. I asked him if he could help
18 me with my drug problem because I know -- I mean, I know, I
19 mean, I know that it's so expensive that -- I mean,
20 ultimately, I mean, I guess I knew -- I never went to
21 Narcotics Anonymous because I always said those people
22 needed God and I knew God. And ultimately what it was that
23 I really did need was a twelve-step program, and I needed
24 to get into some sort of -- what's the name of that, Morris
25 Village or something like that? And I never got a response

1 back from him.

2 I mean, I'm not saying -- I'm just, I'm just saying I
3 did reach out for some help, and I'm -- and, I mean, I've
4 said all I, I've said all I need to say.

5 THE COURT: Well, you realize that the minimum on
6 these two drug charges is ten years. You realize that,
7 don't you?

8 Mr. Sanders, you seem like a bright fellow. How far
9 did you go in school?

10 DEFENDANT: I made it to the, I made it to the twelfth
11 grade, but I got into some trouble because of alcohol, and
12 I was sitting at Broad River Correctional Institution when
13 my senior class walked the stage.

14 THE COURT: Well, you're well spoken. You sound like
15 an intelligent -- I know you're intelligent. It's sad what
16 either drugs have done to you, or you have let drugs do to
17 you.

18 DEFENDANT: I did, I, I -- drugs used me, used me.

19 THE COURT: But you've had so many chances to take a
20 different fork in the road. Unfortunately, you've not
21 either wanted to do that or been able to do that. I don't
22 know which it is because I don't walk in your shoes. But
23 you're going to have a while to ponder this whole situation
24 and hopefully get your life to a point where you can live
25 outside in the community, community at large without living

1 the life you've been living, and that's about all I can
2 tell you.

3 Let me do a little of this paperwork now.

4 (A PAUSE.)

5 SENTENCE OF THE COURT

6 THE COURT: Mr. Sanders, on your possession of
7 controlled substance charge, the sentence is you be
8 committed to the State Department of Corrections for a
9 period of six months. On your possession of pistol by a
10 person convicted of a violent crime, sentence of the court
11 is you be committed to the State Department of Corrections
12 for a period of five years. On your possession of crack
13 third offenses, sentence of the court is you be committed
14 to the State Department of Corrections for a period of five
15 years. On your possession of methamphetamine third
16 offense, sentence of the court is you be committed to the
17 State Department of Corrections for a period of five years.
18 On your manufacturing of methamphetamine third offense and
19 on your possession with intent to distribute heroin third
20 offense, the sentence of the court is that you be committed
21 to the State Department of Corrections for a period of
22 twenty years on each, all sentences to run concurrent.
23 Give him credit for time served 254 days. Good luck to
24 you, sir.

25 --- END OF TRANSCRIPT OF RECORD ---

State of South Carolina

Court of General Sessions

County of Richland

2013-GS-40-05845

2013-GS-40-05851

The State of South Carolina

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

Fred Jack Sanders

:

June 9, 2014

Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge.

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

Kathryn Cavanaugh, Esquire
Attorney for the State

Lucas Hawks, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

1 **The Court:** Be seated, please. Thank you. Bring your
2 client around. Just a minute. All right, Mr. Hawks.

3 **Mr. Hawks:** Thank you, Your Honor. May it please the
4 Court?

5 **The Court:** Yes.

6 **Mr. Hawks:** Judge, I debated on how I was going to go
7 about this. Immediately after the sentence was imposed, I
8 actually got called into Fielding's office and we had a
9 little discussion - her, Doug and my second seat - about
10 having you reconsider the sentence that you did impose. I
11 then went to see Mr. Sanders at Alvin S. Glenn before he was
12 transported just to make sure that he himself wanted to do
13 it, and he was onboard.

14 At first I thought, you know, maybe I can get his mother
15 in here, the rest of his family, and we can kind of do the
16 whole pony show and sob story and sort of beg for mercy, but
17 then I thought perhaps the better way would just be to have
18 an educated discussion about how the nation and this state is
19 sentencing nonviolent drug offenders. And before I get into
20 that, I would like to correct a couple of things that I think
21 were misstated when we originally did mitigation, and
22 actually Jack brought this to my attention.

