

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

FELIX KOTOWSKI,

APPELLANT

APPELLATE CASE NO 2016-000842

RECORD ON APPEAL

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STATE’S EXHIBIT NO. 65 (CD WITH VIDEO RECORDINGS)

1 State of South Carolina)
2 County of Dorchester) In the Court
3) Of General Sessions
4 State of South Carolina,) Case No.: 2014-GS-18-1529
5 Plaintiff,) 2014-GS-18-1530
6 vs.) Transcript of Record
7 Felix Kotowski,)
8 Defendant.)
9 _____)

9
10 December 7th through 9th, 2015
11 St. George, South Carolina

12 BEFORE:
13 The Honorable Maite Murphy, Judge, and Jury.
14

15 APPEARANCES:
16
17 Kyle Ward, Assistant State Solicitor
18 Sheila Mims, Assistant State Solicitor
19 Attorneys for the State
20
21 James Falk, Esquire
22 Attorney for the Defendant

23 ALSO PRESENT:
24
25 Felix Kotowski, III

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1 (Whereupon, State's exhibits #1 through #65 marked
2 for identification.)

3 THE COURT: Counsel, it's 12:20. We'll start the
4 pretrial after lunch.

5 MR. WARD: Yes, ma'am.

6 THE COURT: We have one plea to do. I guess you're
7 not driving back and forth to Charleston to do yours.
8 We'll have everyone come back at 1:45. I know we have a
9 plea in between so to give everybody time.

10 MR. FALK: We have a plea and then one motion and
11 then our motion.

12 THE COURT: Yes, sir.

13 MR. FALK: We're gonna go first?

14 THE COURT: Yes, sir.

15 (Luncheon recess.)

16 BAILIFF: All rise.

17 THE COURT: Thank you. Have a seat. It's my
18 understanding we have some pretrial motions in the first
19 case of Mr. Kotowski.

20 MR. FALK: Yes, Your Honor.

21 THE COURT: And, Mr. Falk, this is your motion to
22 suppress?

23 MR. FALK: Yes, it is, Your Honor.

24 THE COURT: All right, sir. I'll be happy to hear
25 from you.

1 MR. FALK: I call my client to the stand.

2 THE COURT: Can y'all just give me a brief synopsis
3 of the facts before we start with the motions?

4 MR. FALK: Yes, Your Honor. Our motion is this is
5 sort of a, this case started -- Well, this is a meth case
6 and it started with a knock and talk on Mr. Kotowski's
7 girlfriend's house and after the knock and talk, it sort
8 of progressed onto there to a preventive sweep through
9 the house where evidence was found that was in plain and
10 they went and used that evidence and then go back and get
11 a search warrant for the house.

12 THE COURT: Okay. You may call your first witness.

13 MR. FALK: Yes, Your Honor. We would call Mr.
14 Kotowski to the stand.

15 Thereupon,

16 FELIX W. KOTOWSKI, III

17 after having been first duly sworn, testified as follows,

18 MR. FALK: Your Honor, do you prefer me to go from
19 here?

20 THE COURT: Where ever you are more comfortable.

21 MR. FALK: Thank you.

22 THE COURT: Your witness.

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q. Can you hear me?

1 A. Yes.

2 Q. Can you please state your name?

3 A. Felix Walter Kotowski the III.

4 Q. Where do you work?

5 A. Uhm, right now I work at HR working on the naval
6 weapon station redoing the NCIS headquarters.

7 Q. Back in October of 2014, where were you working?

8 A. I was working in North Carolina for a company based
9 out of Pensacola, Florida and, uhm, I was doing the, uhm, 911
10 call center in Morganton, North Carolina.

11 Q. When you say doing the 911 call center, what do you
12 mean?

13 A. I do, uhm, military and government contracts. I do
14 supervision of metal framing, drywall, acoustical and
15 painting.

16 Q. Construction?

17 A. Yes, sir.

18 Q. Okay. So you said that you were working in what
19 city in North Carolina?

20 A. Morganton.

21 Q. How far away is that from here?

22 A. About six hours.

23 Q. Okay. Do you have family here in Dorchester
24 County?

25 A. Yes, I do.

1 Q. What family is that?

2 A. Uhm, my mother.

3 Q. Okay.

4 A. I also have a sister in Dorchester and one in
5 Berkeley.

6 Q. Do have any children?

7 A. Yes, I do. I've got a daughter. She lives in West
8 Ashley.

9 Q. Charleston County?

10 A. Yes, sir.

11 Q. Okay. So when you were working in North Carolina,
12 how often, would you ever in Dorchester County?

13 A. Yes, sir. I would come back all the time. I would
14 come back every other weekend for my daughter. Usually spend
15 it with my mom because my father passed on recently and, uhm,
16 I recently started dating, uhm, and I come back every weekend,
17 you know, work four tens. I would get off Thursday, I would
18 come back Thursday night and spend Thursday, Friday and
19 Saturday. Sometimes she would come up there with me during
20 the week because she's on disability so...

21 Q. And this she, who is this?

22 A. Michelle Vining.

23 Q. Do you know where she lives?

24 A. 111 Marsh Point or Marsh Drive.

25 Q. So how often are you -- When you see her when you're

1 in Dorchester County, where are you staying?

2 A. Uhm, when I'm down here, uhm, usually stayed at her
3 house.

4 Q. Okay. So your relationship with her is a romantic
5 relationship?

6 A. Uh, it was.

7 Q. Do you still see her?

8 A. I still - I still see her, you know, but we are no
9 longer involved.

10 Q. Okay. So on a given weekend, let's say you got
11 there Thursday night, where would you all eat?

12 A. Uhm, usually Thursday night I wouldn't get there
13 until like 1:00 in the morning, you know. Uhm, usually, you
14 know, just come on in, you know. She would be sleeping or
15 whatever and we would get up in the morning, you know, cook
16 breakfast or, you know, just hang out at the house for the
17 weekend.

18 Q. Okay.

19 A. You know, it was a new thing.

20 Q. Prior to October, how long were you with her?

21 A. Uhm, we were only together about four to six weeks
22 before the incident.

23 Q. All right. And the incident is the arrest?

24 A. Yes.

25 Q. Okay. Where do you leave your clothing?

1 A. Uhm, I had some at her house and, uhm, in one of the
2 closets upstairs along with some paperwork and, uhm, I travel,
3 you know, so most of mine, you know, uhm, I go from job to job
4 to job, you know, so most of my stuff is in suitcases. But I
5 got, you know, a little bit here, a little bit there
6 everywhere I stay.

7 Q. So on a weekend that you are staying at her house,
8 how many nights of that weekend are you staying at her
9 house?

10 A. Basically all weekend. It was a new, you know, new
11 thing.

12 Q. Yeah. Do you have a key to her house?

13 A. Uhm, not anymore. Actually I still might have, uhm,
14 her spear key to her truck and the house because, uhm, she has
15 seizures and, you know, if nobody has heard from her or
16 anything lately, I'll go by there and check on her.

17 Q. Okay. In October of 2014 did you have a key to her
18 house?

19 A. Yes, sir. That's how I let myself in Thursday
20 nights when I got there.

21 Q. So you would unlock the door to get in there?

22 A. Yes, sir.

23 Q. Okay. On the other weekends when you were not at
24 her house, I think you testified earlier that there are some
25 weekends when you were with your daughter?

1 A. Right. But I would come down Thursday night, spend
2 Thursday night with her, pick my daughter up after school on
3 Fridays, spend Friday and Saturday with my daughter, then go
4 back over there, see her Sunday before I went out Monday
5 morning.

6 Q. When you were with your daughter, where did you
7 stay?

8 A. Usually at my mom's.

9 Q. Have you introduced - did you ever introduce your
10 daughter to Ms. Vining?

11 A. No. Because I have had past issues where my
12 daughter has gotten close to a woman I have been dating and
13 with the type of work I do, you know, uhm, it's hard to do
14 distant and keep a relationship going and, uhm, she got really
15 hurt one time because me and the girl split up and I don't
16 want to subject her to that anymore.

17 Q. So during this time period around October of 2014,
18 you had testified that you spent some part of the weekends
19 when you were in town at your mother's house, some part of the
20 weekend when you were in town at Ms. Vining's house; is that
21 correct?

22 A. Only every other weekend I would spend with my
23 daughter.

24 Q. Okay. Did you ever spend any time at any other
25 house during that time period?

- 1 A. (Witness shaking head.)
- 2 Q. What's the address on your driver's license?
- 3 A. [REDACTED] Floral Circle, [REDACTED], Summerville.
- 4 Q. Who lives at that address?
- 5 A. Actually nobody lives there. That's my trailer, but
- 6 it's mainly, you know, just storage.
- 7 Q. Okay. That's not where your mother lives?
- 8 A. No.
- 9 Q. Is it close to where your mother lives?
- 10 A. Uhm, it's about eight miles away.
- 11 Q. Okay. How often on those weekends would you, during
- 12 this time period, were you staying at that address, the
- 13 trailer?
- 14 A. Uhm, maybe once a month.
- 15 Q. Okay.
- 16 A. Once every other month, you know.
- 17 Q. One weekend? One night?
- 18 A. One night.
- 19 Q. Now, on the day of your arrest which was October
- 20 30th; is that correct?
- 21 A. Uhm, yes, sir. Well, no. Was it the 29th or the
- 22 30th?
- 23 Q. Let's just say that weekend.
- 24 A. Okay.
- 25 Q. You came down to the front door; is that correct?

1 A. Yes, sir.

2 Q. Okay. So there was a knock and you came down and
3 answered the door; is that correct?

4 A. Yes, sir.

5 MR. FALK: Your Honor, I have no further questions
6 for Mr. Kotowski.

7 THE COURT: Cross examination.

8 MR. WARD: Yes, Your Honor.

9 CROSS EXAMINATION

10 BY MR. WARD:

11 Q. Mr. Kotowski, so in 2014 you said you were working
12 two jobs up in North Carolina?

13 A. No. I was working - I was working for Edwards
14 Construction. I was doing the Morganton 911 emergency call
15 center.

16 Q. Where was that job?

17 A. Morganton, North Carolina.

18 Q. What days did you work up in Morganton, I guess it
19 is?

20 A. Morganton. It would be Monday through Thursday. We
21 were working four tens.

22 Q. Okay.

23 A. Actually, that wasn't the original construction of
24 the building. At the time we were doing renovations to the
25 building because, uhm, they were having problems with

1 interference on the calls, you know, the way the wires were
2 routed through there so we had to go in there and we had to
3 put in a temporary ceiling so when the wires went across, they
4 weren't getting interfered with.

5 Q. Okay. So you were in Morganton, you stayed up in
6 Morganton Monday through Wednesday night every week for your
7 job?

8 A. Yes, sir.

9 Q. And then Ms. Vining was your girlfriend during this
10 time?

11 A. Yes, sir.

12 Q. And she solely owned the 111 Marsh Point house,
13 correct?

14 A. Uhm, I think it's in her mom's name and, uhm, but I
15 believe they own it.

16 Q. You have no interest in the house what so ever,
17 correct? No rights to the house? You don't own any part of
18 it?

19 A. No. I mean, I don't make payments or anything like
20 that.

21 Q. Right. Did Ms. Vining allow you to invite people
22 over to the house or was she the only -- Let me rephrase. Did
23 you ever invite people to her house?

24 A. I would have friends come by and visit me when I was
25 in town. You know what I mean?

1 Q. Okay. Did you do any type of renovations to the
2 house ever?

3 A. Uhm, yes, and I'm still, sometimes if she needs --
4 You know what I mean? -- the toilet breaks or something like
5 that right there, she'll call me because I have been doing
6 construction for a long time.

7 Q. But the day the police came to the house --

8 A. Yes, sir.

9 Q. -- you answered the front door?

10 A. Yes, sir.

11 Q. And Sergeant Thompson was at the door, correct?

12 A. Yes, sir.

13 Q. And he asked you if you lived at the house?

14 A. He asked me if I lived there.

15 Q. And you stated no, correct?

16 A. Correct.

17 Q. But your testimony today is that you have lived
18 there three days a week?

19 A. I also testified that Ms. Vining wasn't home either,
20 you know. I mean, I was nervous. I lied. I mean, about, you
21 know, Ms. Vining being there. The cops were beating on the
22 door. She says I got a warrant. Tell them I'm not here. You
23 know what I mean? So...

24 Q. And you actually said, told the police that you
25 weren't Michelle Vining's boyfriend either, correct?

1 A. Correct. I told them I was there with my girlfriend
2 Lisa.

3 Q. And Lisa turned out to be Michelle Vining?

4 A. Yes, sir.

5 Q. And you would only stay at Michelle Vining's house
6 maybe Thursday night and then Sunday?

7 A. Every other weekend when I had my daughter. The off
8 weekends I would come down Thursday and stay through Sunday.

9 Q. And you were only together with her for about four
10 to six weeks before this incident occurred?

11 A. Yes, sir.

12 Q. So that means you only stayed at her house two
13 weeks, two weekends, two or three?

14 A. Two or three.

15 Q. And you kept all your clothes in a suitcase --

16 A. Uhm --

17 Q. -- because you were traveling back and forth?

18 A. Most of my clothes were kept in suitcases. I got,
19 you know, a closet over at mom's house. I had, you know, a
20 few things over at her house. Uhm, I had some of my work
21 paperwork there at her house. You know, when I would be down
22 there on the weekend, you know, to make sure that I keep up
23 with, you know, my files and everything because, uhm, doing
24 government contracts it's a lot of paperwork.

25 Q. And when the police knocked on the door, you came

1 from upstairs? You came down the steps to get to the front
2 door?

3 A. Yes, sir.

4 MR. WARD: Nothing further, Your Honor.

5 THE COURT: Any redirect?

6 MR. FALK: No, Your Honor.

7 THE COURT: You may step down, sir. Thank you. You
8 may call your next witness.

9 MR. FALK: This is now a little flip-floppy. Do you
10 want the State to present --

11 THE COURT: Certainly. He can present then he'll
12 bear the burden on his side of it so do you want to
13 proceed.

14 MR. WARD: Yeah. Would you prefer we just go
15 through the whole thing or can I make a motion that the
16 State believes that the defense has not met their burden
17 of proving Mr. Kotowski had a legitimate expectation of
18 privacy in that home? I don't know if you want us to go
19 forward and present our evidence first.

20 THE COURT: Mr. Falk.

21 MR. FALK: Well, I believe we have met our burden
22 under Robinson. He had a key to the house. He had
23 friends that visited him at the house. He kept clothing
24 there. Granted Mr. Kotowski at the time might have been
25 somewhat of a nomad in that he didn't really have, you

1 know, a main residence. He was living in a suitcase. He
2 was a traveling guy, but when he came back to Dorchester
3 County, his first night was always at her house. So I
4 think we have met our burden of proof to the extent he
5 had a house that was - he had an expectation of privacy
6 in the place where he was staying at most of the time
7 when he was in Dorchester County.

8 THE COURT: Mr. Ward.

9 MR. WARD: We would state - the defense basically
10 stated he was a nomad. He didn't have a permanent
11 residence because he was going from place to place. His
12 job was at that time in Morganton, North Carolina and
13 would stay there to work. I think that would show more
14 of his place of residence since he was working up there.
15 He would only go there on the weekends. Maybe stay there
16 Thursday and Friday twice. So that's four visits to the
17 house. And then the other weekends he may be there two
18 other nights so less than 15 visits total at the house
19 possibly. His clothes are in a suitcase. It's not like
20 he unpacked his clothes where he expects - you would then
21 expect people not to go through a dresser drawer or
22 anything. He had his own suitcase because he was moving
23 from house to house. He may have had a key, but that
24 didn't mean he had control over the house itself. He
25 stated he did not pay rent. He did not own any part of

1 the house and just the fact that he admitted on the stand
2 that he lied the day the police arrived and now he's
3 saying something differently. I just don't think you can
4 necessarily believe his testimony with that so we would
5 ask that he didn't prove the burden that he did have a
6 reasonable expectation of privacy and we would ask for
7 this motion to be denied.

8 MR. FALK: Your Honor, if I may. I think the
9 prosecution mischaracterized my client's testimony. I
10 believe I heard him say that on the weekends when he
11 didn't have his daughter, he was at her house every night
12 and that the weekends when he had his daughter, he was
13 there the first night and then stayed at his mother's
14 house with his daughter.

15 THE COURT: That was my recollection of the
16 testimony. The defendant does have the burden of proving
17 a reasonable expectation of privacy and considering the
18 factors as laid out in Robinson, he did testify that he
19 spent some time there. He was an overnight guest. He
20 had a key to the property. He changed clothes there. He
21 had some dominion and control over the property. He did
22 renovations to it and was allowed to work on the
23 property. The activities in the home were private.
24 Obviously they were engaged in a romantic relationship,
25 and the Court does find that he does have a reasonable

1 expectation of privacy. You may proceed with your first
2 witness.

3 MR. WARD: Thank you, Your Honor. The State would
4 call Sergeant Thompson.

5 Thereupon,

6 FRANK THOMPSON, IV

7 after having been first duly sworn, testified as follows,

8 DIRECT EXAMINATION

9 BY MR. WARD:

10 Q. Sergeant Thompson, where do you currently work?

11 A. I am employed by the Dorchester County Sheriff's
12 Office and I'm assigned to the metro narcotics unit which is a
13 task force between Dorchester County Sheriff's Office and the
14 Summerville Police Department.

15 Q. What is your title?

16 A. I am the sergeant of the narcotics unit.

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

18 A. I have been in law enforcement since 1998. I have
19 been in narcotics for eight years now.

20 Q. What other, do you have any other certifications or
21 training?

22 A. I have extensive training in methamphetamine drug
23 labs. Also in MDMA labs. I am a - I have ability to
24 recertify officers that are certified to work clandestine meth
25 labs for the state. I give instructions or presentations to

1 communities, to our new deputies that are hired, to look for
2 things to make them aware of methamphetamine labs and I do our
3 research.

4 Q. Throughout your eight years can you estimate how
5 many meth labs you have investigated?

6 A. I personally have worked well over one hundred meth
7 labs in Dorchester County. I have been clandestine meth lab
8 certified since 2004.

9 Q. What does clandestine lab certified mean?

10 A. Clandestine means hidden or secreted meth lab so I'm
11 able to under OSHA standards able to go into what's deemed as
12 a laboratory environment and dismantle that meth lab. You
13 have to be specifically trained in clandestine lab dismantling
14 to work it. Just anybody can't work in there under OSHA
15 guidelines.

16 Q. Now, getting to the incident, can you tell us how
17 you began an investigation in this case?

18 A. Sure. On June 13th, 2014 I received an anonymous
19 tip from a citizen stating that they had third party
20 information that they had heard about a possible drug house at
21 111 Marsh Point Drive which is in Dorchester County in
22 Summerville. The guy told me, it was very little information.
23 He just overheard people talking about that address and really
24 didn't have anything to go on. The first thing I did was I
25 ran an NPLeX check which is the National Precursor Log

1 Exchange. I just read the address because I had no names.

2 Q. I'm sorry. What is the NPLEx Exchange?

3 MR. FALK: Your Honor, I'm not sure if Mr. Thompson
4 is reading from something on his computer. I mean, if
5 he's refreshing his recollection or is testifying from
6 his -- I just want -- If he's refreshing his
7 recollection, I'm entitled to see what he's using,
8 otherwise he has to testify from his memory.

9 THE COURT: Mr. Thompson, do you mind showing him
10 what you're looking at.

11 THE WITNESS: Absolutely. He has a copy of it.

12 THE COURT: It looks like the incident report.

13 MR. FALK: Is it just the incident report?

14 THE WITNESS: Yeah. It's a PDF file of my entire
15 case.

16 MR. FALK: Well, that's fine. That incident report
17 is six pages?

18 THE WITNESS: It's a lot more than that. It's my
19 entire case file.

20 MR. FALK: Okay.

21 THE COURT: Sergeant, if you are referring to
22 something to refresh your recollection, just let us know.
23 You may proceed.

24 BY MR. WARD:

25 Q. Could you explain what the NPLEx exchange is

1 please?

2 A. Sure. NPLeX is a national precursor log exchange
3 that's run by a company called Appriss and under state law all
4 pharmacies have to report any pseudoephedrine purchase to an
5 exchange NPLeX and I have access to that log where I can
6 search pseudoephedrine purchases that have been made by
7 individuals as their common purchases.

8 Q. Can anyone get on this NPLeX and search?

9 A. You have to be law enforcement or have law
10 enforcement duties.

11 Q. You stated you have a user name and password to get
12 on?

13 A. I do. I'm actually the administrator for our
14 agency.

15 Q. Does that give you more ability to do something?

16 A. I can set up new users, delete new users and
17 maintain the people that are, that have license under
18 Dorchester County to use it.

19 Q. Are you trained on how to use this?

20 A. I am. As a matter of fact, last week I was asked to
21 give a presentation by NPLeX Appriss which was a national
22 audience, a webinar and I explained how you use NPLeX in ways
23 that I use it, tips, gave tips that would be useful to other
24 people that are new users.

25 Q. Okay. And when someone -- Explain what happens when

1 someone makes a purchase of pseudoephedrine.

2 A. Under law, South Carolina law, when you purchase
3 pseudoephedrine, you're required to give a picture ID,
4 government issued or some other type of ID. The pharmacist
5 that is filling that order runs the license through a machine
6 or enters the information manually which captures your name,
7 your date of birth, and then height and weight, stuff like
8 that, different demographics and your address, and the log
9 will say, yes, you can make a purchase or no, you can't make a
10 purchase depending on if you have exceeded the amount set by
11 the state which is nine grams in 30 days. So once the license
12 is swiped and if the okay is there for the purchase to be
13 made, if the person has exceeded their legal amount for the 30
14 days, then it says no, you can't make a purchase so they block
15 it and so the purchase is denied.

16 Q. So then you stated you had this anonymous tip back
17 on June 13th, 2014?

18 A. That is correct.

19 Q. And then you stated once you received that tip, you
20 ran the address through the NPLeX?

21 A. Right. Again, I didn't have a name to go on. It
22 was third party. Very limited information. So I put the
23 address 111 Marsh Point, Summerville into NPLeX and it popped
24 up a couple different names. Michelle Vining who is the home
25 owner. And I'll look at my notes here. Brian Edwards who

1 also used that address once before.

2 Q. And then what did you -- Did you notice anything
3 from Ms. Vining's pseudoephedrine purchases?

4 A. Well, I noticed that from Vining and from Edwards
5 that there was substantial amount of purchases made which lead
6 me to believe the possibility of something more to this
7 complaint so what I did then was I --

8 MR. FALK: Your Honor, I'm going to object and put
9 it on the record that he is now testifying to hearsay.
10 There has been nothing to authenticate what - I believe
11 he is looking from printouts that may have come from
12 NPLeX but there is nobody here from NPLeX to authenticate
13 it. It may be a business record but still we have to
14 know what it is. I think it's improper to admit any
15 testimony from the NPLeX without somebody down here
16 authenticating what he's testifying from.

17 THE COURT: Solicitor.

18 MR. WARD: Sergeant Thompson testified to how the
19 NPLeX works. Law enforcement uses it as an investigative
20 tool. Said he just gave a webinar on how he uses the
21 investigative tool. For the purposes here I'm asking
22 what he found when he typed in the address to further his
23 investigation not necessarily - I'm not asking for the
24 actual records, actual paper records to be put in under
25 the business records. I'm just asking what he found

1 during his investigation.

2 THE COURT: Your objection is overruled. Proceed.

3 BY MR. WARD:

4 Q. I think you were stating you saw Ms. Vining had
5 higher than normal purchases?

6 A. Correct. She had a substantial amount of purchases
7 as well as the other individuals that their name came up
8 listed for the address. So at that point I felt there was
9 something else to this so I wanted to continue it so I added
10 what's called a watch to where I had her information and the
11 address so that any time someone used that address associated
12 to that address or used her ID, it would send me an alert that
13 a purchase was made. I also did some spotty surveillance. I
14 drove by a couple times and I observed her vehicle there at
15 the house. And on another occasion I observed a vehicle
16 belonging to a William Cherry who I'm familiar with. His
17 father is a convicted meth cook.

18 Q. Do you have dates for when you conducted those other
19 surveillance on the house?

20 A. Can I look at my notes?

21 Q. Yes.

22 A. The first time I did it it was on June 26th, 2014.
23 That's when I found the vehicle to William Cherry and Sandra
24 Rousch. All the other times I drove by and I would not see
25 any activity. Where the house is it's hard to do surveillance

1 because it's on a cul-de-sac in a golf course community. So
2 me sitting on the side of the road would bring some attention
3 on a small cul-de-sac especially so I wasn't able to sit
4 there to watch for people to come and people to go so I did,
5 you know, continuous drive-bys to see if I would see any
6 activity which I never saw anybody coming or going from the
7 residence.

8 Q. Okay. And then, so after those, you stated you had
9 put an alert for that house and Ms. Vining on your NPLeX?

10 A. That's correct, so that I would be notified if a
11 purchase was made.

12 Q. And then what happened next?

13 A. If I can refer to my notes. On October 29th, 2014 I
14 did receive a e-mail from the watch list that Michelle Vining
15 had attempted to make three separate purchases.. Two of those
16 purchases were blocked because she exceeded the amount that
17 she was legally allowed to purchase because she purchased
18 prior to that. She went to another place at 9:11. Excuse me.
19 9:27 p.m. and purchased a smaller amount that she originally
20 tried. She purchased 1.2 grams which fell within the
21 threshold of her exceedence so she was able to make that
22 purchase. Because of those three purchases, well, two
23 attempts and one purchase I decided the next day to go and
24 conduct a knock and talk at the house.

25 Q. Before we go any further, what's the significance of

1 pseudoephedrine as it involves methamphetamine?

2 A. Pseudoephedrine is a precursor, that or ephedrine,
3 is a precursor that you have to have to manufacture
4 methamphetamine. If you don't have pseudoephedrine or
5 ephedrine, you cannot make meth so as the absolute ingredient
6 you have to have out of all the ways that you can make meth
7 you have to have pseudoephedrine.

8 Q. What do you notice about people with higher than
9 normal pseudoephedrine purchases?

10 A. Well, they can be a chemical courier so they go out
11 and they call them smurfs. They are people that go out and
12 hit the pharmacies to buy pseudoephedrine to bring back to the
13 people, the meth cooks and you have to have the
14 pseudoephedrine so they're gonna get it themselves. I look
15 for patterns. People that go to different pharmacies on
16 multiple occasions to try to cover up their purchase histories
17 because if you go to the same pharmacy seeing the same clerk
18 all the time, they're gonna recognize you and may tip off law
19 enforcement. But they like to conceal their movements by
20 going to different places to buy pseudoephedrine and that's
21 something I noticed on her.

22 Q. So the three purchases that you saw on October 29th
23 were at three different pharmacies?

24 A. No. I'm sorry. She was blocked once, tried it
25 again and blocked and that was at referring to my notes, that

1 was at the Walgreens. She was trying to purchase 2.4 grams
2 and she went to a CVS on Ashley Prospect Road and purchased
3 1.2 grams which fell within that threshold where she was able
4 to make purchases. Now, if she was to go to the next store
5 after she made that one, she would have been blocked. She
6 would not have been able to buy pseudoephedrine.

7 Q. And then after you saw this, what did you do?

8 A. I decided that the next day I wanted to - we had
9 already gone so I wanted to try and do a knock and talk at the
10 house to further my investigation.

11 Q. Okay. And what happened, I guess this would be
12 October 30th, explain what happened when you conducted the
13 knock and talk?

14 A. Myself and Detective Lundberg and Detective Allen,
15 we went to the house. We're undercover officers but we wear
16 identifiable clothing when we're going to do these
17 investigations. So we were dressed out with police
18 paraphernalia, Sheriff's Office. Went to the house and
19 knocked on the front door and after the knock, I could see
20 above the second floor to the right of the door someone look
21 through the window through the blinds. I asked them to come
22 to the door. No response. So I knocked on the door again and
23 Detective Lundberg was in the neighbor's yard on the side of
24 the house and alerted me that someone had come to the side
25 window, removed a fan from the window and closed the window.

1 So I knocked on the door again and the person had
2 moved to the left of the door upstairs again, looked through
3 the window and I asked them to come down to the door. I
4 apologize. I have to back up. The first time they looked
5 through the window was downstairs. I believe it was the
6 laundry room window just to the right of the door. So they
7 looked out that window, closed the window on the side of the
8 house, and then looked through another window at the front
9 left of the door. Finally Kotowski came up to the door and I
10 introduced myself and explained to him why we were there.

11 MR. WARD: May I approach the witness, Your Honor?

12 THE COURT: You may.

13 BY MR. WARD:

14 Q. Do you recognize that photo?

15 A. I do. This is the front exterior of 111 Marsh Point
16 Drive.

17 Q. Is that a fair representation of the house that
18 night?

19 A. It is except for the bushes here covering the window
20 that I was speaking about when they first came out.

21 MR. WARD: Would you like me to admit this as
22 State's exhibit or Court's exhibit for this hearing?

23 THE COURT: Court's exhibit right now.

24 MR. WARD: Court's Exhibit.

25 THE COURT: Any objection?

1 MR. FALK: No objection.

2 MR. WARD: May I publish, Your Honor?

3 THE COURT: It's admitted. Yes, sir.

4 BY MR. WARD:

5 Q. Just to clarify, so obviously you were at the front
6 door?

7 A. Right.

8 Q. Could you point, and you can actually circle on the
9 screen, show where you saw people when you first knocked?

10 A. Sure. When I knocked the first time, the window
11 here is obscured by the plant, but we were standing right here
12 so you could see that window clearly. They came to the blinds
13 and opened up the blinds with their fingers. I asked them to
14 come outside. The next time they went - you can't see the
15 window from this side, but it's on this side over here, they
16 removed a fan from the window, closed the window. After
17 knocking again, they came to this window and peered through
18 the blinds and that's when Kotowski finally came to the front
19 door.

20 Q. Okay. Then what happened when Mr. Kotowski came to
21 the front door?

22 A. As soon as he came to the front door I was
23 immediately overwhelmed with the odor of ammonia. I could
24 smell it coming from his clothes and his person. That set a
25 light off for me because I know that methamphetamine cooks

1 using a one pot method you're creating ammonia gas so I felt
2 that there might have been a lab going on inside the house.

3 Q. At that point did you speak with Mr. Kotowski?

4 A. I did. If I can refer to my notes. He came to the
5 door. I asked him who he was. Identified himself as
6 Kotowski. He tried to close the door behind him. I'm sorry.
7 He did close the door behind him as soon as he walked out. I
8 detected the overwhelming odor of ammonia. While talking to
9 him he appeared to be very nervous. I asked him if he lived
10 there. He said he did not. I asked if Michelle Vining was
11 home. He said she wasn't. I asked who he was here with. He
12 told me only his girlfriend Lisa. I asked him to have Lisa
13 come outside. And so he went to go back inside to get her,
14 attempted to close the door but I held the door open so I
15 could see what was going on because I smelled the ammonia. I
16 asked him just to call for her to come out. He called for
17 her. She never came. Then he went upstairs and eventually
18 she came back down also with him.

19 Q. And then at that point what happened after they were
20 both out of the house?

21 A. I took Lisa to the end of the driveway and -- I say
22 Lisa -- Michelle, explained to her who I was and asked her if
23 she lived at that residence. She said she had, referring to
24 my notes here, I believe she said three years she's lived
25 there. I asked her if she knew where Michelle Vining was.

1 She said that she did not. I believe she said she was with
2 her boyfriend. I explained to her that we were there because
3 of a tip of drug activity, specifically manufacturing
4 methamphetamine. She told me that Michelle had told her that
5 a couple people had done something like that at the house
6 before, but they had all left, had been removed from the
7 house. I told her that Michelle had purchased or attempted to
8 purchase pseudoephedrine three times the night prior. Told
9 her that smelling the ammonia on her boyfriend Kotowski I
10 believed that they were manufacturing methamphetamine in the
11 house right at that moment.

12 I asked her if she would consent to a search of the
13 property. She said that she needed to call Michelle because
14 she didn't think she could give permission. I explained to
15 her that if she's lived there for three years, she had the
16 absolute right to grant permission if she wanted to. After
17 asking her again, trying to explain it to her, after asking
18 her again she said no, and I informed her that we would obtain
19 a search warrant for the residence. I did ask her if anybody
20 else was inside the house and she was pretty deceptive about
21 her answer and kind of hem hawing, so that was the reason,
22 based on many, why we went inside the house to do the
23 protective sweep. One to preserve any evidence inside there.
24 Having smelled the ammonia which is -- The ammonia is usually
25 contained in the bottle that they are cooking or manufacturing

1 in and it's not released except for a little what you call
2 burping the bottle basically. You're relieving pressure in
3 the bottle so ammonia gas escapes but not enough to where it
4 would just saturate your clothing.

5 I believed that something more was going on there so
6 I told Detective Allen and Detective Lundberg to go inside the
7 house and do a protective sweep and make sure nobody else was
8 inside the house because I saw three different activities at
9 windows and we've got two people so to make sure nobody else
10 was inside, to preserve any evidence that was inside there,
11 and also to make sure there was no active methamphetamine lab
12 in progress?

13 Q. Are there dangers associated with leaving a
14 methamphetamine cook unattended?

15 A. Absolutely. You're dealing with -- Depending on
16 what method you're cooking, this one was a one pot or a shake
17 and bake, you're dealing with lithium metal and lithium metal
18 reacts to the water. While you're manufacturing this method
19 you're actually manufacturing water ammonia so you have an
20 explosive hazard. Let alone it's in a bottle under pressure
21 with a lot of fuel, white gas, so you have an explosive
22 hazard.

23 Q. So Detective Allen and Detective Lundberg did a
24 protective sweep and then were you able to secure a search
25 warrant?

1 A. Yes. Prior to that I stayed with Kotowski and
2 Vining. They did the protective sweep and they came back out
3 and told me - they told them to stand up and place their hands
4 behind their back because they ran into a gaseous atmosphere
5 inside the house. They explained to me what they saw and
6 having my knowledge of meth labs and my experience, I don't
7 know if I can give my opinion, but I believe that while we
8 were knocking on the door, one of the two had removed the
9 contents of the one pot bottle and flushed it in the toilet
10 which created a gaseous atmosphere and that's what they
11 encountered inside the bathroom and the hallway that they were
12 clearing. I did call another detective, Detective Strickland
13 and provided him all the information that I had on scene and
14 we were able to secure a search warrant for the residence.

15 Q. And before Detective Strickland secured the search
16 warrant, did he contact you to make sure the search warrant
17 was correct before he presented it?

18 A. Yes. We have a rule, any time we get a search
19 warrant, a supervisor has to be notified so he can listen to
20 it before it's sent to a judge. But we also have the person
21 that's writing it call the case agent to make sure that
22 everything that they wrote because they're not on scene, but
23 to make sure everything they wrote is correct so there is no
24 misunderstanding or any information that was miscommunicated
25 into the warrant. So he read the entire search warrant to me.

1 I approved it and he went to the judge to get it issued.

2 Q. So is that common practice with your unit where you
3 may since you're out at the scene you may call someone to
4 actually get a search warrant signed?

5 A. Yes. We have done it many times, yes.

6 MR. WARD: No further questions.

7 THE COURT: Cross examination.

8 CROSS EXAMINATION

9 BY MR. FALK:

10 Q. At the beginning of your testimony you said that
11 there were other individuals at the house doing suspicious
12 purchases of methamphetamine?

13 A. When I ran the address through NPLeX, besides Vining
14 and Brian Edwards there were two other individuals' names that
15 came up.

16 Q. You haven't provided any of that information to the
17 Court, have you?

18 A. Other than just what I told you, no.

19 Q. I mean, we haven't seen logs?

20 A. No.

21 Q. Do you know the names of these individuals?

22 A. Not now I don't.

23 Q. You had prepared an incident report; is that
24 correct?

25 A. That's correct.

1 Q. You didn't mention any other individuals' names in
2 that incident report, did you?

3 A. Well, those people weren't there at the time. No, I
4 did not.

5 Q. Okay. And you attended a preliminary hearing in
6 this case?

7 A. I believe I did, yes.

8 Q. And the purpose of the preliminary hearing is
9 somewhat to establish probable cause, is it not?

10 A. Yes.

11 Q. Did you mention the names of any other people at the
12 house?

13 A. They weren't at the house.

14 Q. You said there were other suspicious purchases?

15 A. On the logs. I don't know if I confused you. When
16 I ran the address through the NPLeX, it hits on different
17 things. Address, relationship to start. If I had a sister,
18 their name could pop up. This one was address. These people
19 used that address at one time but those people weren't at the
20 house.

21 Q. How long ago were those purchases?

22 A. A good while.

23 Q. Okay. So there is really nothing about those
24 purchases that would have alerted your suspicion about this
25 house, is there?

1 A. No, sir.

2 Q. When did you run the NPLEx on Mr. Kotowski?

3 A. After his arrest. I did not know of Mr. Kotowski
4 prior to that date.

5 Q. After his arrest?

6 A. Correct.

7 Q. When was he arrested?

8 A. October 30th.

9 Q. Is that before or after you got the search
10 warrant?

11 A. When we got the search warrant?

12 Q. Yes.

13 A. He was detained once the officers came out of the
14 house and told me that there was a gaseous atmosphere in the
15 house. Got the search warrant and then he was arrested after
16 the search.

17 Q. And then you ran his NPLEx?

18 A. Correct.

19 Q. Thank you. Did anyone -- You said that Officer
20 Strickland actually prepared the affidavit; is that correct?

21 A. Correct.

22 Q. And you gave him the information?

23 A. Correct.

24 Q. Did anyone else give him information?

25 A. Not that I know of.

1 Q. So all the information that Officer Strickland would
2 have been given would have been information from you; is that
3 correct?

4 A. As far as I know, yes.

5 Q. When did you put in the alert for Ms. Vining?

6 A. May I refer to my notes?

7 Q. Absolutely.

8 A. On June 13th.

9 Q. That's when you set up the alert?

10 A. Yes.

11 Q. So you set up the alert at the same time you
12 looked?

13 A. Yes.

14 Q. Okay. Thank you. Now, you got an anonymous tip on
15 June 13th; is that correct?

16 A. Correct.

17 Q. Did you do -- What did you do to corroborate the
18 information from that tip?

19 A. I ran the address into NPLeX and I also did some
20 surveillance, drive-by surveillance to try to identify anybody
21 that might have been at the house, see any type of activity.

22 Q. Was there anything from your drive-by surveillance
23 that helped you corroborate the tip?

24 A. A vehicle belonging to a William Cherry who I know
25 his father is a convicted manufacturer of methamphetamine.

1 Q. So you found the son of somebody, not Mr. Cherry?
2 You found his son's car; is that correct?

3 A. That is correct.

4 Q. Thank you. So between -- And the tip, did they tell
5 you that -- The person who gave you the tip give you any basis
6 for why he thought the people were -- He was relaying a
7 conversation he heard; is that correct?

8 A. Correct. It was totally third party. He said I
9 don't have any specific information. I just have people
10 telling me about this address. They believe drug activity is
11 taking place there and he wanted it to be looked into.

12 Q. Did he give you any basis for why he believed the
13 tip?

14 A. Not really. That's why I started looking into it.

15 Q. Okay.

16 A. That's why I did the things I did to see if there
17 was any validity to it and when I saw what I did, I felt that
18 there was validity to it and I continued looking into it.

19 Q. And what you saw was the car owned by the son of
20 somebody who had an arrest?

21 A. Not only that. I saw that a person was making
22 substantial pseudoephedrine purchases that is well beyond the
23 means of any normal person taking pseudoephedrine. That is
24 what I call a clue.

25 Q. You didn't find -- But that -- There was no unusual

1 purchases between June and October; is that correct?

2 A. May I refer to my notes?

3 Q. Absolutely.

4 A. If you have the discovery, I included the
5 pseudoephedrine log in there. You can see from the purchases
6 that she was making multiple purchases throughout the month
7 from June until October and then after the three
8 pseudoephedrine purchases I felt to go by there and take a
9 swing at it and see what we can find.

10 Q. If you have the same log I have, there was no
11 purchase in the month of June, no purchase in the month of
12 July, no purchase in the month of August.

13 MR. WARD: You're looking at the wrong log.

14 MR. FALK: May I approach Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. FALK:

17 Q. I'm showing a you a document that was provided to me
18 as part of the discovery in this case. Is that the log?

19 A. Yes.

20 Q. Okay. Is there another log?

21 A. No.

22 Q. Thank you. How were you able to identify that this
23 was the log?

24 A. Because any time I print the log, this is what I
25 get. But down here at the bottom it says Justice Exchange

1 which is part of the NPLEx.

2 Q. And it has her name on it?

3 A. It has her name on it.

4 Q. Okay. So you're free to look at your notes, but did
5 you see any purchase in the month of June?

6 A. I didn't see any in June, but I see in May she had
7 two purchases on the 23rd and the 19th and in April two
8 purchases on the 23rd and the 4th, and in March one purchase
9 on the 27th.

10 Q. Okay. So the purchases in April that alerted you
11 that was, I guess that was buying -- Just so I understand,
12 look at the purchase for August 4th, 2014. Do you see that
13 line?

14 A. August 4th?

15 Q. I'm sorry. April 4th.

16 A. Yes.

17 Q. All right. It says decongestant and then to the
18 right of that it says 2.4.

19 A. Correct.

20 Q. And that's the amount of grams of sudafed?

21 A. That's correct.

22 Q. Okay. So she went to the drug store twice in April,
23 twice in May, and then at no time for the summer all the way
24 until the first of September; is that correct?

25 A. Correct.

1 Q. And it's your testimony that going buying
2 pseudoephedrine twice in a month is suspicious?

3 A. And having other people that were purchasing it also
4 raised a flag.

5 Q. What information do you have that other people were
6 purchasing it?

7 A. When I ran the address on the log the other four
8 people that popped up.

9 Q. Okay. And do you have those logs here for us to
10 see?

11 A. No, I don't.

12 Q. Okay. I think you said some of those you weren't
13 really relying on but they were quite a long time ago,
14 correct?

15 A. Yes, sir.

16 Q. Okay. I just want to -- The part that -- You refer
17 to two purchases at the Walgreens on October 29th.

18 A. Two attempts.

19 Q. Two attempts?

20 A. Yes, sir.

21 Q. Does this log show when they were done?

22 A. Yes, sir.

23 Q. What's the time period between the two attempts?

24 A. Looks like 15 seconds.

25 Q. Okay. Is it your understanding that you could make

1 an attempt and in 15 seconds go to a different cashier and
2 make another attempt?

3 A. No. They didn't go to a different cashier. It was
4 the same store.

5 Q. Okay. So is this not unlike asking the cashier at
6 the BiLo to run your credit card again when it got denied?
7 Just wanted to recheck it?

8 A. I don't know.

9 Q. You're making it sound like it's two attempts but it
10 seems to me there was just one attempt 15 seconds apart?

11 A. Yeah. It was two blocks. They were blocked from
12 purchasing.

13 Q. Okay. But there was no attempt to go any other
14 place to buy it that she was blocked; is that correct?

15 A. No. She went to the CVS at 9:27 p.m. the same day
16 and purchased 1.2 grams of pseudoephedrine.

17 Q. Okay. And that's a legal purchase; is that
18 correct?

19 A. 1.2 grams fell within that threshold. If you look
20 at the first one that was blocked to the right where it says
21 compliance, federal compliance, says nine grams in 30 days
22 federal and then South Carolina compliance it says nine grams
23 in 30 days, she purchased more than nine grams or that
24 purchase would have put her over nine grams within the 30
25 days.

1 Q. Okay. So when you walk up to the door and knocked
2 on October 29th --

3 A. October 30th.

4 Q. Excuse me. October 30th. -- can you just tell me
5 why you, what your suspicion was about the house?

6 A. I believe that the house was indeed involved in the
7 manufacturing of methamphetamine based on the purchase alerts
8 that I got the night before and the information I had from
9 seeing a convicted meth cook's vehicle belonging to the family
10 of a convicted meth cook, however you want to put that there,
11 seeing that there and all the other information that I was
12 given from the NPLeX logs by the other purchasers that were
13 not there, I had suspicion to believe that they were
14 manufacturing methamphetamine. I knocked on the door,
15 obtained a search warrant for the house and found a
16 methamphetamine lab that was in production while we were
17 knocking on the door.