23 I think Ms. Cavanaugh, by mistake, stated that there was
24 an offer of zero to ten at some point, and I just wanted to
25 make clear that he never actually had that offer. His best

1 offer was possession with intent to distribute second which
2 would be five to twenty or five to thirty, excuse me. And,
3 yes, that five is suspendible, but I don't think that's
4 really zero to ten. And a cap of ten was actually what she
5 meant there.

6 I also wanted to clear up -- you know, I think perhaps
7 part of your sentence had to do with the fact that it was a
8 trial that dragged out three days and that it wasn't a
9 complicated case as far as the facts go. In fact, we didn't
10 really dispute any of the facts, but Jack's whole thing this
11 whole time was: I'm not a dealer; I'm an addict. And all he
12 wanted to do by going to trial was to attempt to prove to 12
13 people in that box that he was just a user.

14 And besides the statutory weights and besides the fact
15 that it was a manufacturing third which carries a lot of
16 time, I don't really think there was any testimony or any
17 evidence presented that showed Jack was a drug dealer. There
18 was nothing to show that he's involved in any gangs or
19 organized crime, nothing to show that he was making large
20 amounts of money, untaxed dollars. He was actually working
21 two jobs at the time that this happened.

22 If -- you know, worst-case scenario, if he was dealing
23 or manufacturing, I believe that it was to -- solely to feed
24 his own addiction which is clear. I mean, there is no doubt.
25 You can look at him here today. Just less than three months

1 he's been incarcerated, and look at how different he looks
2 from being cleaned up. His eyes are not sunken any longer.
3 The color has returned to his face. He just looks like an
4 incredibly different man. Part of that may have to do with
5 his haircut and shaving his beard, but, still, I think it's
6 clear that he looks much, much better and healthier.

7 And I'd like to talk a little bit about what your
8 sentence means for him as far as his life in the department
9 of corrections. Because it's so lengthy, he has been housed
10 in one of the worst prisons in the state: McCormick. He
11 tells me that over half the population of his dorm have been
12 convicted of murder. Both of his roommates have murder
13 convictions. So those are the type of people that he is
14 currently being housed with.

15 And I can attest to that myself, Your Honor. I've only
16 been doing this about a year and a half, but I clerked here
17 for a couple of years, and I've seen murder pleas where they
18 get 20 years or less, and that's with someone losing their
19 life.

20 One of the other things Fielding and I talked about when
21 we first sat down was the Department of Justice and how it
22 has even published its own literature about the drug war and
23 about sentencing reform, and I just want to pull a couple of
24 things that I've found really interesting from that, and I've
25 shown this to Ms. Cavanaugh.

1 Since the drug war has began, the state -- the cost of
2 housing inmates at the state level has tripled, and it is the
3 second largest expense for state governments other than
4 Medicaid, and I think that is extremely telling. The
5 literature goes on to talk about how we as a society need to
6 separate violent drug offenders, and I'm not really sure
7 exactly what that means, but I think it's referring to gangs,
8 cartels, you know, people that are running around selling
9 drugs on the streets with guns.

10 Although there was a gun in this case, it was a hunting
11 rifle. He was not out on the streets carrying that gun or
12 selling on the streets. And one of the main themes of that
13 literature is that the sentence should be as equal as
14 possible to the crime that was committed. And, again, I
15 think worst-case scenario here, he -- let's say he was
16 manufacturing that meth and he was found guilty of it and he
17 was selling heroin. I don't think that those two things,
18 especially considering the extremely small amount of drugs
19 that was found, rise to the level of 20 years in prison.

20 I know that Your Honor's hands are tied based on the
21 ten-year minimum and he had to get ten years, but he
22 certainly did not have to get 20. And I think when we put
23 people in prison for drug offenses, the goal should be -- if
24 we're going to do that at all, the goal should be to
25 rehabilitate. We're not punishing him. Well, maybe we are a

1 little, but the goal should be to rehabilitate these people.
2 And look how much three months has already done for this man,
3 being clean for three months.

4 And at the end of ten years, Your Honor, I'm not sure
5 how much more he would be rehabilitated by another five years
6 or another ten years. I think at that point he's going to be
7 as rehabilitated as possible as far as his drug addiction
8 goes. And I wanted to point out -- I asked him before we got
9 started today---

10 **The Court:** Do you think rehabilitation is the only goal
11 of incarceration?

12 **Mr. Hawks:** Well, no. I understand that certainly
13 punishment is part of it, but I'm referring only to drug
14 offenses. I asked Jack before we got started: What is the
15 lengthiest prison sentence he had ever received before yours,
16 and it was three years at 85 percent. So even the minimum,
17 if he would have gotten the minimum, that would be seven
18 years longer than his longest prison sentence and your
19 sentence 17 years longer.

20 Just a couple more things. I want to make sure I get
21 everything out that I wanted. So I guess the real question
22 is: What do we do in these types of situations because this
23 is not the first time he's been in trouble with drugs,
24 certainly not. And I spoke with another solicitor this
25 morning on my way in to work about this case, and his thought

1 was: You know, how do we get these people to understand that
2 they just can't do this anymore and maybe that's why he
3 received such a lengthy sentence. And I understand that, but
4 the ten-year minimum would be again seven years longer than
5 the longest he's ever been in, and I think -- you know, he
6 poured his heart out when we mitigated the first time at
7 trial, and I personally was moved.

8 I think this man -- everything that he's gone through is
9 related to drugs, and I just don't see how ten more years or
10 five more years over that ten years that you're tied to is
11 going to benefit society, is going to benefit him or is going
12 to benefit the justice system. I just don't see it.

13 **The Court:** I'm certain that your experiences, as
14 limited as they may be, you're certainly aware of just the
15 consequences of manufacturing meth and the methamphetamine
16 epidemic that has hit this state. You tell me he wasn't
17 selling or if he was selling, he was selling it to somebody
18 else who gets addicted to support his own habit. Sounds like
19 a selfish thing to do, but I will tell you: I have no
20 tolerance for meth cases. If he'd been up here on a crack
21 cocaine case or a big pile of marijuana or something, I
22 have -- I have strong feelings about methamphetamine.

23 I gave a fellow, two months before your client, 20 years
24 in Lexington County for manufacturing methamphetamine, his
25 first time. No, I'm sorry. It was the second time. Second

1 time. And your client is up here on the third. So when I
2 see your client -- you see him in a lot more personal terms
3 than I do, and I'm concerned about everything that you say,
4 much of which can only be addressed by the legislature, not
5 by the courts. They pass the law. We're charged with
6 following the terms of that.

7 Why do you think they set such high penalties on these
8 serious drug offenses? Because they want them. If they
9 can't stop it one way, they provide the means to stop it
10 another way, and I'm pretty well sure that your client is not
11 going to be making methamphetamine for 85 percent of 20
12 years.

13 I'm sorry he got caught up in it. I'm sorry he's been
14 addicted, if I recall, to crack cocaine, cocaine, heroin, and
15 methamphetamine. I was surprised he was walking, living with
16 as much drug abuse or drug ingestion that he told me he had.
17 So I'll consider your motion, but I -- I guess I better hear
18 from the State.

19 **Ms. Cavanaugh:** Your Honor, I just---

20 **The Court:** Ms. Cavanaugh?

21 **Ms. Cavanaugh:** Thank you, Your Honor. Kathryn
22 Cavanaugh for the State. I would just like to point out a
23 few things. While Mr. Hawks does state that his client was a
24 mere addict and not a dealer, the basis of the search warrant
25 of the defendant's home in this case was the result of a

1 controlled buy. So he was selling at least to some degree,
2 Your Honor.

3 And as you just stated, you know, this is not just, you
4 know, an average drug case. This is someone who is cooking
5 methamphetamine which involved, as we heard from several
6 witnesses, extremely hazardous material in a -- in a
7 residential area. There are homes all around him, and he was
8 also in his mother's own home. According to the investigator
9 and this wasn't, you know, admissible testimony in the
10 record, but his mom couldn't do anything about him cooking
11 meth in her home.

12 I did offer a cap of ten. He did deny -- refuse that
13 offer, and perhaps it's because the trial he went to for
14 trafficking crack cocaine back in I believe it was 2004 he
15 got the minimum which was three years. And, you know, he's
16 been in and out of prison or jail since 1990. His record is
17 one of the longest that I've ever seen. And he's had plenty
18 of chances to be rehabilitated while he's been incarcerated,
19 and he just hasn't taken advantage of any of those
20 opportunities.