18 Q. All right. So again you're saying that the other
19 NPLeX results that you got for that address were based in part
20 on your suspicion about the house; is that correct?

21 A. That gave me reasonable suspicion to go and look at
22 this house more, yes.

23 Q. Can you tell me right now here today when those
24 purchases were, what the quantity was and who made those
25 purchases?

1 A. I can log on the NPLEx and run the address and that
2 will give me the same names.

3 Q. Is there any indication that you did that?

4 A. Other than me testifying that I did it, no. I don't
5 have their names. They weren't arrested whenever we did the
6 lab at the house in June to October, three months, but I
7 didn't include their information in there, no.

8 MR. FALK: Your Honor, if I may, to the extent that
9 he's saying that he's relying on this information that
10 was not provided as part of the Brady materials, I'm not
11 sure that this is - we either have a Brady violation or
12 he should not be able to rely on that for reasonable
13 suspicion.

14 THE COURT: Solicitor.

15 MR. WARD: I was never provided any of that
16 information on the four other people that ran, that
17 popped up when the NPLEx was run. I know it does state
18 in the - I believe it states in the incident report --
19 Hang on just one second. In the incident report it
20 states on June 13th when he ran the log of the address,
21 it just states that Michelle Vining and Brian Edwards
22 were listed for the address as making pseudoephedrine
23 purchases.

24 Obviously we have Ms. Vining's purchase logs.
25 Nothing was provided with Brian Edwards because he was

1 not involved once the search actually was conducted.
2 About the other people that may have been on there our
3 contention even if Your Honor states we cannot use that
4 as part of the reasonable suspicions since it wasn't
5 provided, I think we will be fine without that.

6 THE COURT: Considering the circumstances, I don't
7 think it's a Brady violation. It's not exculpatory as to
8 getting us to this point as far as a suppression hearing
9 is concerned regarding your client so I'm going to allow
10 his testimony. He can limit it to Mr. Edwards and Ms.
11 Vining, but it merely gave him a rise for a reasonable
12 articulable suspicion that illegal activity was ongoing
13 for him to conduct an investigative knock and talk so
14 I'll allow it.

15 MR. FALK: Regarding Mr. Edwards there is no NPLeX
16 information in here. It was only a mention of a name.

17 THE COURT: There is nothing that prevented you from
18 calling him and talking to him. I don't think there is
19 any records where he's printed anything out regarding the
20 logs. I don't think that's a Brady violation and
21 certainly if you need time to talk to him, I'll allow you
22 plenty of time to talk to him if you need any time to
23 talk to him.

24 BY MR. FALK:

25 Q. Do you have any information right now as to how many

1 purchases Mr. Edwards made?

2 A. Not in front of me, no.

3 Q. Do you recall how many?

4 A. It was enough to pique my interest.

5 Q. And two purchases in one month is enough to pique
6 your interest?

7 A. Yes. Two months. If you read a pseudoephedrine
8 box, it tells you don't continue it for more than two weeks.
9 Two purchases of 2.4 grams, 1.4 grams, that exceeds a doctor's
10 recommended instructions on how to take it. If you give me
11 Internet access, I can pull those records and show you and
12 give you a copy of that.

13 Q. Let's move on then. You had said that when you
14 walked up to the house, you had said something about another
15 officer was in the neighbor's yard?

16 A. Correct. On the side of the house, yes.

17 Q. Can you just point --

18 A. It would have been on that side.

19 Q. Okay. And I think there was some testimony about a
20 frog, obviously we're saying an affixed room over the garage.
21 Did you - do you have any information that there is a room
22 above the garage?

23 A. Yes. That's going to be the room above the
24 garage.

25 Q. Okay. Do you know which window he saw the fan

1 from?

2 A. It would have been on the side. You can't see it
3 from here, but this side of the house.

4 Q. Did you see the fan be pulled in from the window?

5 A. I did not, no. I was at the front door.

6 Q. Did you think that that fact was meaningful that the
7 fan was removed from the window?

8 A. Yes, sir. When you're, again, making
9 methamphetamine, you're creating vapors that you want to get
10 out so the fan would draw that out or it could be turned
11 around. I don't know how that fan was facing. It could have
12 been put inside to draw fresh air into the house.

13 Q. What significance did you draw from the fact that
14 they took the fan out of the window?

15 A. Probably so that you wouldn't smell the odor.

16 Q. Again, an officer told you about the fan?

17 A. One of my detectives, yes.

18 Q. And that sort of lead to, did that lead to your
19 belief that there was more than one person in the house?

20 A. That and someone looking out two different windows,
21 yes, sir.

22 Q. Well, you have testified about the two different
23 windows. Were you able to identify them as one person or two
24 persons?

25 A. No, sir. I couldn't tell. The only thing, see

1 these blinds on the window? They just peered through the
2 blinds. You could see the blinds move so I wouldn't be able
3 to say if it was a male or female looking through the
4 window.

5 Q. That certainly could have been the same person each
6 time; is that correct?

7 A. I'm sorry.

8 Q. That could have been the same person each time; is
9 that correct?

10 A. It could have been, yes, sir.

11 Q. It didn't happen simultaneously, did it?

12 A. No.

13 Q. And the blinds were all drawn so there were no open
14 windows that you could just see in, were there?

15 A. No.

16 Q. Between June and October you didn't attempt any
17 controlled buys at that house, did you?

18 A. No, sir. I didn't have an appointment at that
19 time.

20 Q. Okay. Between June and October you didn't get any
21 additional tips about that house; is that correct?

22 A. No, sir.

23 Q. And it's identified as an anonymous tip. Do you
24 know the identity of the person who gave you the
25 information?

1 A. No, I don't. I just know it was a male caller. He
2 specifically told me, he said this is things that I have been
3 told by other people. He told me it was third party. He had
4 no specific knowledge.

5 Q. Now, you spoke, I think it was your testimony that
6 you spoke privately with the female, Ms. Vining, and you left
7 Mr. Kotowski up by the door and you walked with her, I believe
8 it was your testimony, down to the end of the driveway?

9 A. Correct.

10 Q. Did you notice the smell of methamphetamine on
11 her?

12 A. Well, it would have been ammonia, but no, I didn't
13 smell any ammonia on her.

14 Q. If you would have smelled the ammonia on her, would
15 that have been something significant?

16 A. Yeah.

17 Q. Now, you never saw anybody flushing anything down
18 the toilet; is that correct?

19 A. No, sir.

20 Q. Is there any trace other than what you have
21 testified to regarding the gas, would there be any other
22 evidence that something was flushed down the toilet?

23 A. Well, the vessel, I call it a vessel, it's basically
24 a bottle, a drink bottle that they found had residual amount
25 of meth, pseudoephedrine, uhm, sodium hydroxide and ammonia

1 nitrate in the bottle. The atmosphere that they came into
2 inside the house was gaseous led me to believe that while
3 either at one point when we were knocking on the door or while
4 talking to Kotowski that bottle was dumped into the toilet and
5 it was flushed.

6 Q. I'm not sure if you were just being more precise or
7 -- The vessel that you found, was there methamphetamine in
8 there or was it still just part of the - was there
9 methamphetamine in the vessel or just the salts?

10 A. I would have to look at my notes to tell you what
11 the lab reports say. We tested it, I believe. And I don't
12 have the other copy of the lab report. Sorry. But we did
13 take a small liquid sample of it from a bottle but I don't
14 have the lab report.

15 Q. Okay. It's your testimony that you got the search
16 warrant and then you ran Mr. Kotowski's NPLEx?

17 A. No. I ran it later in the evening once we were back
18 at the office.

19 Q. Okay. When you ran it, did you find anything
20 suspicious about his purchases?

21 A. May I refer to the log?

22 Q. Absolutely.

23 A. I see that Mr. Kotowski started purchasing
24 pseudoephedrine in, we have logs from 2009. Just a little
25 back story on NPLEx. They didn't start requiring pharmacies

1 to report until 2010. At that time only CVS was reporting so
2 the numbers would be skewed a little bit. But on September
3 the 26th and September the 17th, 2014 he made purchases of 2.4
4 grams each of pseudoephedrine.

5 Q. They say that's a ten count; is that right? Is that
6 what the ten CT means?

7 A. Correct. That would be ten count. That would be
8 ten pills.

9 Q. Between the 17th and the 26th that's about ten days
10 away?

11 A. Just short, yes.

12 Q. Okay. So that would indicate that he was possibly
13 taking one pill a day?

14 A. Sure.

15 Q. Then there are no purchases. Then there is one
16 purchase in March?

17 A. Correct.

18 Q. Two purchases in July?

19 A. That would be 2013.

20 Q. Okay. All right. You never got an alert about Mr.
21 Kotowski's purchases; is that right?

22 A. As I said before, I never heard of Mr. Kotowski
23 prior to this day.

24 Q. When you were looking over his log, there is no
25 indication that he was ever refused a purchase, is there?

1 A. No, sir. Not that I see, no.

2 Q. Did you pat Mr. Kotowski down or Ms. Vining down?
3 Did you do a Terry pat?

4 A. I'm sure they would be pat down for weapons when we
5 detained them.

6 Q. Did you find any weapons?

7 A. No.

8 Q. You didn't find any weapons in the house, did you?

9 A. Not to my knowledge, no.

10 Q. That would have been something you would have looked
11 for?

12 A. Yes, sir.

13 Q. What is your fear about officer safety? Did you
14 fear there was somebody else in the house?

15 A. I didn't know if there was anybody else inside the
16 house.

17 Q. Okay.

18 A. When I talked to Vining who lied to me about her
19 identity as well as Mr. Kotowski, seeing activity at the
20 windows, not knowing how many people were inside there,
21 smelling the ammonia emitting from his clothing because he was
22 saturated in it, I didn't know if anybody was inside the
23 house. We were getting the search warrant so we secured the
24 house to preserve any evidence to make sure there wasn't an
25 active methamphetamine lab inside the house and to make sure

1 nobody else was in there.

2 Q. You said that Officer Strickland read the search
3 warrant back to you?

4 A. Yes, sir.

5 Q. And you agreed that it was accurate. Is that the
6 purpose of it?

7 A. To make sure that he didn't misunderstand anything I
8 told him and put anything that wasn't true into the
9 affidavit.

10 Q. Do you have a copy of the search warrant
11 affidavit?

12 A. Yes, sir.

13 Q. Could you look at page two of three of the
14 affidavit?

15 A. Yes.

16 Q. In the third line of text under your reasons.

17 A. Yes.

18 Q. Okay. Does that line say anything about a smell
19 coming from Lisa?

20 A. It does.

21 Q. Where would that information have come from?

22 A. It would come from me.

23 Q. And you testified earlier that you did not smell
24 anything on her?

25 A. I didn't note it in my report. That's why I said

1 no.

2 Q. Would that have been something that you would have
3 noted in your report?

4 A. Should have, yeah.

5 Q. You knew that she was the owner of the house at the
6 time, right?

7 A. At the time I thought her name was Lisa. That's why
8 it says Lisa. She mislead me to her identity as well as Mr.
9 Kotowski.

10 Q. When did she tell you that she was Ms. Vining?

11 A. After she was detained and I told her that she
12 needed to give me her information as far as her name and all
13 of that. She said she wouldn't give me her name. I told her
14 she would be booked in as Jane Doe until her fingerprints came
15 back from SLED and she offered to give me her correct
16 information.

17 Q. Okay. If you look at page 3 of the affidavit, you
18 have a reference there to Mr. Kotowski's sudafed purchases?

19 A. I do.

20 Q. You referred earlier that you didn't recognize
21 Mr. Kotowski until you got back to the office; is that
22 correct?

23 A. That would have been my mistake. I do recall
24 actually running it now while we were on scene. I didn't get
25 that far in my notes.

1 Q. Did you include that in your investigative report?

2 A. Give me a moment. Actually Detective Strickland
3 would have ran that while he was getting the search warrant.

4 Q. Okay.

5 A. I gave him Kotowski's information and asked him to
6 check it and he would run that while it was performed, or
7 writing out the affidavit report.

8 MR. FALK: I don't believe I have any further
9 questions at this time.

10 THE COURT: Redirect examination.

11 MR. WARD: Real quick.

12 REDIRECT EXAMINATION

13 BY MR. WARD:

14 Q. So you stated that you placed Ms. Vining on alert on
15 the NPLeX back in June of 2014, correct?

16 A. Correct.

17 Q. So would you have been alerted to all of, every time
18 she attempted to purchase between June and then when you did
19 the knock and talk in October?

20 A. Yeah. Any activity with her information as far as
21 attempts to purchase, blocks, anything like that I would get
22 an e-mail notifying me.

23 Q. Okay. So could you tell us how many purchases she
24 had from June up until that October 30th date?

25 A. I'm referring to my case notes here. From June

1 until October 30th she had three in September, she had nine
2 activities either being blocks, returns or purchases in
3 October.

4 MR. WARD: Thank you. No further questions.

5 THE COURT: You may step down, sir. Thank you.

6 Call your next witness.

7 MS. MIMS: The State call Brandon Allen.

8 Thereupon,

9 BRANDON ALLEN

10 after having been first duly sworn, testified as follows,

11 MS. MIMS: May it please the Court.

12 THE COURT: Yes, ma'am.

13 DIRECT EXAMINATION

14 BY MS. MIMS:

15 Q. Detective Allen, where are you employed?

16 A. I am employed with the Dorchester County Sheriff's
17 Office.

18 Q. How long have you been with Dorchester County?

19 A. Going on three years now.

20 Q. What specifically do you do with Dorchester County
21 Sheriff's Department?

22 A. I'm assigned to the Dorchester County Summerville
23 metro narcotics unit task force.

24 Q. Just very briefly what are some of your, what's your
25 job description?

1 A. We investigate any and all narcotics violations that
2 come in that are either self generated through the unit or
3 through complaints whether they be anonymous or sent in
4 through the community or any, pretty much any entity.

5 Q. Okay. And were you working on October 30th, 2014?

6 A. Yes, ma'am, I was.

7 Q. Do you remember that date?

8 A. Yes, ma'am, I do.

9 Q. Can you please tell the Court whether you had,
10 whether you responded to 111 Marsh Point Road at some point
11 that day?

12 A. Yes, ma'am. For the record, I'm referring back to
13 my notes the same way Sergeant Thompson was because it's the
14 same case file.

15 Q. Okay. Thank you.

16 A. On that date and time Sergeant Thompson, myself and
17 Detective Lundberg went to 111 Marsh Point Drive in reference
18 to a methamphetamine investigation that Sergeant Thompson was
19 investigating.

20 Q. Okay. What was going to be your role? What was
21 your understanding going to this location what exactly you
22 were going to do?

23 A. My role was basically a support role for Sergeant
24 Thompson as the primary investigator for the incident,
25 assisting a narcotics detective.

1 Q. You may have already answered this. How many people
2 were on the scene when you arrived from the Sheriff's
3 Department?

4 A. Three people total. Myself, Sergeant Thompson and
5 Detective Lundberg.

6 Q. Okay. So can you tell me what happened when you got
7 there?

8 A. Yes, ma'am. We arrived at 111 Marsh Point Drive
9 which is in Dorchester County. Myself, Sergeant Thompson went
10 to the front door. As Sergeant Thompson stated we were
11 clearly visibly marked as law enforcement. Detective Lundberg
12 went to the right-hand side of the house. Sergeant Thompson
13 and I approached the front door. We knocked for a period of
14 time. We did not get a response, but we did see people
15 looking through windows, things of that nature as Sergeant
16 Thompson testified to. Waited another period of time.
17 Knocked again. Then finally as testified by Sergeant Thompson
18 Mr. Kotowski eventually came to the door.

19 Q. Okay. When he came to the door, did he step outside
20 or did he stay in the doorway?

21 A. Yes, ma'am. He stepped out and closed the door
22 behind him. Immediately upon him stepping out and closing the
23 door it raised a flag for me. It was almost like he was
24 trying to distance himself from the house or possibly block
25 our view so to speak.

1 Q. Was it because he closed the door?

2 A. Yes, ma'am.

3 Q. Did you notice anything peculiar about Mr.
4 Kotowski?

5 A. I observed the same overwhelming ammonia smell that
6 Sergeant Thompson observed as he testified. We were in close
7 proximity to Mr. Kotowski so it was blatantly obvious what it
8 was.

9 Q. In your opinion was that smell permeating from his
10 body?

11 A. Yes, ma'am.

12 Q. And have you been in the narcotics division three
13 years as well?

14 A. Yes, ma'am.

15 Q. Have you ever been to a suspected house before that
16 was perhaps making methamphetamine?

17 A. Yes, ma'am.

18 Q. Did you recognize that smell?

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

20 Q. Okay. And what do you recognize about that smell?
21 I mean, what does ammonia trigger to you?

22 A. It triggers -- It's a -- It key triggers as a one
23 pot manufacturing methamphetamine process taking place is what
24 it triggered for me.

25 Q. Okay. When you were talking -- Or when Officer --

1 When you guys were taking to Mr. Kotowski, what was his
2 demeanor?

3 A. He was extremely nervous. I recall him looking
4 around, trembling, things of that nature. I wasn't directly
5 involved in the conversation that was taking place. Sergeant
6 Thompson being the lead investigator over the incident was
7 doing a lot of the talking.

8 Q. Okay. So what happened next?

9 A. Sergeant Thompson and Mr. Kotowski continued their
10 conversation in regards to anyone else in the residence. I
11 recall some lying going on about who Lisa was and there was
12 actually Michelle Vining who was present who we had determined
13 to be the home owner. Mr. Kotowski was instructed by Sergeant
14 Thompson to call Lisa downstairs. We needed to speak with
15 her. He attempted to go back inside and shut the door on us
16 at which point given the ammonia smell and given the reason we
17 were actually at the address in reference to a methamphetamine
18 lab, it was an officer safety reason we asked him to keep the
19 door open as Sergeant Thompson testified. He kind of held the
20 door open. We didn't know if he was going to pull a gun. We
21 didn't know what he was gonna do so that was our mind set on
22 that. Or mine at least. My mind set. I believe he hollered
23 a couple times for Lisa to come down. If I can I'll just
24 refer to her as Michelle Vining from now on so we don't have
25 confusion. She had come down. He walked up the stairs. They

1 came back down a brief time later and Sergeant Thompson and
2 Ms. Vining and Mr. Kotowski continued their conversation. The
3 details of that conversation I am not aware of. At which
4 point Sergeant Thompson requested consent as he testified, I
5 believe. Consent was denied at which point Sergeant Thompson
6 instructed myself and Detective Lundberg to conduct a
7 protective sweep of the residence so we could obtain a search
8 warrant.

9 Q. Can you please explain to the Court what a
10 protective sweep is?

11 A. A protective sweep is strictly looking for persons
12 inside a structure. We are not looking for evidence. We're
13 not going through drawers. We're not going through anything.
14 We're specifically looking for bodies or persons that might be
15 in the residence. We had already been lied to numerous times
16 since we had been there so we really didn't know who else was
17 inside the house.

18 Q. Were you also suspicious because of the people who
19 you thought might have been looking out the blinds?

20 A. Correct. We had a lot of movement there at the
21 beginning. People looking through blinds, people closing
22 windows, pulling fans out in different aspects of the house so
23 we were not sure how many people were in there.

24 Q. Okay. So when you went inside to perform the
25 protective sweep, was it just you?

1 A. It was myself and Detective Lundberg.

2 Q. Okay. And can you tell me mainly what your biggest
3 concern was walking through the house? You mentioned that you
4 do a protective sweep for many reasons. What was your number
5 one concern going through there?

6 A. My number one concern was persons. That was the
7 main concern. We don't know who else is in there. The second
8 would be preservation of evidence. Third, obviously given the
9 ammonia smell that we had, given the complaint, given the
10 investigation and what was going on upon our arrival, we were
11 concerned that we also possibly had an activity
12 methamphetamine lab taking place.

13 Q. Okay. Can you tell the Court about the sweep, what
14 happened when you got into the house?

15 A. Yes. Myself and Detective Lundberg like I stated
16 entered the residence to conduct the sweep. From my knowledge
17 and through my training and experience we cleared the
18 downstairs area the best we could and then we made our way
19 upstairs. You can see the stairwell from the entry point of
20 the front door. The stairwell is almost a, it's a secondary
21 stairwell that leads up to the second floor of the residence.

22 As we reached the top of the stairwell we
23 encountered a closed door straight ahead. That's also where
24 we encountered a heavy haze or a gaseous atmosphere. We
25 opened that door to ensure that there was no one hiding in

1 that room which ended up being a bathroom. Upon opening that
2 door is when we had the overwhelming smell of ammonia. The
3 same smell we had while talking to Mr. Kotowski downstairs.
4 From my memory it was extremely overwhelming to the point
5 where looking back on it Detective Lundberg and I probably
6 should have had protective gear on. We didn't know it was
7 that serious at that point and I believe that's, from my
8 memory we were pretty much holding our breath the rest of the
9 way through there at that point.

10 When we opened the bathroom to ensure that no one
11 was inside, we saw things in plain view like mason jars with
12 an unknown liquid on it, stuff like that just sitting out in
13 plain view on the counter or sink and other places. We
14 continued on down to a few more rooms that we had to clear to
15 make sure nobody else was hiding in the room or in the house.
16 We made it to last bedroom obviously and then we exited the
17 residence.

18 Q. Okay. When you're talking about going upstairs to
19 the top bathroom up there and you mentioned a haze, when you
20 opened that door, did it get a lot stronger?

21 A. Yes, ma'am.

22 Q. Okay. And based on your experience and training,
23 what would that be an indication of if there had been anything
24 illegal going on in there or what could have caused that
25 smell?

1 A. As Sergeant Thompson testified, I was under the
2 impression they had either dumped the lab out or they had just
3 recently were gassing it off or burping it. While we were
4 knocking on the door they were trying to dispose of it.