21 I also -- and I showed Mr. Hawks this when I was pulling
22 up his case from the Richland County database, because ours
23 has been archived. His history during that three-year prison
24 stint, he was convicted three different times in-house for
25 striking an employee without a weapon, fighting without a

1 weapon, and being under the influence of alcohol or some
2 other substance while incarcerated. So, you know, he's had
3 -- he's just shown time after time that he is not going to
4 change his ways regardless of how many times he has brushes
5 with the law, and again I would just emphasize the fact that
6 manufacturing methamphetamine is a very dangerous activity
7 and it was in a residential neighborhood.

8 I think that 20 years was an appropriate sentence. He
9 could have gotten 30, Your Honor, and he refused what I would
10 consider a very reasonable offer.

11 **The Court:** Was I made aware - I just don't remember -
12 of his rap sheet, his criminal record, at sentencing?

13 **Ms. Cavanaugh:** No. Oh, yes, yes, yes. At sentencing,
14 yes, his -- I mean, he has---

15 **The Court:** Let me look at it.

16 **Ms. Cavanaugh:** Sure.

17 **The Court:** I just wondered what one of the most lengthy
18 records Kathryn Cavanaugh has ever seen looked like. (The
19 Court looks at documents.) How old is your client?

20 **Mr. Hawks:** Forty-one.

21 **The Court:** There's a lot of this 1990 stuff. How old
22 were you then, '92, '93?

23 **Mr. Sanders:** I was -- '92 I was -- I believe I was 19.

24 **The Court:** A lot of pistol charges. Do you remember if
25 any of these were violent, Ms. Cavanaugh, just off the top of

1 your head?

2 **Ms. Cavanaugh:** The trafficking crack cocaine conviction
3 from 2004 is the violent conviction. Most of them---

4 **The Court:** Driving, blue light, D.U.I. What type of
5 work did you -- you said he was holding down two jobs, which
6 I find hard to...

7 **Mr. Hawks:** He was working at Fatz Cafe and I believe
8 also doing some heating and air.

9 **The Court:** Heating and air?

10 **Mr. Sanders:** H.V.A.C.

11 **Ms. Cavanaugh:** I thought -- I'm sorry. I remember from
12 the mitigation that he had left his job at Fatz Cafe, but I
13 could be mistaken about that, at the time of the trial or
14 when he---

15 **Mr. Hawks:** When he was in jail---

16 **Ms. Cavanaugh:** ---when he was incarcerated. I thought
17 he had left before that.

18 **The Court:** He had a pretty good bit of pretrial time,
19 as I recall. Almost a year.

20 **Ms. Cavanaugh:** This happened in May, Your Honor, and I
21 think he's been incarcerated since August of 2013.

22 **Mr. Hawks:** Since August of 2013.

23 **The Court:** Any luck getting into A.T.U.? Do they even
24 have an A.T.U.?

25 **Mr. Sanders:** There is an A.T.U., but I believe they

1 only offer it to -- at the end of your sentence.

2 **The Court:** Oh, okay.

3 **Mr. Sanders:** I have been -- I've been actively going to
4 A.A., and they offer that twice a week. And I go to every
5 church service that they offer, but there's really nothing --
6 there's not a whole lot there. It's actually a very dark
7 place. It's -- there's a lot of hopeless individuals, you
8 know.

9 This sentence has definitely been an eye opener and, you
10 know, the truth be known, I personally wasn't the
11 manufacturer. All I was doing was -- and I am -- I am wrong
12 about it, putting my mother's home in jeopardy, but I was
13 just providing a place for it to be done, you know, and I
14 mean -- and it was due to my heroin addiction. The heroin --
15 I've been through -- you can see my record. I've been
16 through all the drugs.

17 Heroin was the largest one I've ever tried to battle and
18 I was at the end of -- I was actually at the end of the road
19 there and, I mean, I stand good on my word what I said
20 whenever you sentenced me. I will be a drug counselor. I
21 mean, I thought about it when I was in the Reception and
22 Evaluation Center. I got a hold of an A.A. book and I
23 started reading it, and it -- I was mesmerized by what I saw
24 in there, you know.

25 I started as basically a drunk and that's what I was was

1 an alcoholic, and I started tapering off of the alcohol and
2 that's whenever my drugs started. I was basically just
3 substituting, and I didn't realize that was what I was doing,
4 you know, because the drugs themselves had me clouded in my
5 mind.

6 And, you know, I do apologize once again for, you know,
7 my disruptive behavior, but I do believe that I have matured
8 a lot here lately, you know. I've put away my childish acts
9 and my childish thinking, and even though I am living amongst
10 a dark place and dark, hopeless individuals, I refuse to
11 allow that to break my spirit and who I am and who I am going
12 to be.

13 **The Court:** Okay. Anything further?

14 **Ms. Cavanaugh:** No, Your Honor.

15 **The Court:** Let me think about it. I'll let you know.

16 **Mr. Hawks:** Thank you, Your Honor.

17 **The Court:** Good luck to you, sir.

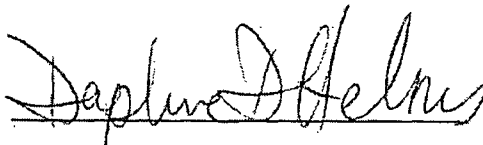
18 **Mr. Sanders:** Thank you, sir.

19 (Whereupon, the proceedings were concluded. There were
20 no exhibits introduced.)
21
22
23
24
25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 9th of June, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 18, 2014

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter



RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: FRANCIS J. SANDERS III PLACE: 113 ROCKINGHAM
 OFFICER (S): MR. J. CLARK
 DATE: 04.23.2013 TIME: 21:00

YOUR RIGHTS

- ☒ Before we ask you any questions, you must understand your rights.
- ☒ You have the right to remain silent.
- ☒ Anything you say can be used against you in court.
- ☒ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- ☒ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- ☒ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature]

SIGNED: Francis J. Sanders III

WITNESS: [Signature]

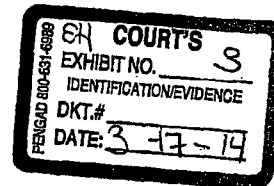
WAIVER OF RIGHTS

- ☒ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature]

SIGNED: Francis J. Sanders III

WITNESS: [Signature]



STATEMENT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WS

DATE: 04/23/2013TIME: 21:00

Personally appeared before me, this date, an officer duly and legally authorized to administer oaths in the above-named county and state aforesaid, comes one: FRED J. SANDERS III

DOB: _____

Address: _____

Who makes the following statement under oath to wit:

Q: Do you reside @ 113 Parkway Ham?

A: yes sir 15-18 years

Q: Which Bedroom do you stay and sleep in?

A: Back Left Bedroom.

Q: Do you reside with any other person at this home?

A: yes my mother.

Q: Does your mother keep any of the personal items in your Bedroom?

A: NO Sir

Q: So any illegal items, Contraband, Firearms in your Bedroom would be yours and yours alone correct?

A: yes Sir

Q: Are you a convicted felon have you ever been to prison for more than 1 year?

This statement was made in the presence of _____, of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20____.

SIGNED: Fred Sanders

WITNESS: _____

Notary Public for South Carolina

My commission expires: _____

WITNESS: _____

1/2

STATEMENT OF

Fred Sanders

(CONTINUED)

DATE: 04.23.13 TIME: 21:15A: yes to both questionsQ: So you are fully aware that possession of a firearm by yourself is illegal, correct?A: I thought. I understood I could have a single shot rifle for hunting. I know I am not supposed to have a pistol or assault rifle.Q: We have found through our search warrant: 1 Cocaine 2 marijuana 3 Valium and methamphetamine in your bedroom. These are your items correct?A: yes sir.Q: How do you use/take meth?A: inject and smokeQ: The loaded syringes we found contain a liquid is this meth?A: yesQ: do you have anything further to add?A: I ApologizeXXXSTATEMENT ENDSXXX FJS

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20____.

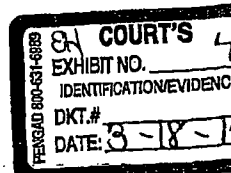
Notary Public for South Carolina

My commission expires: _____.