5 Q. Okay. You mentioned mason jars. Based on your
6 training and experience what does a mason jar mean to you?

7 A. It will hold any sort of fuel liquid or anything
8 like that that's utilized to manufacture methamphetamine. The
9 density of the glass mason jar is important due to the fact
10 that it won't fail as easily as like a plastic bottle so
11 anything corrosive or anything like that that needs to be
12 stored or separated or anything like that you're gonna see a
13 lot of mason jars from my experience, holding fuel and things
14 of that nature.

15 Q. Okay. So after you conducted the protective sweep,
16 did you see anything else in your mind that was, just while
17 you were doing the sweep -- Did you touch anything?

18 A. No, ma'am.

19 Q. Okay. Were you just looking with your eyes?

20 A. We were just looking for persons at that point.

21 Q. Okay. And did you see anything else that caused you
22 concern in the home?

23 A. As far as any of the equipment or anything like
24 that?

25 Q. Yes.

1 A. We didn't -- I don't recall seeing anything out of
2 the ordinary. We might have seen paraphernalia laying around
3 or something of that nature in some rooms but nothing that
4 stands out at that point. Detective Lundberg was also present
5 and there are certain things that you're going to see that the
6 other person won't be able to see.

7 Q. Okay. So what happened after you conducted the
8 sweep?

9 A. Once we executed the sweep and determined that no
10 one else was inside the residence, we exited the residence at
11 which point Detective Lundberg met with Sergeant Thompson
12 outside and explained what we had.

13 Q. Okay. And were there any effects on you personally
14 from being in the house once you had opened the bathroom
15 door?

16 A. At a later time there was when we executed the
17 search warrant. We had to don gear, Tyvek suits, respirators
18 for lack of a better term. They are called SCBA's. The same
19 thing firefighters wear so they can breath inside a house
20 that's on fire. Once we came out of the residence upon
21 completion of the execution of the search warrant, I believe
22 it was either Lieutenant Gibbons, I think that it was
23 Lieutenant Gibbons that conducted a pH of my gear and it came
24 back a very high level and I had to be decontaminated what
25 they call a wet decon which basically I had to be hosed down

1 by the fire department to ensure that I had no crossover
2 contamination or anything of that nature, health concerns for
3 me. We are cleared before we go into a meth lab by medical
4 personnel and we're cleared after we come out to ensure that
5 there's no health or safety issues.

6 Q. So you were contaminated?

7 A. Yes, ma'am.

8 MS. MIMS: I have nothing further. Thank you.

9 THE COURT: Mr. Falk.

10 CROSS EXAMINATION

11 BY MR. FALK:

12 Q. You had testified about a lot of activity. People
13 looking out windows when you walked up to the house?

14 A. Yes, sir. I was at the front door with Sergeant
15 Thompson.

16 Q. Sergeant Thompson testified that he saw one person
17 looking out upstairs, one person looking out of a window
18 downstairs?

19 A. Correct.

20 Q. Did you see anything more than that?

21 A. No. I saw the same thing Sergeant Thompson saw.

22 Q. And you didn't see the fan come out of the window?

23 A. No, sir. I did not. It was on the side of the
24 house and I didn't have a visual.

25 Q. When you testified about the last bedroom that you

1 all looked in, you go up the stairs then you turn to the
2 right, was that the last bedroom?

3 A. No, sir. It's actually from my recollection once
4 you come to the top of the stairwell where we encountered the
5 closed bathroom door which is where we got the overwhelming
6 smell, to my knowledge without a picture of it in front of me
7 and I don't have anything in my case file, I believe it turns
8 to the right. As you come to the top, there's a door to the
9 left which leads to a room, a bathroom door straight ahead
10 which is where we encountered the haze, it turns right and
11 then you have a door to your right, a door almost straight
12 ahead and the hallway turns left again and it's a little bit
13 longer hallway which leads to the room that I believe the fan
14 was pulled from.

15 Q. And is that over the garage?

16 A. Yes, sir. Correct.

17 MR. FALK: Okay. No further questions.

18 THE COURT: Any redirect?

19 MS. MIMS: No, Your Honor.

20 THE COURT: Thank you, sir. Please step down. You
21 may call your next witness.

22 MR. WARD: We would call Detective Lundberg.

23 Thereupon,

24 DANIEL LUNDBERG

25 after having been first duly sworn, testified as follows,

1 THE COURT: Your witness.

2 MR. WARD: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. WARD:

7 Q. Detective Lundberg, where are you currently
8 employed?

9 A. I am currently employed with the Dorchester County
10 Summerville metro narcotics unit.

11 Q. What is your title there?

12 A. I am a narcotics investigator.

13 Q. How long have you been working law enforcement?

14 A. I have been in law enforcement for almost about nine
15 years. Before that I received a bachelor's degree in law
16 enforcement.

17 Q. How long have you been with the narcotics unit?

18 A. Over five.

19 Q. Do you have any other certifications that go along
20 with drug investigations?

21 A. I'm currently clandestine lab certified as an
22 investigator and technician.

23 Q. Okay. About how many methamphetamine labs have you
24 investigated?

25 A. I could say over a hundred throughout the years.

1 Q. Now, were you on duty on October 30th of last
2 year?

3 A. I was.

4 Q. Tell us what your involvement was when you first
5 went to this address?

6 A. Sergeant Thompson had spoken with me and Detective
7 Allen said that he had some information that he received and
8 he wanted to follow up at 111 Marsh Point and asked for our
9 assistance to go with while he investigates the complaint so
10 the purpose of us coming was just to provide support to him
11 while he followed up on what he was looking at.

12 Q. When all three of you made it to the house, where
13 did you go?

14 A. Sergeant Thompson, Detective Allen, they went to the
15 front door. I kind of went around to the right side of the
16 house. There was a six foot privacy fence that kind of lead
17 around to the property. I was kind of there at the corner of
18 the privacy fence just to see if anybody was in the backyard
19 who may not hear us knocking on the door or anything like
20 that. While they were knocking, I just kind of hung out there
21 at that corner just to see maybe if somebody - I have had in
22 our experience sometimes when we knock on the door, people run
23 out the back. So I just stood kind of on the corner just to
24 kind of watch while they knocked on the door.

25 After a couple of minutes of hearing them knock, I

1 could hear them alerting who they were. There was a room that
2 I took was a frog. I didn't know until later that that's
3 exactly what it was, but a room kind of on my side of the
4 house that had a window fan in it and it was running. After
5 they had been knocking for a couple of minutes, I noticed
6 somebody come to the window, opened it up a little bit, took
7 the fan out and then shut the window which I thought was kind
8 of weird since they had been knocking and nobody is coming to
9 open up the door, you know; it was kind of strange. However,
10 I didn't know exactly what was going on because I was still on
11 the side of the house and it was kind of hard to hear.

12 So at that time I alerted Sergeant Thompson and
13 Detective Allen what occurred just to give them a heads up
14 that there is somebody moving around and which they did alert
15 to me that they did also have movement on their side as well
16 and they were trying to get the people to come at least down
17 so they could talk with them.

18 Q. I'm showing you Court's exhibit 1. Could you draw
19 on the screen what side of the house you were on?

20 A. I was over here..

21 Q. Over on that side?

22 A. Yes.

23 Q. And then once I guess Sergeant Thompson and
24 Detective Allen were able to get the occupants out of the
25 residence, did you conduct a protective sweep?

1 A. I did. Uhm, while that was going on, I heard
2 Detective Thompson kind of speaking with a male and kind of
3 almost sounded like there was a little bit of an altercation
4 at the door. I could kind of hear something so I kind of come
5 up and stood kind of on that corner and just kind of watched
6 as another female come outside and they talked. I stood on
7 that corner just kind of watching and just observing and then
8 Sergeant Thompson did ask for me and Detective Allen to go
9 ahead and do a protective sweep of the residence and as I
10 walked by, they were kind of here in the front area and as I
11 walked by I did, as the detectives before me testified, I
12 observed just by walking by a strong odor of ammonia on his
13 person as I went by and I kind of had an idea as I walked by
14 of what was going on with the protective sweep and everything
15 that we were probably essentially going to obtain a search
16 warrant and then we were going in to make sure there was
17 nobody else inside the residence.

18 At that point myself and Detective Allen entered the
19 residence, you know, notifying if anybody was inside that we
20 were coming and cleared the residence on the first floor and
21 then slowly made our way up the stairs that kind of wended
22 around to the second floor. At that time as we come up the
23 stairs we saw that there was a door facing us that was closed
24 and the light was on. You could see it coming from under the
25 door. We challenged that door for a second to notify if

1 anybody was in there to come out and at that time you could
2 start to really smell the smell of ammonia that I noticed on
3 the defendant's person. As you were coming up the stairs you
4 started smelling it a little stronger and a little stronger.

5 As soon as we opened the door after not getting an
6 answer, as soon as we opened the door it was like a haze that
7 was contained in that bathroom. It was a very overwhelming
8 smell of ammonia that was coming along with the haze. As we
9 took a peek inside, I kind of walked in and went towards the
10 toilet in the back area. I observed multiple mason jars on
11 the counter, multiple bottles. I observed what appeared to be
12 some chemicals on the floor next to the toilet with the toilet
13 open. To me just seeing that and the overwhelming smell and
14 the kind of haze and gas in the air, it kind of made me
15 believe that something was recently probably dumped down the
16 toilet or the sink. With the toilet I assumed that it
17 probably would have been the toilet. That was what I was kind
18 of thinking at that time.

19 And as Detective Allen testified I didn't feel
20 comfortable. I don't feel that I should have been in that
21 circumstance the way I was without any kind of breathing
22 protection. Usually we'll wear a mask with filters that help
23 filter out all of the chemicals in the air so we are not
24 breathing it, you know, into our lungs and causing damage. So
25 I attempted for the rest of the time while we cleared holding

1 my breath so I didn't continue to breathe it.

2 While we continued, as Detective Allen testified, it
3 did take a right at the stairs where there was a bedroom here
4 and then almost a bedroom straight ahead which appeared to be
5 a child's bedroom. It had a lot of toys and different things
6 in there like that that appeared that it was probably their
7 bedroom. While going in there I did observe in plain view a
8 bag of tools. There was a camp fuel container laying next to
9 the bed and I did observe some other bottles near the closet
10 as I went to make sure that there was nobody hiding in the
11 closet and come out and made our way to the frog which is the
12 last room that I remember clearing before we come out where we
13 did observe some paraphernalia things and possibly
14 methamphetamine. We saw, I saw a powder substance that I
15 believe was later tested and field tested presumptive for
16 methamphetamine.

17 Q. During the protective sweep, did you yourself touch
18 or move anything inside the house?

19 A. I may have touched closets just to move them out of
20 the way just to see, but as far as the evidence that I named
21 like the bottles and stuff I didn't pick anything up. I
22 didn't open any drawers or anything. Just basically anywhere
23 where there could be people hiding.

24 Q. I'm showing you what's marked as State's 2 and 10
25 for identification purposes. Do you recognize those photos?

1 A. I do.

2 Q. Tell me which one you're looking at and what you see
3 in those photos?

4 A. I believe it is number 2, State's exhibit is a white
5 wicker table with some kind of plastic container and a plastic
6 bag inside. That is what I mentioned as far as being in the
7 frog, the powder substance that I believe later field tested
8 presumptive for methamphetamine. And State's exhibit number
9 10 which I believe to be in the bathroom is the chemical
10 bottles that I mentioned coming in and seeing as I come to the
11 far side of the bathroom which was muriatic acid and sulfuric
12 acid.

13 Q. Are those fair and accurate representations of what
14 you saw that night?

15 A. They are.

16 MR. WARD: We would ask for State's 2 and 10 to be
17 admitted into evidence for this hearing, Your Honor.

18 THE COURT: Any objections?

19 MR. FALK: No objection.

20 THE COURT: We'll mark those as Court's 2 and 3 to
21 keep it consistent. They're admitted.

22 MR. WARD: Yes.

23 BY MR. WARD:

24 Q. I'm showing you Court's exhibit 2. Are these where
25 the bottles were when you were doing the protective sweep?

1 A. Yes, sir.

2 Q. What are the significance of those chemicals?

3 A. Those chemicals can be used in a hydrogen chloride
4 gas generator which is one of the final steps of
5 manufacturing. And it's where you combine either sulfuric
6 acid and salt or muriatic acid and aluminum foil to combine it
7 to make essentially an acid which creates a gas and which you
8 bubble it into the final solution of meth and it takes it from
9 a liquid form into like a salt, a usable form.

10 Q. Court's exhibit 3, again is this where you found --

11 A. Yes, sir.

12 Q. -- during your protective sweep?

13 A. Mm-hmm.

14 Q. What did you believe that may have been at that
15 time?

16 A. It was a white powder substance. I believed it to
17 be a narcotic, possibly methamphetamine due to just some of
18 the things that I observed coming through the house and the
19 door which lead me to believe that was a possibility.

20 Q. Okay. Then after you conducted the protective
21 sweep, were you involved in the execution of the search
22 warrant?

23 A. I was.

24 Q. During that search warrant were you able to recover
25 any items?

1 A. I was. We recovered multiple items.

2 Q. Were those items used in the manufacturing of the
3 methamphetamine process?

4 A. Yes, sir. Multiple items located within the
5 residence we believed to be used within the manufacturing of
6 the methamphetamine in particular the one pot method or shake
7 and bake which we collected multiple items of evidence and
8 they were submitted into evidence as well as multiple other
9 items that were found to be hazardous. We have contracted
10 through SLED where we have a clean up crew that comes to take
11 these hazardous items and dispose of them properly.

12 Q. Okay. I don't know if you have in your notes if you
13 can find the search warrant return?

14 A. The actual return itself?

15 Q. Yes. Did you find it?

16 A. Yes, sir.

17 Q. It states, I believe, that you were the one that
18 collected or seized the items referenced in the search warrant
19 return?

20 A. Yes, sir. During the course of execution of the
21 search warrant I initially videotaped the entry, us going into
22 the residence and kind of getting a realtime idea of where
23 everything was at, how the house was laid out and kind of
24 narrate some of the things that we found. Then at that point
25 once that was done detectives start to kind of search the

1 residence. It was a fairly big house. Two stories. Multiple
2 rooms. When detectives would kind of find something that they
3 believed to be involved as evidence or anything like that,
4 they would notify me and I would come and take a photograph of
5 where it was found and we would collect it and bring it
6 outside to the other assisting detectives.

7 Q. And could you tell us what items were seized that
8 are on the return?

9 A. Do you want me just to go through the list of the
10 things?

11 Q. Yes.

12 A. From the room over the garage we did collect a clear
13 plastic container which contained a clear plastic bag with an
14 off white substance. We collected aluminum foil containing a
15 glass in color smoking device, two aluminum smoking devices
16 which are commonly referred to as boats which contained
17 residue. We located a black in color cellular phone, a black
18 in color cellular phone also with a charger cord. And in
19 bedroom number 2 we located a plastic airline tubing which was
20 cut from the gas generator itself. We took off the tip of the
21 airline tubing that's usually put into the solution. We'll
22 cut the end of it off and send it in to be tested so we can
23 show that it was possibly used for the production of
24 methamphetamine. And in the bathroom 2 we located a clear
25 plastic bag containing an off white powder. We also had a

1 substance which we located where we took a sample that was
2 located in a green plastic bottle.

3 MR. WARD: Nothing further.

4 THE COURT: Cross examination.

5 CROSS EXAMINATION

6 BY MR. FALK:

7 Q. I'm going to ask the prosecution to play that tape.
8 But is the last room on that tape the frog?

9 A. I would have to review it. I would hate to be
10 wrong, but I do believe initially like I testified doing the
11 protective sweep as we kind of snaked our way through the
12 house the frog was the last room that we cleared before coming
13 out.

14 Q. And it had one window in it; is that correct?

15 A. I believe so. I believe it was the one that I saw
16 on the side of the residence where the fan was kind of laying
17 there against the wall.

18 Q. You had a view of the back of the house, did you
19 not?

20 A. Not necessarily. I was on the outside of the
21 privacy fence. I was kind of right there on the corner. I
22 could kind of see a little bit of the side of the backyard but
23 I didn't have like a good view of the back of the house. I
24 just kind of hung out right there on the side.

25 Q. You said that there was a fan?

1 A. Yes, sir.

2 Q. Is it one of those fans that fits the whole
3 window?

4 A. Yes, sir.

5 Q. You said you saw somebody remove the fan?

6 A. Yes, sir.

7 Q. Could you identify who that person was?

8 A. No, sir.

9 Q. Would there have been any reason -- Were you between
10 the protective sweep and concluding the protective sweep and
11 then coming back through for the video, did you ever go back
12 into the house?

13 A. No, sir.

14 Q. You testified that you didn't touch anything?

15 A. Besides moving like closets and stuff, yeah, I
16 didn't open drawers and, you know, move clothing or anything.
17 It was just purely trying to locate and make sure nobody was
18 hiding so we wouldn't be surprised later going in with suits,
19 without guns and everything and kind of being at the mercy of
20 whoever may have been in there waiting.

21 Q. And you never found any guns; is that correct?

22 A. Not that I remember. No, sir. But a weapon is a
23 weapon. You can use a baseball bat, a screw driver.

24 MR. FALK: Sure. Would y'all mind playing the tape
25 just from like 12 minutes into it? Your Honor, I thought

1 I was going to be able to hook it up but I needed a nine
2 pin connector with my computer. I apologize. I'm asking
3 the State if they would play the tape. It is lengthy so
4 I just thought if it's okay with the prosecutor we can
5 like fast forward it up until about 12 minutes into it.

6 MR. WARD: That's fine with me and technically a
7 foundation hasn't been laid for this but I'm not
8 objecting to it being played.

9 MR. FALK: I'm going to try and lay the foundation
10 while we do that.

11 THE COURT: All right. Proceed.

12 MR. WARD: But I have no objection to it being
13 entered.

14 THE COURT: For the purposes of this hearing?

15 MR. WARD: Correct.

16 MR. FALK: Put it in for the purposes of this
17 hearing.

18 (Whereupon, a videotape of the search was played.)

19 BY MR. FALK:

20 Q. Now, does that look like the tape that y'all made?

21 A. I believe so. I didn't really get to see it since
22 we went right through and paused it but yeah, I believe.

23 MR. FALK: Okay. Let's play some more.

24 (Whereupon, the playing of the videotape of the
25 search was continued.)

1 BY MR. FALK:

2 Q. Can you tell which room you're in?

3 A. Not without watching the whole thing through. I
4 believe we may be -- I can't say for sure. Maybe the kid's
5 room due to that cooler. That would be the kid's room.

6 Q. Okay. You had said that this is the frog?

7 A. Yeah.

8 Q. Do you think that is -- Do you agree -- I mean, I
9 just heard frog on the testimony. Do you think you're in the
10 frog right now?

11 A. Possibly, yeah.

12 Q. Let's keep playing it.

13 (Whereupon, the playing of the videotape of the
14 search was continued.)

15 BY MR. FALK:

16 Q. Can you look at the screen right now?

17 A. Yeah, I see it.

18 Q. Is that the fan?

19 A. I believe so.

20 Q. Do you have an explanation why it's in the window?

21 A. I don't.

22 MR. FALK: No further questions.

23 THE COURT: Redirect.

24 MR. WARD: Nothing, Your Honor.

25 THE COURT: You may step down, sir. Thank you. You

1 may call your next witness.

2 MR. WARD: Matt Strickland.

3 Thereupon,

4 MATTHEW STRICKLAND

5 after having been first duly sworn, testified as follows,

6 DIRECT EXAMINATION

7 BY MR. WARD:

8 Q. Detective Strickland, where are you employed?

9 A. Dorchester County Sheriff's Office.

10 Q. When did you start there?

11 A. September of this year.

12 Q. Where were you previously to that?

13 A. I was employed with the Summerville Police
14 Department assigned to the Dorchester Summerville metro
15 narcotics unit.

16 Q. How long had you been working with them?

17 A. I worked for Summerville Police Department about six
18 years. I think I was in the metro narcotics unit for about a
19 year and a half or so.

20 Q. Back on October 30th of last year you weren't
21 actually at the scene of this incident?

22 A. No, sir. Not when everything was taking place I was
23 not.

24 Q. Could you explain kind of how you became involved?

25 A. I was, while they were going out and doing what they

1 did, I was still at our office doing paperwork or something.
2 After a while Sergeant Thompson gave me a call, told me that
3 he needed a search warrant typed up so I typed up the
4 affidavit for the search warrant based on what he told me.
5 Once I was done with it, I called him back, read everything
6 that I had in the affidavit back to him to make sure
7 everything was the way it was supposed to be since I wasn't
8 there, he was the one that saw everything and stuff like that
9 so once I did that, I contacted the judge, met with the judge,
10 got it signed and brought it to them at the scene.

11 (Whereupon, Court's exhibit number 4 marked for
12 identification.)

13 BY MR. WARD:

14 Q. I'm showing you what's been marked as Court's
15 exhibit 4 for identification purposes. Do you recognize that
16 document?

17 A. I do.

18 Q. What is that document?

19 A. It's the search warrant affidavit that I typed up
20 and had signed by the judge.

21 Q. How are you able to recognize it as that?

22 A. My name is on it and it's my signature at the bottom
23 where I signed it when I met with the judge and it's what I
24 put.

25 MR. WARD: At this time, Your Honor, we would ask

1 for Court's exhibit 4 to be admitted.

2 MR. FALK: No objection.

3 THE COURT: All right. It's in.

4 BY MR. WARD:

5 Q. So Sergeant Thompson called you while you were at
6 the office. And I'm showing you Court's exhibit 4. Maybe
7 it's easier if you just look at it. I'll hand this back to
8 you. Did Sergeant Thompson give you all the information to
9 fill in?