SIGNED: Fred SandersWITNESS: [Signature]

WITNESS: _____

2/2



STATEMENT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WS

DATE: 04.23.2013TIME: 21:00

Personally appeared before me, this date, an officer duly and legally authorized to administer oaths in the above-named county and state aforesaid, comes one: FRED J. SPANUS III

DOB: _____ Address: _____

SC 29223

Phone (H) #: _____

Phone (W) #: _____

Who makes the following statement under oath to wit:

Q: Do you reside @ 113 Rockingham?

A: yes sir 15-18 years

Q: Which Bedroom do you stay and sleep in?

A: Back Left Bedroom.

Q: Do you reside with any other person at this home?

A: yes my mother.

Q: Does your mother keep any of her personal items in your Bedroom?

A: NO Sir

Q: So any illegal items, Marijuana, Firearms in your Bedroom would be yours and yours alone correct?

A: yes Sir

Q: Are you a convicted felon have you ever been to prison for more than 1 year?

This statement was made in the presence of _____, of the Richland County Sheriff's Department.

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20____.

SIGNED: Fred Spanus III

WITNESS: _____

Notary Public for South Carolina

My commission expires: _____

WITNESS: _____

1/2

STATEMENT OF

Fred. Sanocis
(CONTINUED)

DATE: 04.23.13 TIME: 21:15

A: yes to both questions

Q: So you are fully aware that possession of a firearm by yourself is illegal, correct?

A: I thought I understood I could have a single shot rifle for hunting. I know I am not supposed to have a pistol or assault rifle.

Q: We have found through our search warrant; 1 Cocaine 2 marijuana 3 Valium and methamphetamine in your Bedroom. These are your items correct?

A: yes sir.

Q: How do you use/take meth?

A: inject and smoke

Q: The loaded syringes we found contain a liquid is this meth?

A: yes

Q: do you have anything further to add?

A: I Apologize

XXX

STATEMENT ENDS XXX FJS

I make this statement of my own free will and accord, without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20__.

SIGNED:

Fred Sanocis

WITNESS:

[Signature]

Notary Public for South Carolina

My commission expires: _____.

WITNESS:

2/2

WITNESSES

(S) Dep. A. Ricard - RCSD

ARREST WARRANT NUMBER

2013A4010201428

ACTION OF GRAND JURY

TRUE BILL

Valencia Martin

Foreperson of Grand Jury

Date:

SEP 11 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-05845

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2013

116

**THE STATE
vs.**

Fred Jack Sanders

**Indictment for
MANUFACTURING
METHAMPHETAMINE**

**SC Code: 44-53-0375 (B) (1)
CDR Code: 3198**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

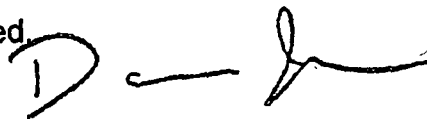
INDICTMENT

At a Court of General Sessions, convened on September 11, 2013,
the Grand Jurors of Richland County present upon their oath:

MANUFACTURING METHAMPHETAMINE

That Fred Jack Sanders did in Richland County, on or April 23, 2013,
manufacture, or did aid, abet, attempt or conspire to manufacture, a
quantity of Methamphetamine (Crank), a controlled substance under
provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as
amended, such manufacturing not having been authorized by law, to wit:
in that he was in possession of materials, chemicals, and ingredients used
in the manufacturing of Methamphetamines at _____ Road in
violation of Section 44-53-375(B), S. C. Code of Laws, (1976, as
amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Dep. A. Ricard - RCSD

ARREST WARRANT NUMBER

2013A4010201429

ACTION OF GRAND JURY

TRUE BILL

Valencia Martin
Foreperson of Grand Jury SEP 11 2013
Date:

VERDICT

DOCKET NO. 2013-GS-40-05846

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2013

116

THE STATE

vs.

Fred Jack Sanders

**Indictment for
PWID METHAMPHETAMINE**

SC Code: 44-53-0375 (B) (1)

CDR Code: 3198

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

284 Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 11, 2013,
the Grand Jurors of Richland County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

That Fred Jack Sanders did in Richland County on or about April 23, 2013, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Methamphetamine, a controlled substance under the provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina, (1976, as amended), such possession not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Dep. A. Ricard - RCSD

ARREST WARRANT NUMBER

2013A4010201431

ACTION OF GRAND JURY

TRUE BILL

Valencia Martin
Foreperson of Grand Jury SEP 11 2013
Date:

VERDICT

DOCKET NO. 2013-GS-40-05848

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2013
116

THE STATE
vs.