10 A. He did.

11 Q. So the description of the property --

12 A. Correct.

13 Q. -- he gave you that information?

14 A. Yes, sir.

15 Q. Then as far as the affidavit goes he also gave you
16 all of that information?

17 A. Yes, sir.

18 Q. And did you do any other research or put anything
19 else that you found into the affidavit?

20 A. Is it okay if I look through it?

21 Q. Yes.

22 A. I did. I wrote up the names that he had at the time
23 and searched going through NPLeX.

24 Q. And you added that into that affidavit?

25 A. Correct.

1 Q. And then did you contact Sergeant Thompson before
2 you went and had it executed by a judge?

3 A. I did.

4 Q. Did you inform him that you had ran both the names
5 of the defendants through the NPLeX?

6 A. Yes, sir.

7 Q. Okay. When you took the search warrant to the
8 judge, do you remember which judge it was?

9 A. I believe, I think it was Judge Snowden, if I'm not
10 mistaken.

11 Q. Did she place you under oath --

12 A. Yes.

13 Q. -- before swearing out the search warrant?

14 A. Yes.

15 Q. Did you add anything orally to the search warrant
16 that wasn't typed up in it?

17 A. No, sir.

18 Q. What was the date that the search warrant was
19 executed?

20 A. The same date it was signed by the judge.

21 Q. What date was that?

22 A. It was the 30th of October 2014.

23 MR. WARD: Okay. Thank you. No further questions.

24 THE COURT: Cross examination.

25 CROSS EXAMINATION

1 BY MR. FALK:

2 Q. Did anyone other than Detective Thompson give you
3 information for the search warrant, other than the NPLEx, did
4 anyone other than Detective Thompson give you any
5 information?

6 A. No, sir.

7 MR. FALK: No further questions.

8 THE COURT: You may step down, sir. Thank you. Any
9 other witnesses?

10 MR. WARD: One more brief one. Sorry, Your Honor.
11 We call Detective James King.

12 Thereupon,

13 JAMES C. KING

14 after having been first duly sworn, testified as follows,

15 THE COURT: Your witness.

16 MR. WARD: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. WARD:

19 Q. Detective King, where are you currently employed?

20 A. The Dorchester County Sheriff's Office metro
21 narcotics unit.

22 Q. How long have you worked in law enforcement?

23 A. I've been in it almost eight years.

24 Q. And in October of last year were you working with
25 the narcotics unit?

1 A. I was.

2 Q. Could you tell us how you were involved in this
3 case?

4 A. Yes. I was at the office during the initial call
5 for the search warrant, Detective Strickland, and I was
6 notified that I needed to come on scene with other detectives
7 in regards to assisting Detective Thompson with his
8 investigation on the search warrant.

9 Q. Okay. What was your involvement when you arrived at
10 the scene?

11 A. My job at first was I stayed outside the residence
12 to watch Mr. Kotowski and Ms. Vining and once the process of
13 donning of the gear happened, I was to record the evidence
14 that was coming out of the house.

15 Q. Okay. Did you - were you taking notes during that
16 time?

17 A. Yeah. During the process of collecting evidence, as
18 Detective Lundberg was coming out of the house with evidence,
19 he was telling me what he had, where he found it and that's
20 what I recorded down for the search warrant return and also
21 for the incident report.

22 Q. I'm showing you Court's exhibit 4. Do you see the
23 search warrant return?

24 A. Yes, sir.

25 Q. Whose name is on the return?

1 A. That would be me at the top.

2 Q. Were you able to, I guess, turn back in that to the
3 Clerk's Office within ten days?

4 A. I did.

5 Q. How did you do so?

6 A. Once the information is typed out, my name is signed
7 and I return it to the Clerk's Office for the judge to sign
8 off on it.

9 Q. What was the date that you filed that return?

10 A. It was stamped and filed October 31st, 2014. That's
11 done my machine that's in the office.

12 MR. WARD: Thank you. No further questions.

13 THE COURT: Cross examination.

14 MR. FALK: No questions.

15 THE COURT: You may step down, sir. Thank you. Any
16 other witnesses?

17 MR. WARD: Nothing further, Your Honor.

18 THE COURT: Anything further, Mr. Falk?

19 MR. FALK: Nothing, Your Honor.

20 THE COURT: I'll be happy to hear argument from
21 either side. Mr. Falk.

22 MR. FALK: Your Honor, I'm concerned about the
23 reasonableness of the suspicion that Officer Thompson had
24 when he conducted the knock and talk. He had testified
25 that he received an anonymous tip on June 13th and there

1 is really nothing that corroborates the validity of this
2 anonymous tip other than his testimony regarding his
3 looking at the NPLeX and seeing other purchases occurring
4 at that house. He doesn't have any testimony as to when
5 those other purchases occurred at the house, and
6 certainly the house can't purchase the methamphetamine.
7 He said other people in the house purchased
8 methamphetamine, but that information is not before us
9 specifically.

10 Obviously just the fact that you purchase, buy
11 pseudoephedrine does not necessarily mean that you are
12 using it to cook. Certainly you can purchase it. Every
13 purchase is put in the NPLeX so it's not just purchases
14 over the amount and it's not just refusals that make the
15 NPLeX. Every purchase makes the NPLeX. And so he had
16 said that he tried to corroborate the tip. He drove by
17 the house one time. He made much of the fact that the
18 son of somebody, a car owned by the son of somebody who
19 he had arrested in the past was parked there on June 26th
20 which is still two months, three months before he
21 actually conducted the knock and talk. Between June 26th
22 and October 29th there is nothing else that corroborates
23 the tip. And his other, the other basis for his
24 suspicion is the car that he saw on the 26th, the fact
25 that Ms. Vining had made purchases from the house, but

1 there is nothing from June 13th or June 26th, 2014 until
2 October 29th when two hits came up on the NPLEx.

3 And much is made of the fact that it was two
4 refusals, but I think if the Court considers that it's
5 probably one attempt to purchase meth, it was 15 seconds
6 apart, it could have been try it again, not necessarily
7 any attempt at subterfuge or trying to go someplace else
8 so she just asked her to run it again. So there is
9 really one refusal and based on the one refusal and the
10 subsequent purchase is what the officer is saying is his
11 grounds to come and knock on the door.

12 And I do not believe that the intent of the statute
13 which is as the Court would know 14-7-1110 is the fact
14 that any time somebody gets a refusal off of the NPLEx,
15 that means that police officers knock on the door. I
16 think that there needs to be something more than that.

17 So now we have the fact that I do not think that
18 there is Officer Thompson's suspicions were reasonable
19 and I think under this court's decision or the Supreme
20 Court's decision in Counts, that in order to justify
21 knock and talk an officer has to have a reasonably
22 articulable suspicion. It advises the fact that Counts
23 goes beyond what federal juris prudence is on a knock and
24 talk and says that South Carolina is representing a
25 higher expectation of privacy. So I have that problem

1 there.

2 And then the only thing that justifies the
3 protective sweep is the smell of the overwhelming, as
4 testified, smell of ammonia. But there is even a
5 conflict in that testimony because he said that there was
6 an overwhelming smell coming from Mr. Kotowski. Then he
7 did not testify that there is any smell of ammonia coming
8 off of Ms. Vining or Lisa at the time. We'll just refer
9 to her as Ms. Vining. But then somehow when the search
10 warrant affidavit is, the information for the search
11 warrant is communicated between Mr. Thompson and
12 Mr. Strickland, then again we add this information that,
13 oh, well, she smelled too. So I have a concern that
14 maybe the officers didn't have a good of handle on the
15 situation as they are talking about because there is this
16 inconsistency as to the smell saying there is this
17 overwhelming smell on one person, not an overwhelming
18 smell on the other, but later there's testimony that they
19 both smell. There is certainly a conflict in the
20 testimony that's been given today.

21 And I know you thought I was crazy to keep asking
22 all these questions about the fan but the fan is an
23 important fact here as far as all this case goes. It is
24 one of the instances, it's one of the things that the
25 police officers talked to is why they thought there might

1 have been more than one person in the house because all
2 of a sudden this fan is removed and that's over on this
3 side of the house and then, you know, you have got some
4 other activity here and every officer talked about the
5 fact that, you know, the fact that Officer Lundberg said
6 he saw the fan being removed, was one of the things that
7 they felt was meaningful as far as justifying conducting
8 the protective sweep and there is no explanation why when
9 they take the video of that, that fan is still in the
10 window. So I have concerns about what Mr. Lundberg could
11 have actually been viewing when he was standing back
12 there because he testified that they didn't go back and
13 put stuff back in place. There is no testimony that they
14 put the fan back in the window and certainly that's more
15 than just peeking and opening up a closet door. He said
16 there is nothing during the protective search or the
17 protective sweep that they would have, you know,
18 re-installed or moved furniture around or something as
19 significant as putting the fan back in the window. So I
20 have a question whether or not that fan was really in the
21 window.

22 And the fact that all these items are used as far as
23 getting the search warrant, basis for the protective
24 sweep. Your Honor, I think that there are - I think that
25 there is a problem. There was no reasonably articulable

1 suspicion that Officer Thompson had to justify the sweep
2 and I think that there were inaccuracies in the affidavit
3 that was used to obtain the search warrant for the house
4 primarily to talk about the smell of the clothes on the
5 second person coming out of the house. I think a judge -
6 we don't know how significant a judge would have said,
7 you know, if they have this thing that would have put him
8 over the top as far as, you know, two people smelling of
9 stuff and only one person having the odor on them because
10 certainly one person could have - there is no for a judge
11 to know how much credence the court gave to the fact that
12 there is testimony about a second witness or a second
13 suspect at the scene that wreaked of the ammonia smell.

14 THE COURT: Thank you, Mr. Falk. Solicitor.

15 MR. WARD: Thank you, Your Honor. First off for the
16 reasonable suspicion to conduct the knock and talk,
17 Sergeant Thompson stated he received the anonymous tip on
18 June 13th, 2014. He then investigated further because, I
19 guess, at that time he didn't believe there was enough to
20 conduct a knock and talk just from an anonymous tip so he
21 stated he ran the address through NPLeX which gave him
22 the owner of the house Michelle Vining and also possibly
23 a few other names and noticed there was multiple
24 purchases of pseudoephedrine for people related to that
25 house. He then on June 26th he stated that he went and

1 surveilled and saw, ran the license plates of a couple
2 cars in the house, at the house. Again one of them was
3 just the son of a convicted methamphetamine cook, but
4 that just leads to more suspicion for Sergeant Thompson
5 at that time. That doesn't necessarily mean the people
6 in the house are guilty. That just kind of triggers some
7 suspicion further.

8 Also on that date he placed Ms. Vining, who is the
9 owner of the house, on the NPLeX alert and he testified
10 that from September to October before he went to the
11 knock and talk there were 12 either purchases or attempt
12 to purchase of pseudoephedrine in that time. He stated
13 from his experience people with higher than normal
14 pseudoephedrine purchases are either smurfs who are
15 buying the pseudoephedrine and providing it to someone
16 else to actually cook or they are just somehow involved
17 in the manufacturing process.

18 Then what led to the further suspicion where he
19 finally decided to conduct a knock and talk were the
20 three attempts on October 29th. Whether it was one
21 purchase or two that were blocked on the 29th, she was
22 still blocked for attempting a purchase over nine grams
23 of pseudoephedrine in 30 days. Sergeant Thompson stated
24 that this NPLeX was created in 2010 to stop and help
25 control pseudoephedrine purchases involving it because

1 they know it's involved in methamphetamine. If she was
2 using it for normal purposes, I would think a normal
3 person gets blocked, they don't then go to another CVS or
4 another pharmacy to try to attempt a smaller amount.
5 That's what led to his suspicion to go conduct the knock
6 and talk.

7 Under Counts I agree just an anonymous tip would no
8 longer be enough to just go up to someone's house and
9 knock on the door and talk to them to try and find
10 illegal activity, but for those reasons there is
11 reasonable suspicion to actually go to the house and
12 conduct a knock and talk.

13 As far as the search warrant goes and the protective
14 sweep, Sergeant Thompson, Detective Allen, Detective
15 Lundberg all stated they saw people peering through
16 windows. I'm sorry. Sergeant Thompson, Detective Allen
17 saw people from upstairs peering through windows, saw
18 people downstairs peering through windows. They weren't
19 sure how many people may have been in the residence.
20 They were lied to. They knew that before they did the
21 protective sweep by both Mr. Kotowski and Ms. Vining.
22 Sergeant Thompson stated he believed the protective sweep
23 needed to be done because not knowing if other people
24 were in the house, safety purposes for them believing
25 there was methamphetamine being manufactured, if no one

1 is attending to a methamphetamine lab, he said it could
2 explode. That's a reason to conduct a protective sweep
3 as well as for destruction of evidence to make sure, as
4 they all stated, all the officers stated, they believed
5 there may have been some destruction of evidence before
6 they actually went into the residence due to multiple
7 knocks on the door before someone came to the door. And
8 again nothing was seized at that point. Nothing was
9 tampered with or touched during the protective sweep.
10 They just saw things in plain view, came out of the house
11 and waited for a search warrant.

12 The search warrant, as Your Honor knows, search
13 warrants are valid on their face unless there is some
14 proof of just basically outright dishonesty in the
15 affidavit. Sergeant Thompson testified to what he saw
16 and that's what was in the affidavit. He told that back
17 to Detective Strickland and Detective Strickland
18 contacted him again before getting it signed by a judge
19 to make sure it was correct.

20 For those reasons we believe there was reasonable
21 suspicion to go to the house in the first place and the
22 defendant's rights were not violated by any type of
23 warrantless search.

24 MR. FALK: Your Honor, just, I think that the Court
25 has to consider the time of when some of these other

1 events occurred relative to when the knock and talk
2 happened. The anonymous tip comes on June 23rd, they see
3 the car in the driveway on June 26th, there is nothing
4 else that happens until they get the hit from the NPLEx.
5 So officer suspicion is another basis for determining
6 whether or not the officer's suspicion is reasonable is
7 the temporal relationship between when they have the
8 information and when they are going to make the invasion
9 of the person's privacy. It's three months in between
10 and certainly a tip that old would be considered stale.
11 Any other kind of information like that would certainly
12 be stale information. Current information is the NPLEx,
13 and if you can just go in because -- I don't think the
14 statute, I don't think the legislature wants you to be
15 subject to a knock and talk just because you go over the
16 limit on the pseudoephedrine purchase.

17 THE COURT: Thank you, Mr. Falk. In considering the
18 evidence that was presented and in reviewing the
19 officers' testimony along with the defendant's testimony
20 the Court finds as follows: The Court finds that in and
21 of itself obviously the anonymous tip on its own would
22 not be sufficient for a knock and talk. Sergeant
23 Thompson did testify that he took steps to corroborate
24 what was given to him by doing the database regarding the
25 pseudoephedrine purchases as well as the car that he had

1 known to be of the father, an immediate family member of
2 someone that has been convicted for manufacturing
3 methamphetamine. I think that that along with the
4 subsequent activities, the September 9 activities, and
5 three on October 29th do give rise to reasonable
6 suspicion of illegal activity that warrants the ability
7 to do a knock and talk on that date; that the 29th
8 instances, there were two at the Walgreens, whether it's
9 15 seconds or 15 minutes apparently it was denied, it was
10 ran through again, it was denied again, then she went to
11 a different location to get a different amount so that's
12 three separate activities.

13 It's somewhat difficult, Mr. Falk, when law
14 enforcement is told that when they wait too long when
15 they try to do a complete and thorough investigation that
16 it's too long, but if they jump at the chance the first
17 time it's too quickly so I think the timing is important
18 and the timing is important in this case because Sergeant
19 Thompson took the time to obtain corroborative evidence
20 of the tip that led to the reasonable suspicion of
21 illegal activity at the targeted location.

22 In regards to the protective sweep of the property,
23 the Court finds that there were exigent circumstances
24 that warranted it. The overwhelming smell of ammonia
25 certainly is a potentially dangerous type of situation

1 that would risk not only officer safety but safety of the
2 neighbors if there was to be an explosion and further
3 there was activity which was described at different
4 windows and the officers did not know for officer safety
5 if there were other individuals located in the residence.
6 The fan really is to me of no consequence whether it was
7 in the window. When Detective Lundberg testified and
8 said he saw somebody take it from the side, he then heard
9 what was an altercation and went forward so it could have
10 been placed in the window immediately after. He didn't
11 testify that he sat there and watched it the whole time
12 so I think that's really of no consequence for the
13 purposes of this hearing so your motion to suppress is
14 respectfully denied.

15 MR. FALK: Thank you, Your Honor.

16 MR. WARD: Thank you, Your Honor. Do you have Mr.
17 Kotowski?

18 MR. FALK: Your honor, I can get his bail bondsman
19 who will stay on his bond.

20 THE COURT: Mr. Falk, once a case is called, it's my
21 policy to go ahead and keep them in custody. Mr. Falk,
22 is your client still here?

23 MR. FALK: I believe they are going to get him. I
24 apologize, Your Honor.

25 THE COURT: That's okay. I typically tell you that

1 have instructed you on the law in this case you will then
2 be in a position to determine what the true facts are and
3 render a true and just verdict and apply the law to the
4 facts as you determine them.

5 It will be the added duty of the foreperson who I
6 will appoint at a later time to be the liaison to the
7 Court and basically if the jury needs something or has
8 any questions during deliberations, you can submit that
9 to the Court. The foreperson doesn't have any greater
10 responsibility or anything. You're merely the liaison to
11 the Court and I will appoint the foreperson at a later
12 time.

13 Any objections to the opening instructions either
14 from the State or from the defense?

15 MR. WARD: Nothing from the State, Your Honor.

16 MR. FALK: Nothing from the defense, Your Honor.

17 THE COURT: All right. Solicitor.

18 MS. MIMS: Thank you, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, ma'am.

21 MS. MIMS: Good morning, ladies and gentlemen. My
22 name is Sheila Mims. I'm an Assistant Solicitor here in
23 Dorchester County and myself along with Mr. Kyle Ward
24 will be trying this case today against Mr. Felix
25 Kotowski.

1 First, I would like to thank you. I know that you
2 probably have more important things that you could be
3 doing today and especially close to Christmas, but you
4 are a vital part of our criminal justice system. Without
5 you it does not function so thank you so much for being
6 here today.

7 As I mentioned, we are here today because Felix
8 Kotowski has been charged with manufacturing
9 methamphetamine and with possession of less than one gram
10 of methamphetamine.

11 Methamphetamine is an illegal drug. It is highly
12 addictive and it is very dangerous and, ladies and
13 gentlemen, you are gonna know so much about
14 methamphetamine by the time you walk out of the courtroom
15 today. More than you ever wanted to probably. But
16 you're gonna find out how it's made, you're gonna find
17 out exactly what it is, and one of the more interesting
18 things that you're gonna find out is that methamphetamine
19 is a drug that is actually made out of a lot of common
20 household items that you actually may have in your home.
21 Things such as aluminum foil. Things such as batteries.
22 Things like lye. But when you take those common harmless
23 household items and you combine them with maybe some more
24 common household items and you mix them up, you can
25 create a toxic mixture that when being manufactured can

1 actually explode. It's a very, very dangerous drug.

2 Back in 2014 Sergeant Frank Thompson with the metro
3 narcotics unit in Dorchester County, he received a tip.
4 Based on that tip he was told that methamphetamine was
5 being manufactured in a home at 111 Marsh Point Road
6 which is in Summerville, Dorchester County. Based on
7 that tip he did some further investigation and on October
8 30th of 2014 he and two other officers conducted what we
9 call a knock and talk and it's simply that. You knock on
10 the door of the residence and try to get some
11 information.

12 So on October 30th, 2014, they conducted a knock and
13 talk and when they did, Mr. Felix Kotowski came to the
14 door. Now when he did and he stepped outside, officers
15 will testify that they immediately noticed something very
16 strange. He had a very strong odor of ammonia coming off
17 of his clothes. Officers are also going to testify to
18 you that that smell of ammonia is a strong indication
19 that methamphetamine is being made inside a residence.
20 Based on that smell and some further investigation they
21 procured a search warrant for the residence and when they
22 went into the house on the search warrant, they found
23 every household item that you would need to manufacture
24 methamphetamine. They found lithium from the batteries.
25 They found pseudoephedrine. They found all of the

1 ingredients necessary to successfully manufacture
2 methamphetamine and they also found .6 grams of meth
3 itself already made and ready to be consumed.

4 Now, officers are going to testify to you about what
5 they saw when they went in there, about how when they
6 went to the second floor they saw a haze in the upstairs
7 hallway and how when they opened the bathroom door, that
8 haze hit them very strongly right in the face and how one
9 of the officers had to actually be decontaminated when he
10 got downstairs. That's how bad it was.

11 Now, manufacturing and possession. I want to talk
12 to you about those two terms for a minute. Manufacturing
13 methamphetamine is strictly that. It's simply that.
14 Manufacturing is when you take part in creating an
15 illegal substance. Methamphetamine is an illegal drug.
16 Possession is simply that. Possession is when you have
17 something either on you -- There are two types. There's
18 actual and there's constructive. This is actual
19 possession. I'm actually holding this note pad in my
20 hand. It's actually on my person. This is actual
21 possession. Equal to that is constructive possession.
22 Don't actually have it on me, but it's within my dominion
23 and control. The best example I can give you of that is
24 if you're riding in a vehicle, you're driving your car,
25 there's something in the back seat of the car, you can't

1 reach it but it's within your dominion and control. You
2 know it's there. That's constructive possession. So if
3 it's in your dominion and control, you know it's there,
4 that is constructive possession.

5 Now, ladies and gentlemen, it is our burden, the
6 State's burden to prove to you beyond a reasonable doubt
7 that Mr. Kotowski is guilty of these offenses and we
8 gladly accept that burden. And how we're gonna prove our
9 case to you is mainly through testimony. We're gonna
10 bring in the officers from the metro narcotics division
11 in Dorchester County. They're gonna get up here and
12 they're gonna talk to you about what they heard, what
13 they saw, what they smelled when they arrived at 111
14 Marsh Point Drive. They're gonna show you pictures of
15 the ingredients that they found inside the home. They're
16 gonna show you video of exactly what that house looked
17 liked. You are also gonna hear from the chemical analyst
18 from SLED, South Carolina Enforcement Division. He's
19 gonna come in and talk to you. He's gonna tell you about
20 how he tested the items that were turned into him and
21 also that they indeed tested positive for
22 methamphetamine.

23 So I ask that you listen closely to the evidence
24 that will be presented for you and pay close attention to
25 everything you see and hear and I think it will show you

1 that Mr. Kotowski is guilty of this offense. Thank
2 you.

3 THE COURT: Mr. Falk.

4 MR. FALK: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. FALK: We are here today because my client was
7 in the wrong place at the wrong time. We are here today
8 because if you go to a CVS and you buy too much
9 pseudoephedrine or sudafed in a given month Dorchester
10 County Sheriff's Office is gonna come knocking on your
11 door. My client was in a house and I think there's gonna
12 be ample evidence to show that this house was probably a
13 meth lab and it probably had been used for years as a
14 meth lab and probably a lot of people have probably
15 cooked meth in this house. But you're not gonna find
16 anything that's going to tie my client to the goings on
17 inside the house. I don't know why my client was in the
18 house that day. I have a suspicion that maybe he was
19 going to buy methamphetamine, but I don't think there is
20 any proof that we are gonna be able to tie that any of
21 the items recovered from that house my client had
22 anything to do with.

23 I think you will hear the State offer one piece of
24 evidence, one small piece of evidence which is actually
25 gonna tie the goings on in the house actually to my

1 client and I think by the time you hear all the evidence
2 on this case you're gonna find that maybe that evidence
3 that the State is gonna try and link to my client is not
4 that strong and maybe doesn't even exist. I think what
5 we're gonna hear is a case of the Dorchester County
6 Sheriff's Department deciding that they're gonna get my
7 client. My client is just being railroaded into this.
8 He was in the wrong place and they wanted to arrest
9 everybody in this house when they came into this person's
10 house, when they came into the meth lab, a house owned by
11 somebody else, and they arrested my client.

12 I thank you for your attention in this case. My
13 name is James Falk. I'm representing Felix Kotowski.
14 Thank you.

15 THE COURT: Ladies and gentlemen of the jury, I know
16 we just got you back in here but we must take a very
17 short recess before we allow the first witness to be
18 called. Again, please don't discuss this case yet. We
19 will be right back with you.

20 (Whereupon, the jury entered the jury room.)

21 THE COURT: Mr. Falk, it's my understanding that
22 before Sergeant Thompson testifies, you had an objection
23 to the proposed testimony based upon his pretrial
24 testimony; is that correct?

25 MR. FALK: Yes, Your Honor.

1 THE COURT: All right. I'll be happy to hear your
2 objection.

3 MR. FALK: Your Honor, I believe that Sergeant
4 Thompson has no direct evidence, is not a direct witness
5 of any of the purchases of pseudoephedrine either by Ms.
6 Vining or by my client. I believe that all of
7 Mr. Thompson's testimony on this matter is going to come
8 from a printout that he received from what's called the
9 NPLeX system. I believe that he will be relying on
10 hearsay information in order to provide any testimony of
11 specific purchases. I do not believe that the, any
12 testimony, in effect any testimony that's coming through
13 the NPLeX system is admissible either as a public record
14 or a business record unless the State is going to offer
15 somebody who manages the Appriss database to come in here
16 and testify as to the reliability of the database and say
17 that the information that Detective Thompson was relying
18 on is, in fact, information from the Appriss database. I
19 should have an opportunity to cross examine in effective
20 the database because the database is testifying in this
21 case.

22 This is not a situation where somebody is compiling
23 records. This is a situation where somebody is going to
24 a drugstore, they are scanning a, probably a credit card
25 and a driver's license and that information is then

1 transmitted I believe to Kentucky where the Appriss
2 system is located, where that information is stored and
3 that there is a computer program that's associated with
4 that database that then sorts that information out. I
5 should be entitled to know how reliable that information
6 is. I should be entitled to know whether or not that
7 there are any checks done on that database to measure the
8 accuracy, whether or not there is any proof or any false
9 positives on it. In effect I should be able to cross
10 examine the database in the same manner as if this were a
11 DUI case and cross examine the DUI examiner who actually
12 runs the breathalyzer. I think that the information is
13 inadmissible, is hearsay. It is not a business record.
14 It is not a public record. It certainly is not a public
15 record because I don't have access to that database. So
16 just by definition it's not a public record.

17 Now, there's also, I believe there will also be
18 testimony of Mr. Kotowski's purchases and I think in that
19 situation we have on top of the fact that it's
20 inadmissible hearsay, I believe we have a confrontation
21 clause issue as to whether or not my client is going to
22 be able to actually cross examine the person who is
23 testifying against him. And what I mean is, some agent
24 of a CVS pharmacy somewhere is going to have to testify
25 that Mr. Kotowski was in there and that it was, in fact,

1 his driver's license that was scanned. I should have the
2 opportunity to know whether or not how reliable the
3 person is that was responsible for having that
4 information put into the database. I think it's very
5 reasonable to assume that there should be some checks on
6 whether or not the person who owned the driver's license
7 was, in fact, the person who was using it to purchase the
8 items. All that we really know is that a driver's
9 license was scanned. We do not know whether Mr. Kotowski
10 scanned the driver's license and I do not believe that
11 they're gonna offer proof to corroborate a - they're not
12 gonna have a sales receipt to show that it was even run
13 on his credit card. I mean, there's gonna be no
14 corroborating evidence to show that those purchases were
15 made at a particular time.

16 So I believe I have a confrontation clause issue
17 here with allowing - because I certainly think that the
18 testimony - that what would be in effect testified to
19 from the database is testimonial and my client would not
20 have an opportunity to cross examine him.

21 Finally, I think that as we get over to testimony
22 about Mr. Kotowski's purchases there is nothing wrong
23 with buying sudafed. If we look at the NPLeX records for
24 Mr. Kotowski, he buys sudafed when he's got hay fever.
25 He buys them and he takes them about once a day. We

1 heard Officer Thompson testify that, you know, there's a
2 pattern among smurfs I think is one of his terms or
3 people going and buying this and going to numerous drug
4 stores. If we look at Mr. Kotowski's purchases from the
5 database, I mean, as reported in the database, he went to
6 the same store about 90 percent of the time. So I mean
7 there was certainly no intent to cover up or conceal but
8 I think in the fact that we have Mrs. Vining who probably
9 was somebody who was buying methamphetamine probably to
10 manufacture -- I mean buying sudafed to manufacture
11 methamphetamine, by allowing this testimony about
12 Mr. Kotowski's purchases I think that its probative value
13 is outweighed by the prejudicial value to my client and
14 that it's gonna paint my client as being somebody who is
15 purchasing sudafed for the wrong reason.

16 So in summary I would object to any testimony that
17 is coming, that is arising from the NPLeX records based
18 on the fact that it is inadmissible hearsay, it's a
19 confrontation clause violation and even if we get there,
20 that its probative, with respect to Mr. Kotowski's
21 records, its probative value is outweighed by the
22 prejudicial effect.

23 THE COURT: Thank you, Mr. Falk. Solicitor.

24 MR. WARD: I guess first in regards to, I'm trying
25 to keep track here, the hearsay argument that it's

1 inadmissible, South Carolina created this law in 2010
2 where all pharmacies are required to keep track of
3 pseudoephedrine purchases and the statute specifically
4 lays out each step that the pharmacist or whoever is
5 working behind the pharmacy has to take when selling
6 pseudoephedrine. It also says in the statute that there
7 is criminal liability if they don't follow those
8 instructions and it sets out that law enforcement can use
9 those as an investigative tool.

10 We are not using Ms. Vining's records and putting
11 those in as business records. We are using her records
12 to show the reason that Sergeant Thompson continued the
13 investigation of the house and ultimately conducted the
14 knock and talk.

15 Also, I guess as far as the confrontation clause
16 goes, other jurisdictions have found that NPLeX itself is
17 not testimonial in nature because the actual intent of
18 the program is to prevent people from purchasing
19 pseudoephedrine to manufacture, not to use in actual
20 criminal prosecution. Now just because it could be used
21 later in criminal prosecution doesn't necessarily make it
22 testimonial in nature. The actual purpose of the statute
23 is to prevent people from purchasing and to keep track of
24 it because it's actually point of sale in real time so
25 they can block it if necessary if they go over the

1 federal amount or state amount.

2 For Mr. Kotowski's records the defense argues with
3 Ms. Vining's that we would have to bring someone from the
4 NPLeX or Appriss who keeps track of all the database to
5 get them in as business records. But then he wants the
6 CVS pharmacist to come and testify to show that
7 Mr. Kotowski has actually testified, he's asking for two
8 different things. I mean, if he wants the business
9 records and the CVS pharmacist, I don't think that's
10 necessary for either one. And also we are not putting in
11 the actual records itself. We're just having what
12 Sergeant Thompson used to help investigate and prove or
13 get probable cause on whether or not Mr. Kotowski was
14 actually somehow involved in the manufacturing process.

15 THE COURT: Thank you, gentlemen.

16 MR. FALK: Your Honor, I think that the prosecution
17 mischaracterized my point about the CVS pharmacist. What
18 I'm saying is that would be - the State was gonna bring
19 in a CVS pharmacist to say that there was a transaction
20 at that time and that would be direct evidence. I'm not
21 - I don't want to bring in CVS for my client. The
22 records themselves will show that he's bought
23 pseudoephedrine at CVS on numerous occasions. I'm not
24 asking him to bring anybody in. I think it would be the
25 State's obligation to bring in somebody from CVS to

1 somehow corroborate and if they had somebody from Appriss
2 in here to say that those records are what they are, then
3 I think I would have less objection. But without
4 somebody from Appriss in here who maintains and keeps the
5 database, I think that it's inadmissible hearsay.

6 THE COURT: All right. Thank you, gentlemen. In
7 accordance to Statute 44-53-398 which deals with the sale
8 of products containing ephedrine or pseudoephedrine
9 basically the statute does delineate the requirements of
10 a retailer which they must go through in order to give a
11 purchaser or to sell to a purchaser such products and
12 basically they say shall require purchaser to produce a
13 government issued photo ID showing the date of birth of
14 the person and require the purchaser to sign an
15 electronic log showing the date and time of the
16 transaction, the person's name and address, the type of
17 issuing government entity, identification number, the
18 amount of compound, mixture or preparation. The retailer
19 shall also determine the name entered in the log
20 corresponds to the name on the identification, that the
21 date of birth and the address are correct and shall enter
22 the log and the name of the product and quantity sold.
23 The retailer shall ensure that the product is delivered
24 directly into the custody of the purchaser and the log
25 must include notice to purchasers that entering false

1 statements or misrepresentations on the log may subject
2 the purchaser to criminal penalties.

3 That statute further delineates potential criminal
4 penalties for retailers for not complying with the
5 statutes requirements. An employee's duty to accurately
6 report, basically it means that they could be held
7 criminally responsible and criminally reliable for not
8 accurately reporting into the database.

9 The Court finds that this requirement pursuant to
10 the statute gives the indicia of trustworthiness based
11 upon the proper foundation being laid by the State the
12 transactions. That would be further corroborated by
13 statute 23-3-1200 which is the SLED electronic monitoring
14 system of the collection and storage of use of this
15 information. This statute delineates the access to this
16 data which is only to local, state or federal law
17 enforcement official which may be given access to this
18 information. The information in SLED's electronic
19 monitoring system is confidential and not of public
20 record as defined in section 30-4-20(c) which is the
21 Freedom of Information Act and SLED only provides access
22 to those individuals I have previously named.

23 Sergeant Thompson testified yesterday that he was
24 trained, that he had access to the database and that that
25 would establish the proper foundation for him to access

1 the database and use it as a criminal investigative tool.
2 In looking at your argument as to whether or not these
3 transactions are maintained in the regular course of
4 business, basically the logs of the transactions are
5 properly maintained by law and they basically just create
6 a rebuttal presumption that the person whose name appears
7 in the logs is the person whose transactions are recorded
8 in the logs and based upon the proper foundation being
9 laid that he has the proper access to the database based
10 upon his training and experience.

11 In regards to your confrontation clause argument
12 that it violates a confrontation clause, the Court finds
13 that it does not violate the confrontation clause, that
14 the records as compiled are not testimonial in purpose.
15 Basically the realtime compilation of these purchases
16 don't fall under the three examples as outlined and
17 proffered, but which focus on the statement as being
18 prepared specifically for criminal prosecution and that
19 entries are made and recorded whether or not the
20 defendant later committed a crime with the purchase of
21 product, the extent consists of compilation of several
22 items that are non criminal data and identifiable by time
23 and place which further mostly resemble more of akin to
24 telephone records. It's not an analysis of what the
25 defendant may have done or not done with the items, but

1 merely creates a rebuttable presumption that this
2 defendant made those purchases.

3 So based upon that the Court does not find that it
4 violates a confrontation clause issue your objection is
5 overruled. Anything further at this point before we
6 bring the jury out?

7 MR. WARD: Nothing from the State.

8 MR. FALK: Your Honor, I also then -- I don't know
9 if you want to wait while we renew the objection but I
10 also made an argument whether or not the probative value
11 of his records is not outweighed by -- I'm arguing that
12 the probative value of his records is outweighed by the
13 prejudicial value as it refers to Mr. Kotowski.

14 THE COURT: The Court finds that the probative value
15 outweighs the prejudicial effect to your client. Let's
16 have the jury please.

17 (Whereupon, the jury returned to the courtroom.)

18 THE COURT: Welcome back ladies and gentlemen of the
19 jury. We are ready to start with the testimony in this
20 trial. Solicitor, you may call your first witness.

21 MR. WARD: Thank you, Your Honor. The State calls
22 Sergeant Thompson.

23 Thereupon,

24 FRANK THOMPSON, IV

25 after having been first duly sworn, testified as follows,

1 MR. WARD: May it please the Court.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY MR. WARD:

5 Q. Sergeant Thompson, could you tell the jury where you
6 are currently employed?

7 A. Yes. I am employed by the Dorchester County
8 Sheriff's Office and I'm assigned to the metro narcotics unit
9 which is a task force between Dorchester County and
10 Summerville police department.

11 Q. And what is your current rank?

12 A. I am a sergeant of the narcotics unit.

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

14 A. With Dorchester County since December 1998 and I
15 have been in narcotics since January of 2007.

16 Q. Do you have any other training and experience in
17 reference to methamphetamine?

18 A. I do. I have been to numerous classes involving the
19 manufacturing of methamphetamine. Since 2004 I have been
20 certified to investigate methamphetamine labs. I have been
21 through a DEA basic narcotics investigating school which is a
22 two week classroom training course. I have been through the
23 United States Attorneys Narcotics Commander School which is a
24 week long training course. I have been through several
25 different recertifications for methamphetamine manufacturing,

1 methamphetamine workshops and also have manufactured
2 methamphetamine in a laboratory setting through DEA certified
3 chemists for training and I have done that and other drugs
4 through a laboratory environment.

5 Q. Could you tell the jury what prompted you to begin
6 an investigation in this case?

7 A. Sure. On June 13th, 2014 I received an anonymous
8 tip by phone from a gentleman who said that he had third party
9 information that there was possibly drug activity at 111 Marsh
10 Point Drive which is in Dorchester County, Summerville. The
11 gentleman told me he had heard this information from other
12 people. He didn't have any names. He didn't have specific
13 information. He was just relaying the information that he was
14 told. Because I had no names I had very, very little
15 information to go on so I started an investigation using some
16 of the tools that I had.

17 Q. So after you received the tip on June 13th of last
18 year, what was the next thing you did?

19 A. Well, we have a system that's a database which
20 records pseudoephedrine purchases. I accessed that database
21 and because I didn't have any names I put the address --

22 MR. FALK: Your Honor, I just want to renew my
23 objection. I don't think I have to because of the timing
24 but just out of an abundance of caution.

25 THE COURT: Yes, sir. The ruling is the same. You

1 may proceed.

2 BY MR. WARD:

3 Q. Could you explain a little bit about what this NPLEx
4 is that you stated?

5 A. Sure. I'll give you a little background on it. In
6 2005 congress enacted what's called the Methamphetamine Act
7 and that listed certain items as watch items or restricted
8 chemicals, pseudoephedrine being the one item you have to have
9 to manufacture methamphetamine. So to reduce methamphetamine
10 labs congress enacted laws to where certain things were
11 restricted, pseudoephedrine being that. It was required that
12 you record any purchase of pseudoephedrine on a log, and at
13 the time it was a paper log. So if you were to go and buy
14 pseudoephedrine from any pharmacy or any gas station that sold
15 pseudoephedrine which is commonly called sudafed, walfed.
16 Wal-Mart has, I believe, has walfed also, you're required to
17 sign a log with your name, your date of birth, what was
18 purchased, the brand name, and the amount of the purchase,
19 however grams of pseudoephedrine or sudafed.

20 In 2007 South Carolina enacted the meth law or
21 combat meth act as well and it was required to follow along
22 the federal guidelines as far as the paper log which made it
23 very difficult for my job because I had to go between all
24 these stores and look at logs. In 2010 legislation was passed
25 where they made it where it was required to be electronically

1 captured so now if you go to a store or pharmacy and you
2 purchase pseudoephedrine, you have to have a government issued
3 ID. They take that, they scan it or they manually enter the
4 information and it requires that you provide your name, date
5 of birth, your address, what you are buying and how much you
6 are buying and all this is is to combat meth labs. So if you
7 take away the precursor needed to manufacture methamphetamine,
8 you're reducing the number of labs that we're finding in the
9 United States.

10 Q. Who has access to these logs?

11 A. These logs are restricted to law enforcement and the
12 pharmacy. The pharmacy has it so they can enter the
13 information in. Law enforcement is able to go into that
14 database, pull records, search different things for
15 investigative use.

16 Q. And are you granted access?

17 A. I am. I'm granted access. I'm actually the
18 administrator for our agency. I'm able to give access to
19 detectives that work under me.

20 Q. Have you had any classes or training on how the
21 company that compiles these records work?

22 A. Yes. The company is called Appriss and they put on
23 this thing called a webinar. Basically it's a training class
24 and not too long ago I was actually asked by one of the people
25 from Appriss to put on one of these webinars where I logged

1 into a computer and gave training on how to use Appriss to all
2 participating states that use it. Not everybody in the United
3 States is required to use this log. There is I believe 32
4 states out of the 50. But participants of the program were
5 able to watch this webinar with me giving training on how to
6 use it.

7 Q. All right. So tell the jury what you did next in
8 your investigation?

9 A. Sure. I got the tip on June 13th so again I had
10 little information. All I had was an address. The first
11 thing I did was put that address into the database and it
12 brought up records of people that were associated with that
13 address somehow either by government ID or putting that
14 information in and I was able to find two names particularly
15 that had used their ID to purchase pseudoephedrine belonging
16 to 111 Marsh Point. That piqued interest that there was maybe
17 something going on there so what I did then was went to the
18 house, drove by and tried to get tags to look at and tried to
19 run some names. I did go by on June the 26th of 2014 and I
20 saw a vehicle there. After running the license plate, I found
21 out that it belonged to the son and mother of a convicted meth
22 cook that I actually prosecuted. Having that that piqued my
23 interest more so I put a watch list or activity a watch for
24 the resident of the home. Her name was Michelle Vining. With
25 that any time Michelle Vining purchased pseudoephedrine as

1 soon as she made the purchase, I would get a notification by
2 e-mail letting me know where she purchased it, how much she
3 purchased, and what type of purchase it was so I could use
4 that record to continue my investigation.

5 Q. So that was late in June. After that did you
6 conduct any surveillance on the house or attempt to?

7 A. I did. Where this is located is a golf course
8 community so me sitting on the side of the road for a long
9 time it's going to pique some interest by the residents.
10 They're gonna want to know why I'm sitting out in front of the
11 house. It's also a cul-de-sac so there's not very long
12 distance between the entrance to the street and the end. So I
13 couldn't just sit there and do stationary surveillance like I
14 would normally do. I would want to go there to try to find
15 out of people coming and going, try to see some activity, what
16 not. Because of those circumstances I wasn't able to do that
17 so all I would do is just drive by occasionally to see if I
18 could find some license plate for one and hope to see
19 something, some type of activity, somebody coming out,
20 somebody going in, but that was unsuccessful. I wasn't able
21 to see any activity.

22 Q. After those numerous attempts, did you have an
23 opportunity to get anymore information for this
24 investigation?

25 A. Yes. On October 29th, 2014 as I said before I had

1 that watch on Michelle Vining, I was alerted by e-mail that
2 she attempted to make three purchases of pseudoephedrine. At
3 9:11 p.m. she attempted to purchase 2.4 grams of
4 pseudoephedrine from Walgreens on Dorchester Road, but she was
5 unsuccessful to make that purchase. The law allows you to
6 purchase nine grams of pseudoephedrine in 30 days. If you
7 exceed that amount, your purchase is blocked. So if I went in
8 and bought three boxes of 2.4 grams pseudoephedrine, I
9 wouldn't be able to buy all three of them. Michelle's
10 purchase was blocked because she exceeded the nine grams. So
11 at 9:11:16 she attempted that same purchase again 2.4 grams
12 and it was blocked again. She left that store and went to the
13 CVS at 9:27 p.m. she went to the CVS on Ashley Forest Road and
14 purchased 1.2 grams which is lower than the 2.4 grams she
15 tried to purchase before. So that purchase fell under the
16 exceeded limit to where she wouldn't go over the nine grams so
17 she was able to buy that smaller amount and that raised a flag
18 for me. That piqued my interest. She's trying to buy this
19 2.4 grams twice, was blocked, she went to another location,
20 purchased 1.2 grams so I wanted to look into that. I decided
21 to do a knock and talk the next day.

22 Q. Describe what happened when you arrived at the house
23 the next day?

24 A. All of my officers are undercover officers so we
25 have the pleasure of going to work in shorts and T-shirts.

1 That's one of the great things about our job. When we go on
2 knock and talks or any type of enforcement action, we are
3 identified as police officers. We have the vest that says
4 Sheriff and we wear kind of a uniform type in the field. All
5 of us are dressed the same. I got, elicited the help of two
6 of my detectives and we went to 111 Marsh Point Drive and when
7 we got there I saw that Michelle Vining's vehicle was there.
8 Her vehicle. I've seen it there all the time. And there was
9 another vehicle. A truck, I believe.