Fred Jack Sanders

Indictment for
PWID CRACK COCAINE

SC Code: 44-53-0375(B)(1)
CDR Code: 3014

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 11, 2013,
the Grand Jurors of Richland County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE

That Fred Jack Sanders did in Richland County on or about April 23, 2013,
possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or
conspire to distribute, dispense or deliver a quantity of Crack Cocaine, a controlled
substance under the provisions of Section 44-53-110, et.seq., Code of Laws of
South Carolina, (1976, as amended), such distribution not having been authorized
by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws,
(1976, as amended).

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Dep. A. Ricard - RCSD

ARREST WARRANT NUMBER

2013A4010201432

ACTION OF GRAND JURY

TRUE BILL

Valencia Morton
Foreperson of Grand Jury

Date:

SEP 11 2013

VERDICT

DOCKET NO. 2013-GS-40-05849

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2013
116

THE STATE
vs.

Fred Jack Sanders

Indictment for
POSSESSION OF A FIREARM BY A
PERSON CONVICTED OF A CRIME OF
VIOLENCE

SC Code: 16-23-0500 (B)
CDR Code: 3434

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

280 Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 11, 2013,
the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A FIREARM OR AMMUNITION BY PERSON

CONVICTED OF A CRIME OF VIOLENCE

That Fred Jack Sanders did in Richland County on or about April 23, 2013, unlawfully possess a firearm or ammunition and has been convicted of a violent crime as defined under Section 16-1-60 that is classified as a felony offense. To wit: Trafficking Crack Cocaine. In violation of Section 16-23-500(A), S. C. Code of Laws, (1976, as amended).

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Dep. A. Ricard - RCSD

ARREST WARRANT NUMBER

2013A4010201433

ACTION OF GRAND JURY

TRUE BILL

Valencia Morton
Foreperson of Grand Jury

Date:

SEP 11 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-40-05850

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2013

116

THE STATE

vs.

Fred Jack Sanders

**Indictment for
POSSESSION OF A CONTROLLED
SUBSTANCE**

SC Code: 44-53-0370(d)(2)

CDR Code: 0179

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 11, 2013,
the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A CONTROLLED SUBSTANCE

That Fred Jack Sanders did in Richland County on or about April 23, 2013, knowingly and intentionally possess a quantity of Diazepam (Valium), a Schedule IV controlled substance under provisions of Section 44-53-0110, S.C. Code of Laws, (1976, as amended), such possession not having been authorized by law, in violation of Section 44-53-0370(d)(2), S.C. Code of Laws, (1976, as amended).

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Dep. A. Ricard - RCSD

DOCKET NO. 2013-GS-40-05851

The State of South Carolina

County of

Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2013

116

**THE STATE
vs.**

Fred Jack Sanders

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

2013A4010201434

ACTION OF GRAND JURY

TRUE BILL

Valencia Martin
Foreperson of Grand Jury

Date:

SEP 11 2013

VERDICT

**Indictment for
PWID HEROIN**

**SC Code: 44-53-0370(g)(1)(a)
CDR Code: 2584**

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 11, 2013,
the Grand Jurors of Richland County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN

That Fred Jack Sanders did in Richland County on or about April 23, 2013, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense, or deliver a quantity of Heroin, a Schedule I controlled substance under the provisions of Section 44-53-110, et. seq., S. C. Code of Laws, (1976, as amended), such possession not having been authorized by law, in violation of Section 44-53-0370(b)(1), S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, 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."

October 28th, 2015



LaNelle Cantey DuRant
Appellate Defender

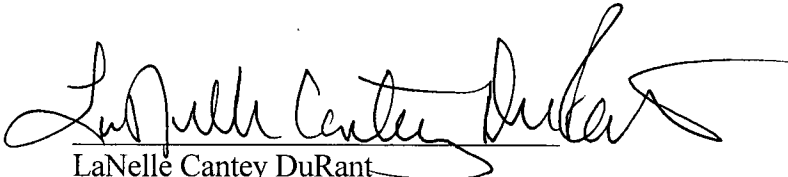
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

October 28th, 2015



LaNelle Cantey DuRant
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

OCT 28 2015

SC Court of Appeals