10 Myself and another detective approached the front
11 door and another detective that was with us walked around to
12 the side of the house to a neighbor's yard and we do that just
13 to make sure nobody is in the backyard or nobody runs out,
14 anything like that. I knocked on the front door and
15 immediately someone came down to the front door and opened or
16 manipulated some blinds inside of what was later found to be a
17 laundry room. So they looked at us and saw us. I asked them
18 to come to the door. I got no response after that. I knocked
19 on the door again and the detective on the side of the house
20 alerted me to someone removing a fan from an open window and
21 closing the window. So we knew somebody was there and we were
22 trying to get them to come to the door. Again I knocked on
23 the door and another person went to a window to the left of
24 the door and again manipulated the blinds to look out and we
25 asked them to come to the door. Moments later after that the

1 defendant came to the front door and closed the door behind
2 him as if he was wanting to conceal something on the inside.

3 Q. One second. I'm showing you what's marked as
4 State's exhibit 62 for identification purposes. Do you
5 recognize that?

6 A. I do.

7 Q. What is that?

8 A. This is the exterior of the house.

9 Q. Is that a fair and accurate representation of what
10 the house looked like that night?

11 A. It is.

12 MR. WARD: At this time, Your Honor, we would ask
13 that State's exhibit 62 to be admitted into evidence.

14 THE COURT: Any objection?

15 MR. FALK: No objection.

16 THE COURT: It's in.

17 MR. WARD: May I publish, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. WARD:

20 Q. Sergeant Thompson, if you can just draw on that
21 screen up there. If you could kind of point out where you saw
22 people popping up from the blinds?

23 A. Sure. The first time I knocked, you're not going to
24 be able to see the window because it's obscured by this tree
25 here, but the person came to this window here and manipulated.

1 the blinds where they were looking out. The second time I
2 knocked, you're not able to see the window on this picture,
3 but on this side of the house there is a window where a
4 detective was standing and they removed the fan from the
5 window, closed the window. On the third time that I knocked,
6 someone came to this window, manipulated the blinds, looked
7 out and then finally the defendant came to the front door.

8 Q. Would you be able to estimate about how long it was
9 from the first knock until you stated Mr. Kotowski came to the
10 door?

11 A. It was a short amount of time. I'd say probably
12 between three to five minutes.

13 Q. Then continue. What happened once Mr. Kotowski came
14 to the door?

15 A. As I said before, he came out the door and quickly
16 closed the door behind him as if he was trying to conceal the
17 inside. We were in close proximity. We were standing here on
18 the porch very close to him and I immediately was overwhelmed
19 with the odor of ammonia coming from his clothes. It smelled
20 like his clothes were saturated with ammonia. Having vast
21 experience in manufacturing methamphetamine knowledge I know
22 that ammonia is used to manufacture what's called a one pot
23 method. There are hundreds of ways to manufacture
24 methamphetamine. There are three prevalent ways we see. One
25 of them is what we call the one pot or shake and bake and it's

1 basically in one vessel and you're making ammonia gas which is
2 making ammonia water and it's converting the pseudoephedrine
3 to methamphetamine. You don't really smell that smell because
4 it's contained in the bottle, but as you burp, what we call
5 burping because you have got to release the pressure in the
6 bottle, ammonia is going to escape. Well, this gas or odor
7 saturated his clothes and I could tell that it was on him just
8 coming off of him.

9 Now, think back to if you played college sports or
10 high school sports or you have children that may have been
11 knocked out and you take an ammonia ampul and crack it and put
12 under their nose and they wake up, if you're doing it way down
13 here, you're still hitting it, you can smell it and if you
14 know what I'm talking about, it's an awful smell that just
15 takes you away and you're like (indicating.) Well, that's
16 what I smelled on him so I had a suspicion that they were
17 actually manufacturing methamphetamine at that moment.

18 Q. Did you -- What happened after that?

19 A. After that I asked him for his name. He said his
20 name was Felix. I asked him if he lived there. He said he
21 did not. I asked him if Michelle Vining was home and he said
22 she was not. I asked him who he was there with or I asked him
23 if he was Michelle's boyfriend and he said he wasn't and then
24 I asked him who he was with and he said Lisa was his
25 girlfriend. I asked him to have Lisa come outside. So he

1 went back into the door and he tried to close the door but
2 because of my suspicions already, I didn't want him to close
3 the door. I held the door open. I said, no, just call her
4 down. Have her come outside. So he called for Lisa multiple
5 times and finally he went to the stairs and moments later she
6 came downstairs also and she came outside.

7 Q. Did you - were you able to speak with her?

8 A. I was. I had another detective stay with --

9 MR. FALK: Objection, Your Honor. If Lisa is going
10 to testify, that's fine, but I don't believe that Officer
11 Thompson can testify as to what Lisa told him.

12 THE COURT: Don't go into any hearsay, Sergeant.

13 MR. WARD: We'll move on.

14 BY MR. WARD:

15 Q. So after Lisa came out of the house, what did you
16 and the other officers do at that point?

17 A. I asked for consent to search the property and Lisa
18 said --

19 MR. FALK: Objection, hearsay.

20 THE COURT: You can say whether or not you were
21 given consent but not what she said.

22 BY MR. WARD:

23 Q. Were you given consent to search the house at that
24 time?

25 A. No. There was a question if Lisa could give

1 consent. I tried explaining that consent could be given by
2 that person and ultimately the person said no to consent so we
3 were going to get a search warrant for the residence.

4 Q. And after you did that, what occurred?

5 A. Well, I called another detective that was at our
6 office and I gave him the information that I had collected on
7 the scene as far as my observations, my detection of ammonia
8 and had him draft the search warrant and then the search
9 warrant was sent to a judge and the judge signed the search
10 warrant, executed or giving us permission to execute the
11 search warrant.

12 Q. Before the search warrant was executed, did anything
13 happen before that?

14 A. Yes. I provided both the defendant and the female
15 Lisa their Miranda Warnings and they invoked their rights not
16 wanting to speak with me without counsel so we didn't question
17 them anymore. I did ask Lisa for her information and she
18 refused to give it to me and I advised her that if she didn't
19 give me her information, she would be booked in as Jane Doe
20 until we found out who she was and she finally told me her
21 name was Michelle Vining.

22 MR. FALK: Your Honor, objection. This is again
23 hearsay.

24 MR. WARD: Statement against interest, Your Honor.

25 THE COURT: Overruled.

1 BY MR. WARD:

2 Q. - All right. So eventually you found out Lisa was
3 actually Michelle Vining?

4 A. Correct.

5 Q. Did the other officers on scene conduct a protective
6 sweep?

7 A. Yes. Because of the amount of activity that we saw
8 at the windows I didn't know how people were inside the house.
9 I had a strong suspicion that there was an active lab inside
10 the house. The ammonia and my knowledge of meth labs, they're
11 explosive so if you have an active lab inside the house,
12 that's a dangerous situation. Didn't know how many people
13 were in there because of all the people we saw moving around
14 and to preserve the evidence I sent the two officers inside of
15 the house to do what we call a protective sweep. Their job at
16 that point was to make sure no one else was inside the house
17 and that they didn't see in plain sight an active lab. Now,
18 this protective sweep they are not going in and opening
19 drawers and looking in cabinets and stuff like that. They are
20 solely looking for people and the presence of an active lab.

21 Q. Once the search warrant was executed, what was your
22 role at the house?

23 A. While they were executing the search warrant I
24 stayed outside and I had a new detective with me and he was
25 recording the information that, the items that were being

1 brought out of the house as evidence. We had evidence that we
2 took and stored in our evidence locker and we had evidence
3 that was destroyed because it's hazardous material. Basically
4 meth labs are under federal regulations a unregulated
5 hazardous material site so some of that stuff that we deemed
6 as hazardous material is destroyed by a contractor that is
7 provided to us by SLED.

8 Q. Did you actually go in the house and remove items?

9 A. No. I did not go in the house. I had four
10 detectives that were in protective chemical outfits and they
11 were inside the house searching.

12 MR. WARD: May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. WARD:

15 Q. I'm showing you what's been marked as State's
16 exhibit 61 for identification purposes. Do you recognize
17 that?

18 A. I do.

19 Q. What is it?

20 A. This is a photograph of a bottle that was removed
21 from inside the house that had remnants of liquid in it that
22 we believe was the vessel for the one pot manufacturing lab.

23 Q. Is that a fair and accurate representation of what
24 that looked like that night?

25 A. Yes, it does.

1 MR. WARD: At this time, Your Honor, we would ask
2 that State's exhibit 61 be admitted into evidence.

3 THE COURT: Any objection?

4 MR. FALK: No objection.

5 THE COURT: It's in.

6 MR. WARD: May I publish, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. WARD:

9 Q. So you say that was a bottle that was taken out of
10 the residence. What is the smaller little white container?

11 A. That is what we call an over pack container
12 basically. Inside this plastic bottle is a glass vial and it
13 sits inside the bottle and the white container is protected so
14 that if the glass bottle was to break, the substance inside
15 the vial would be contained inside that plastic container.

16 Q. Who took the sample that night?

17 A. I took the sample in this picture.

18 Q. Did you place it in the over pack container?

19 A. I did. I wrote number 1 so that it would signify
20 that, there was a number 1 also on this green bottle, that
21 this was sample number 1 taken from bottle number 1. I also
22 wrote on the side, you can't really see it but right over here
23 is the case number for the incident as well as the pH of the
24 substance inside the bottle.

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

1 exhibit 1 for identification purposes. Do you see the exhibit
2 number 1 that's in the picture?

3 A. I do.

4 Q. Do you recognize that to be the same?

5 A. It is.

6 Q. How are you able to do so?

7 A. Again it has the number 1 and on the side it has the
8 case number and then on the other end of it is the pH that I
9 wrote.

10 Q. So once you placed the sample into the over pack ,
11 container, what did you do with the over pack container at
12 that point?

13 A. The over pack container was then given to Detective
14 King, I believe. He was recording the items that was removed
15 as evidence off to a search warrant return that was later put
16 into a chain of custody and placed into evidence for a lab
17 analysis.

18 Q. Now, let's go back to the pseudoephedrine purchase
19 logs. Did you have an opportunity to get Mr. Kotowski's
20 pseudoephedrine purchases?

21 A. Yes. While on scene, I never heard of Mr. Kotowski
22 before this incident, while on scene after getting his
23 information and having the detective write the search warrant,
24 I gave him Kotowski's information and asked him to run the
25 pseudoephedrine log for him as well.

1 Q. What did you find on Mr. Kotowski's logs?

2 A. I found that he had purchased pseudoephedrine
3 recently. This happened on October 30th and on September 29th
4 and September 17th he had made purchases of pseudoephedrine.

5 Q. Okay. And for Ms. Vining, the person you initially
6 were investigating, how many purchases from, I guess,
7 September up to this incident did she have?

8 A. She had 12 activities. Activities means either she
9 purchased it, she was blocked from it. As far as purchases
10 she had one on December 29th, one on December 22nd -- excuse
11 me. I apologize. October 29th, October 22nd, October 17th,
12 October 15th, October 13th, two on October 13th, and then one
13 on September 16th, one on September 11th and one on September
14 3rd.

15 Q. Through your experience those amount of
16 pseudoephedrine purchases, what is that indicative of?

17 A. It could be either the chemical courier, the meth
18 cook himself, or a smurf, what we call a person that goes out
19 and buys pseudoephedrine. Because of the Combat Meth Act,
20 restriction of pseudoephedrine typically in my experience and
21 my investigations meth cooks will gather a group of friends,
22 people in their circle and they will all go out and buy
23 pseudoephedrine and everybody come back and give the
24 pseudoephedrine to the meth cook who will then make the
25 methamphetamine.

1 MR. WARD: No further questions. Please answer any
2 questions the defense may have.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION

5 BY MR. FALK:

6 Q. Officer Thompson, you testified earlier with some
7 specifics on purchases made of pseudoephedrine; is that
8 correct?

9 A. Yes, sir.

10 Q. You had no -- In order to give those specifics you
11 had to rely on information that you obtained from the NPLEx;
12 is that correct?

13 A. Yes. The way NPLEx works is we put names in the
14 database as I said before, addresses, and it will give me a
15 printout of all the pseudoephedrine purchases made, the person
16 that made it, the time they made it, the location, store
17 number, store name, store address, the amount they purchased
18 and the product that they purchased.

19 Q. Thank you. Do you have, without looking at the
20 NPLEx log, do you know how much - would you be able to tell me
21 how much Ms. Vining purchased in September of 2015?

22 A. Without looking at it probably not. I think I did
23 say that there was two purchases made in a September.

24 Q. Again that was based on your recollection after
25 looking -- Do you have any first hand knowledge that she made

1 those purchases, any purchases other than your review of the
2 information you received from the NPLEx?

3 A. The only information I have got about her purchases
4 was from NPLEx. I wasn't in the store with her while she made
5 the purchases so no. Everything I have is from the log.

6 Q. Was there any attempt to corroborate any of these
7 purchases by going to any of the stores?

8 A. The log speaks for itself. You have to give your ID
9 to purchase the pseudoephedrine. They scan that and make sure
10 the information there is correct and then if you are able to
11 buy it, they make the sale. If you exceed it, they block the
12 sale so the information is pretty reliable.

13 Q. You have no information whether or not it was, in
14 fact -- You have no way of knowing sitting right there whether
15 or not the person who owned the ID actually presented the ID,
16 do you?

17 A. Again I was not at the store when they made the
18 purchase or when they bought the pseudoephedrine.

19 Q. Are you familiar with the computer program that
20 manages the database?

21 A. The information I have about the computer program is
22 it's owned by Appriss and they are the collection point.
23 Legislatures decided in law that Appriss would be used to
24 record the information on NPLEx from the pseudoephedrine logs.
25 I know that Appriss is --

1 Q. Excuse me. Do you have any information as to the
2 accuracy of the database?

3 A. Could I finish answering the question that you asked
4 me?

5 THE COURT: He's allowed to finish his original
6 answer.

7 MR. FALK: I thought it exceeded my question but
8 okay.

9 BY THE WITNESS:

10 A. I'll wait to talk. I'm sorry.

11 THE COURT: Answer yes, no and then explain if you
12 have to.

13 BY THE WITNESS:

14 A. That's all I can tell you. That's all I know.

15 BY MR. FALK:

16 Q. Okay. Do you have any information as to the -- You
17 don't have any information as to the accuracy of the database,
18 do you?

19 A. No.

20 Q. Do have any information as to any kind of quality
21 controls that are maintained on the database?

22 A. No. I don't work for Appriss. I'm employed by the
23 Sheriff's Office.

24 Q. Do you have any information as to exactly how the
25 information is taken regarding the amount of the purchase and

1 the date of the purchase and the time of the purchase?

2 A. Are you asking how it's recorded?

3 Q. How is it recorded?

4 A. Well, it's my understanding that --

5 Q. So you have no first hand knowledge of how it's
6 recorded? Do you have any first hand knowledge of how it's
7 recorded?

8 THE COURT: Again, answer yes, no and explain your
9 answer.

10 BY THE WITNESS:

11 A. Yes. You go to the store, you provide the
12 pharmacist, because only the pharmacist can sell it, you
13 provide the pharmacist your ID and then that information - the
14 ID is scanned, the information embedded in your license is
15 recorded and the pharmacist would input the name of this
16 product that you're wanting to buy and the grams associated
17 with that product.

18 BY MR. FALK:

19 Q. How does the pharmacist input that information?

20 A. Manually I would say.

21 Q. You would assume. You have no information as to how
22 the pharmacist puts the information in; is that correct?

23 A. That's correct.

24 Q. You don't know whether it's put in by a scan of the
25 UPC code or whether it's put in manually; is that correct?

1 A. Correct. I don't work for the pharmacist. I work
2 for the Sheriff's Office.

3 Q. I'm just trying to find out what information you
4 have regarding how accurate that database is and what
5 possibility there is for errors of entry?

6 A. I can't testify to that. I don't know that.

7 Q. You are not at all part of -- Obviously you didn't
8 develop the database?

9 A. No. I wouldn't be sitting here today if I did.

10 Q. You didn't develop the computer program that takes
11 the data that's entered and forms it into a report; is that
12 correct?

13 A. That's correct. No.

14 Q. And any of the training that you have had regarding
15 the database is not, would not tell you how the database takes
16 the information and generates the reports?

17 A. The training that I have on the system is user level
18 training, how to run reports, different tools that are in the
19 database that I can use to investigate methamphetamine
20 crimes.

21 Q. Does Appriss have any certifications?

22 A. Not to my knowledge.

23 Q. And again, Appriss is the company that manages the
24 database?

25 A. Yes. Appriss, they do other law enforcement

1 software such as VIN which is for victim notification. There
2 is other law enforcement type software that they run.

3 Q. You testified earlier that you got some e-mails
4 regarding Ms. Vining's purchases; is that correct?

5 A. Correct. I established a watch on Michelle Vining
6 so when she purchased pseudoephedrine, I would be notified and
7 that notification is by e-mail.

8 Q. Do you have any copies of those e-mails?

9 A. I'm sure they are still on the server through the
10 county.

11 Q. Do you have any copies of those e-mails with you
12 today?

13 A. No, I don't.

14 Q. You had testified earlier that you would put the
15 address into the database; is that correct?

16 A. That is correct because the initial tip I had no
17 information as far as names. All I had was an address so I
18 put the address into NPLeX and was given information.

19 Q. And I believe your testimony was that two names came
20 back; is that correct?

21 A. Correct. Michelle Vining and a Brian Edwards.

22 Q. So Mr. Kotowski's name was not identified?

23 A. No. As I said before, I had not heard of Kotowski
24 prior to that.

25 Q. What time was the knock and talk?

1 A. It was mid afternoon. I would say probably 4:00,
2 5:00, somewhere around in there.

3 Q. Because by those pictures it looked like it was
4 dark?

5 A. Yes. By the time we got the search warrant, have
6 someone write the search warrant and you have to go find a
7 judge because they're not at the courthouse 24 hours so we
8 would meet a judge at home, get equipment and other resources
9 as far as the fire department, EMS, our equipment, have all
10 that staged, we had to set up decon because the defendant was
11 saturated in ammonia so we had to decon the defendant and
12 clean him --

13 Q. Excuse me, officer. I just asked what time.

14 A. I was just explaining why it was dark.

15 Q. I didn't ask you why. I just was asking you what
16 time. Thank you.

17 THE COURT: He may explain his answer. You said it
18 looked like it was dark so he can explain why it got to
19 be dark by that point.

20 MR. FALK: Okay.

21 BY MR. FALK:

22 Q. Did you make another arrest?

23 A. Yes. There was two people arrested at the house.

24 Q. And who was the other person that was arrested?

25 A. Michelle Vining.

1 Q. She is not on trial today, is she?

2 A. No. She is not.

3 Q. Do you have any knowledge of what happened with
4 her?

5 MR. WARD: Objection. There is no relevance to what
6 occurred with her case. She is not on trial.

7 MR. FALK: Your Honor, I would --

8 THE COURT: Please approach.

9 (Side bar off the record.)

10 THE COURT: You may proceed.

11 BY MR. FALK:

12 Q. I believe I asked you whether or not you knew if Ms.
13 Vining was arrested?

14 A. She was arrested.

15 Q. And do you have any knowledge of whether or not she
16 pled guilty? What charge was she arrested on?

17 A. She was also charged with manufacturing
18 methamphetamine and possession of methamphetamine.

19 Q. Do you have any knowledge whether or not she pled
20 guilty?

21 A. I believe she did plead guilty to --

22 THE COURT: The question is whether or not she pled,
23 if you know.

24 BY THE WITNESS:

25 A. I don't know. I don't know.

1 BY MR. FALK:

2 Q. You know she pled. You don't know what the charges
3 are?

4 A. Correct.

5 Q. Thank you. Now, you were saying that the door
6 opened up and you smelled ammonia. That was your earlier
7 testimony?

8 A. Correct. When Kotowski, the defendant came to the
9 door, as I said before, he closed the door behind him and
10 stood at the doorway and I could smell the ammonia emitting
11 from his clothing.

12 Q. But he came through that door, the door was opened
13 up and he was standing there and you're saying you could smell
14 the ammonia?

15 A. Correct.

16 Q. You had indicated that you had gotten a search
17 warrant in this case or you -- A search warrant was obtained
18 in this case; is that correct?

19 A. That is correct. We did obtain a search warrant for
20 the residence.

21 Q. And I believe the search warrant had some
22 information about the NPLeX. Putting that aside, did any
23 other police officer provide any information that was used for
24 the search warrant?

25 A. The search warrant, I provided probable cause for

1 the search warrant to Detective Strickland. He wrote the
2 search warrant. He called me. Read me the search warrant and
3 then went and got the search warrant signed by a judge. No
4 one else provided information besides myself and the
5 information I had given Detective Strickland.

6 Q. By the time you got that search warrant, you knew
7 the true identify of the female there; is that correct?

8 A. That is correct.

9 Q. And you knew that she was the owner of the house?

10 A. That is correct.

11 Q. Did you smell any ammonia smell coming from Ms.
12 Vining?

13 A. In the search warrant it does say that I told --

14 MR. FALK: Your Honor, I asked a yes or no question,
15 did he smell anything. I'm entitled to a yes or no
16 answer.

17 THE COURT: He's also allowed to explain his answer
18 once he answers.

19 BY THE WITNESS:

20 A. Yes. I told Detective Strickland and it's in the
21 search warrant affidavit that I smelled ammonia on both
22 Kotowski and Michelle Vining or Lisa at that time because we
23 are referring to her as the alias.

24 BY MR. FALK:

25 Q. Did you prepare an incident report in this case?

1 A. I did prepare an incident report.

2 Q. At any place -- And is it -- What is the purpose of
3 preparing an incident report?

4 A. To record the information that we gather for a
5 document of record through the Sheriff's Office. Also for
6 court proceedings like this.

7 Q. To help refresh your memory?

8 A. Yes.

9 Q. And is it important to be accurate in the incident
10 report?

11 A. It is.

12 Q. In your training as a police officer is it important
13 to put critical evidence in the incident report?

14 A. It's important to document, yes.

15 Q. At anyplace in the incident report did you say that
16 you smelled an aroma coming from Ms. Vining?

17 A. It is not in the incident report, but as I said
18 before in the search warrant affidavit.

19 Q. Do you have an explanation why you would keep that
20 information out of the incident report?

21 A. The only thing I can say is error in writing it I
22 just left that out.

23 Q. Because certainly whether or not there was an aroma
24 coming from the owner of the house would be important
25 information to give to a judge in getting a search warrant,

1 wouldn't it?

2 A. I think that the information we had up to that point
3 when Kotowski came to the front door was substantial to obtain
4 the search warrant.

5 Q. Thank you. Now, my question is do you think that
6 would be important information whether or not the owner of the
7 house smelled like, had a smell of ammonia?

8 A. Sure. That would be important.

9 Q. Since it's an indication of -- Withdraw that
10 question. Now, you had spoken about the NPLEx logs and Mr. -
11 and you said you reviewed Mr. Kotowski's pseudoephedrine
12 purchases; is that correct?

13 A. That is correct.

14 Q. Wasn't it your testimony -- And it was your
15 testimony that people who are -- You had testified about a
16 smurf. What is a smurf?

17 A. A smurf is just a name we put on people that are
18 chemical couriers. They will go out oftentimes gather a
19 number of friends to make runs or store trips and all these
20 individuals will go in and purchase pseudoephedrine so they
21 have enough amount to come back and make a cook we call it or
22 a run to where they have enough methamphetamine to make it
23 worth their while.

24 Q. Did you not testify earlier that they will go to
25 different pharmacies to try to conceal their actions?

1 A. That is true. They will go to different pharmacies
2 so that they do not raise a suspicion by the pharmacist that
3 is ringing up the order. They make multiple trips to
4 different stores different times.

5 Q. You had given your opinion regarding Ms. Vining's,
6 what you thought Ms. Vining's NPLeX records indicated; is that
7 correct?

8 A. I don't know if it was opinion, but her records
9 indicated to me that she was buying pseudoephedrine for use in
10 manufacturing methamphetamine.

11 Q. It's not your testimony that Mr. Kotowski's purchase
12 pattern is an indication that he is cooking, is it?

13 A. As I said before, Mr. Kotowski did make two
14 purchases in, I believe, September. But understand this,
15 because of the Combat Meth Act people that manufacture
16 methamphetamine oftentimes try to keep themselves off the
17 radar as we would say. They don't want to be on the list so
18 they make substantially low purchases or no purchases at all.
19 Just because they don't have any purchases doesn't really
20 negate the fact that they are involved in methamphetamine.
21 They just want to conceal themselves because that's the first
22 thing you look for and people know that now that we are
23 looking at this stuff.

24 Q. Do you know where Mr. Kotowski bought
25 methamphetamine in July of 2013?

1 A. Yes, I do.

2 Q. And what quantity did he buy?

3 A. On September, or excuse me, July 15th, 2013 he
4 purchased 2.4 grams, and on July 25th, 2013 he purchased 2.4
5 grams.

6 Q. On July 25th, 2013, where did he purchase that?

7 A. On the 15th?

8 Q. On the 25th?

9 A. 25th was at Rite-Aid number 11621 located at 602,
10 Bacons Bridge Road.

11 Q. On the 15th do you know where he purchased?

12 A. At Rite-Aid.

13 Q. Which one?

14 A. 602 Bacons Bridge Road.

15 Q. On the - in June do you know where he purchased?

16 A. The same location.

17 Q. If you would review his record, would you review his
18 purchase locations on his record?

19 A. If I was to review his records, yeah.

20 Q. No. I mean, would you please right now look at
21 where he purchased his pseudoephedrine?

22 A. Would you like me to list all the places?

23 Q. No. I just want you to look because then I'm going
24 to ask you a question.

25 A. Okay. (Witness complies.) I have reviewed it.

1 Q. Is it fair to say that most of those purchases were
2 at the same Rite-Aid?

3 A. Yes. I would say they were at the same Rite-Aid.

4 Q. Is it fair to say that he was not making any effort
5 to conceal where he was purchasing it?

6 A. It does not look as though from his pattern he was
7 concealing his purchases.

8 Q. You had testified about the green bottle that was
9 recovered?

10 A. Yes.

11 Q. Did you all ever attempt to find any fingerprints on
12 the bottle?

13 A. Not to my recollection, no.

14 Q. So do you have any information as to whether or not
15 Mr. Kotowski was ever in possession of that bottle?

16 A. Not to my recollection, no.

17 Q. In fact, you don't even have any evidence that he
18 ever touched that bottle?

19 A. No.

20 MR. FALK: I have no further questions.

21 THE COURT: Any redirect examination?

22 MR. WARD: Nothing from the State, Your Honor.

23 THE COURT: You may step down, Sergeant. Thank you.
24 Call your next witness.

25 MS. MIMS: Thank you, Your Honor. The State would

1 call Detective Brandon Allen.

2 Thereupon,

3 BRANDON ALLEN

4 after having been first duly sworn, testified as follows,

5 MS. MIMS: May it please the Court.

6 THE COURT: Yes, ma'am.

7 DIRECT EXAMINATION

8 BY MS. MIMS:

9 Q. Good morning, Detective Allen.

10 A. Good morning.

11 Q. Could you please tell the jury where you are
12 employed?

13 A. I'm employed with the Dorchester County Sheriff's
14 Office. I'm assigned to the Dorchester County Summerville
15 metro narcotics unit.

16 Q. And what exactly is the metro narcotics unit?

17 A. We are a task force between Dorchester County
18 Sheriff's Office and the Summerville Police Department and
19 other affiliated agencies. We investigate all narcotics
20 investigations throughout the county in that jurisdiction.

21 Q. How long have you been with the narcotics unit?

22 A. I have been with the narcotics unit going on almost
23 three years now.

24 Q. Okay. Were you working with the narcotics unit on
25 October 30th, 2014?

1 A. Yes, ma'am, I was.

2 Q. Do you remember that date?

3 A. Yes, ma'am, I do.

4 Q. On that date did you have at some point an occasion
5 to respond to 111 Marsh Point Road in Summerville?

6 A. Yes, ma'am.

7 Q. Is that in Dorchester County?

8 A. Yes, ma'am, it is.

9 Q. Why were you responding to that location?

10 A. Sergeant Thompson was actively involved in an
11 investigation involving manufacturing of methamphetamine and
12 requested my assistance in regards to that investigation.

13 Q. Was it just you and Officer Thompson at that
14 location?

15 A. No, ma'am. It was myself, Sergeant Thompson and
16 Detective Lundberg.

17 Q. Can you tell the jury what you did when you got
18 there?

19 A. Myself and Sergeant Thompson went to the front door
20 to conduct what we call a knock and talk. We believed that,
21 or through Sergeant Thompson's investigation we believed that
22 someone was possibly manufacturing methamphetamine at that
23 residence. Myself and Sergeant Thompson went to the front
24 door. We were clearly marked with law enforcement equipment
25 like the vest we wear says Sheriff across the front of it. We

1 knocked on the door and waited for a response. We waited an
2 extended period of time and knocked several times before
3 someone even came to the door. While we were waiting we saw
4 people looking through windows. I believe it was relayed by
5 Detective Lundberg that someone had removed a fan from a
6 window.

7 Q. Where was Detective Lundberg located? Was he
8 standing at the front door with you as well?

9 A. No, ma'am. He was standing on the right side of the
10 house. If you're looking at the house from the street,
11 Detective Lundberg was on the right side of the house.

12 Q. I'm sorry. Go ahead. What did he indicate?

13 A. Detective Lundberg relayed to us that someone in the
14 residence had removed a fan from an upstairs window while we
15 were knocking on the front door waiting for someone to answer.
16 Then we saw window blinds moving like someone was attempting
17 to look out the window to see who was out front.

18 Q. So did you knock just one time?

19 A. No, ma'am. We knocked numerous times.

20 Q. Did someone eventually come to the door?

21 A. Yes, ma'am. Mr. Kotowski eventually came to the
22 door.

23 Q. What happened when he answered the door?

24 A. When he answered the door, he stepped outside and
25 closed the door behind him in what I believe was to basically

1 distance himself from the house and not allow us to maybe see
2 what was going on inside the residence.

3 Q. Did you notice anything peculiar about
4 Mr. Kotowski?

5 A. Yes, ma'am. He had a very, very strong odor of
6 ammonia coming from his person from like his clothes, like he
7 was saturated.

8 Q. Did you have to be standing close to Mr. Kotowski to
9 notice that?

10 A. Not on this day, no.

11 Q. Was it a very strong odor?

12 A. Yes, ma'am. It was overwhelming.

13 Q. What was Mr. Kotowski's demeanor?

14 A. I noticed him to be very nervous, shaky, looking
15 around, things of that nature. It was obvious he was nervous
16 about something.

17 Q. So what did you do next?

18 A. Sergeant Thompson being the case agent or the
19 primary investigator in this incident talked to Mr. Kotowski.
20 I kind of took a step backward as a support role basically.
21 Through my training and experience when someone is looking
22 around or someone is real fidgety, there is a possibility they
23 might flee or try to run. That's kind of where my mind set
24 was at. That's why I took a couple steps backwards.

25 Q. What happened next? Did you eventually go into the

1 residence?

2 A. Sergeant Thompson asked Mr. Kotowski who else was in
3 the house. If his girlfriend Michelle was home or if Michelle
4 was home, I believe, and Mr. Kotowski said that no, that the
5 only person in the house was a woman that he identified as
6 Lisa. We did not know who Lisa was at that time. It was
7 later determined to be Michelle Vining. Sergeant Thompson
8 asked Mr. Kotowski to have Lisa come out front and at which
9 point he tried to step back in the door and close the door
10 behind him. We stopped him from doing that for numerous
11 reasons. The one primary reason is officer safety. We don't
12 know if he's going back in the house to retrieve a weapon or
13 anything of that nature so my concern and for the reason for
14 us blocking the door or not letting him shut it, number 1,
15 officer safety. We don't want to get hurt. Number 2, given
16 the smell we had a good idea what was going on. We didn't
17 want him to go back inside and destroy any evidence.

18 Q. What does the smell of ammonia indicate to you
19 through your training and experience?

20 A. Through my training and experience it's a key
21 indicator in the manufacturing process of methamphetamine
22 specifically the one pot manufacturing method which is
23 commonly referred to as shake and bake.

24 Q. Okay. So did Mr. Kotowski keep the door open?

25 A. He did. We asked him to call out to Lisa to have

1 her come down. He calls out. She doesn't come down
2 initially. Then I believe he makes his way upstairs and goes
3 and gets her and then they both come back out.

4 Q. Okay. What happened next?

5 A. Again Sergeant Thompson being the lead investigator
6 he spoke to what was later, Lisa was later identified as Ms.
7 Vining or Vining and spoke with Mr. Kotowski. It was relayed
8 to me that Sergeant Thompson requested consent to search the
9 residence based on the information that he had obtained
10 through his investigation and what was going on at the
11 residence and it was relayed to me that consent was denied.
12 They would not less let us willingly go in and look around the
13 house at which point I was instructed and so was Detective
14 Lundberg to conduct a protective sweep of the residence
15 because we were going to obtain a search warrant for the
16 residence.

17 Q. What's a protective sweep?

18 A. A protective sweep is a sweep through a structure,
19 it could be any structure where you're looking for persons.
20 You're not looking for evidence or anything like that. You're
21 looking for other bodies or other individuals possibly inside
22 a residence or inside a structure. And again one of the
23 reasons for that is if we are going to obtain a search warrant
24 and go search a residence or structure, we want to make sure
25 nobody is jumping out on us while we are doing our job and

1 trying to hurt us or anything like that so we went in and
2 conducted a protective sweep.

3 Q. Did you find anyone else in the residence?

4 A. No, ma'am, we did not.

5 Q. Okay. What happened after the protective sweep?

6 A. Once we completed the protective sweep of the
7 residence, myself and Detective Lundberg exited the residence
8 at which point Detective Lundberg relayed to Sergeant Thompson
9 the items that we saw in plain view while we were executing
10 the protective sweep inside the house.

11 Q. So while you're on the protective sweep tell the
12 jury what you did observe. Did you touch anything while you
13 were doing the protective sweep?

14 A. Not evidence wise. We opened the closet doors and
15 things like that.

16 Q. Were you looking for people?

17 A. Looking for people so we had to open doors to
18 closets and things of that nature. Any place a person could
19 hide.

20 Q. Did you see anything on your protective sweep that
21 concerned you?

22 A. Yes, ma'am. Once we initially started the
23 protective sweep, we started downstairs. We cleared the
24 bottom half of the house and then we made our way upstairs.
25 As we got to the top of the stairwell, I noticed the same

1 overwhelming smell of ammonia that I noticed coming off of
2 Mr. Kotowski outside once we got to the top of the stairwell.
3 At the very top of the stairwell in the residence we
4 encountered a closed door that was straight at the top of the
5 stairwell. Through my training and experience it's what we
6 would classify as an immediate threat. You don't know what's
7 on the other side of that door. There was a doorway to the
8 left that was open. So we opened the - we knocked. We
9 announced to see if anybody was in that room that had the
10 closed door to it and no one responded. Obviously then we
11 opened the door.

12 Immediately upon opening that door the smell of
13 ammonia became even stronger to the point where through my
14 recollection I probably should have had some sort of breathing
15 apparatus on or some sort of protective equipment. Myself and
16 Detective Lundberg probably shouldn't have been in there
17 without it it was that overwhelming. Overwhelming to the
18 point we had to hold our breath pretty much the rest of time
19 we were in the house because we didn't want to get hurt by
20 this stuff.

21 Q. Based on your training and experience, what would
22 have caused that smell of ammonia?

23 A. Through my training and experience I believe what
24 had happened while we were knocking on the door was that they
25 had basically dumped out the meth lab or what we refer to as

1 gassing off or burping. It's basically just -- I believe they
2 emptied the contents of the one pot methamphetamine lab while
3 we were knocking on the door. That's why it was exposed and
4 that's why it was so strong and overwhelming at that point.

5 Q. Is that type of smell something that is dangerous to
6 you?

7 A. Yes, ma'am. It's highly volatile and extremely
8 dangerous.

9 Q. So we are back to after you conducted the protective
10 sweep, what happened next?

11 A. Once we finished the protective sweep as I stated we
12 exited the residence. Detective Lundberg went and spoke with
13 Sergeant Thompson and told him what he smelled, saw, things
14 like that in plain view at which point Sergeant Thompson
15 relayed that information and we were able to obtain a search
16 warrant for the residence based upon the investigation or
17 based upon what we saw in the protective sweep and what we
18 smelled.

19 Q. Were you a part of the team that actually conducted
20 the search of the house?

21 A. Yes, ma'am.

22 Q. Were you one of the first ones in the home?

23 A. Yes, ma'am.

24 Q. Did you wear what you were just wearing your normal
25 clothes when you walked into the home?

1 A. No, ma'am.

2 Q. What were you wearing?

3 A. We are all clandestine lab certified so we have to
4 wear chemical suits. We refer to them as a Tyvek suits. It's
5 basically a full body jump suit that protects you from
6 chemicals. We wear a mask similar to what firefighters would
7 wear when they go into a house that's on fire with respirators
8 and a tank which is called an APR, an SCBA to basically push
9 clean oxygen and clean air through our lungs so that we can
10 actually operate in that kind of environment.

11 Q. Is your body completely covered?

12 A. Yes, ma'am.

13 MS. MIMS: Your Honor, may I approach the witness?

14 THE COURT: Yes, ma'am.

15 BY MS. MIMS:

16 Q. Detective Allen, I would like to show you what's
17 been marked as State's exhibits 2 through 6. Can you tell me
18 what those are pictures of?

19 A. Exhibit number 2 appears to be a plastic container
20 containing white residue.

21 Q. Do you recognize that picture?

22 A. Yes, ma'am, I do.

23 Q. Is that a picture of what was in the house at 111
24 Marsh Point Road on October 30th, 2014?

25 A. Yes, ma'am.

1 Q. Does it accurately represent what it looked like at
2 the time?

3 A. Yes, it does.

4 Q. Go ahead.

5 A. The picture marked exhibit 3 is a stack of match
6 books, 50 count match books. I count one, two, three, four,
7 five, six, seven, eight boxes total, 50 count. It is from the
8 residence.

9 Q. I'll tell you what. Just Look through the rest of
10 those and tell me if you recognize those photos?

11 A. Yes, ma'am, I do.

12 Q. As being photos taken at 111 Marsh Point Road?

13 A. Yes, ma'am, I do.

14 Q. Do they accurately reflect what was in that
15 residence on October 30th, 2014?

16 A. Yes, ma'am, they do.

17 MS. MIMS: Your Honor, at this point I would ask to
18 introduce those photos 2 through 6 into evidence.

19 MR. FALK: Your Honor, if I may ask a question. Do
20 those photographs represent -- Did you move any of those
21 items? Were any of those items moved and then
22 photographed or are those photographs of where they were
23 inside the house how they were sitting?

24 THE WITNESS: Can you please repeat the question?

25 MR. FALK: Okay. Let's talk about the match books.

1 Were those match books stacked up like that or did you
2 pull them from all over and put them together to take the
3 photograph?

4 THE WITNESS: I wasn't the one responsible for
5 taking photographs. I can't say for sure if they were
6 stacked like that or not.

7 MR. FALK: Do you know if these were staged, these
8 photographs were staged? The aluminum foil, was that
9 taken where it was or was it moved outside and a
10 photograph taken?

11 THE WITNESS: No, sir. It's common practice for us
12 when we locate an item, we photograph it from a distance
13 and then up close before we even move it so we have a
14 good working knowledge of where we actually find evidence
15 at.

16 MR. FALK: Your Honor, to the extent that the
17 matchbooks, I think we need some foundation whether or
18 not that's the way they looked. I would object to the
19 match books coming in unless somebody can testify that
20 that's how they looked at the time. I mean, obviously a
21 match book here, a match book here, it's one thing to put
22 them all together. I think that's prejudicial.

23 MS. MIMS: We can have another witness, if you want,
24 to identify exactly what those looked like.

25 THE COURT: That's fine.

1 BY MS. MIMS:

2 Q. So if you are looking at exhibit number 2 and
3 exhibit number 4 through 6, do you recognize those photos?

4 A. Yes, ma'am, I do.

5 Q. Were those photos taken as you saw them on October
6 30th, 2014?

7 A. The photographs were taken as we located the
8 equipment.

9 Q. Where they were located in the home?

10 A. Yes, ma'am.

11 MS. MIMS: Your Honor, at this point I would ask to
12 introduce 2, 4, 5, and 6 into evidence.

13 THE COURT: Any objection?

14 MR. FALK: No objection.

15 THE COURT: They're in.

16 MS. MIMS: Permission to publish, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. MIMS:

19 Q. I'll show you what's been marked as State's exhibit
20 number 2. Do you recognize that photo?

21 A. Yes, ma'am.

22 Q. What is that a picture of?

23 A. That's a plastic container containing a plastic bag
24 with a white powder residue.

25 Q. I'm going to show you State's exhibit number 4. Do

1 you recognize that picture?

2 A. Yes, ma'am, I do.

3 Q. What is that?

4 A. That is a Reynolds Wrap container of aluminum foil
5 50 square feet.

6 Q. Based on your training and experience is aluminum
7 foil something that you would use in the manufacturing of
8 methamphetamine?

9 A. Yes, ma'am, and also the consumption.

10 Q. I'm gonna show you what's been marked as State's
11 exhibit 5. What is this?

12 A. Some sort of Pyrex dish or glass dish with a white
13 residue.

14 Q. Do you know what this could be used for?

15 A. It could be used for basically when they conducted
16 their chemical make-up or what they have done to basically
17 filter out any sort of salt methamphetamine waste product.

18 Q. And this is State's exhibit number 6 I'm showing
19 you. What is this?

20 A. That is a piece of aluminum foil containing a glass
21 for lack of a better term pipe. Methamphetamine users will
22 utilize a pipe of that nature. It will have a round ball on
23 the end of it and you light it up and you can actually inhale
24 it through smoking.

25 Q. Detective Allen, I'm going to show you what's been

1 marked as State's exhibit 8 and 9. Do you recognize these
2 photos?

3 A. Yes, ma'am, I do.

4 Q. Did you take those photos?

5 A. No, ma'am, I did not.

6 Q. Okay. Were you there when the photo was taken?

7 A. Yes, ma'am, I was.

8 Q. Do they accurately represent those items as they
9 were displayed on October 30th, 2014 at 111 Marsh Point
10 Road?

11 A. Yes, ma'am.

12 MS. MIMS: Your Honor, at this point I would ask to
13 move State's exhibit 8 and 9 into evidence.

14 THE COURT: Any objection?

15 MR. FALK: No objection.

16 THE COURT: They're in.

17 BY MS. MIMS:

18 Q. Let me show also show you what has been marked as
19 State's exhibit number 10 and 11. Do you recognize those
20 photos?

21 A. Yes, ma'am, I do.

22 Q. Okay. Were you there when the photos were taken of
23 those two exhibits?

24 A. Yes, ma'am, I was in the residence when the
25 photographs of these items were taken. They were specifically

1 in the upstairs bathroom where we encountered the overwhelming
2 gaseous haze.

3 Q. Okay. Do those photos accurately represent what you
4 saw -- First let me ask you this: On State's exhibit number
5 10, does that photo accurately represent where those bottles
6 were located when you walked into the room that they were
7 in?

8 A. Yes, ma'am. We took two separate pictures, one
9 where we actually located the items and then obviously you
10 cannot tell what they are from this angle so we took a
11 secondary photo where you can actually take a more
12 identifiable picture of what the items actually were. That's
13 why you have pictures of the same items from two different
14 perspectives.

15 Q. So does one picture, does number 10 indicate where
16 they were located, where exactly they were located when you
17 walked into the room without you touching them?

18 A. Yes, ma'am. Correct.

19 Q. Okay. And the next picture, number 11, does that
20 indicate where -- Did you put them up right in same room but
21 on something in the room?

22 A. Yes, ma'am. Basically on the bathroom counter so we
23 could photograph the labels identifying what kind of chemical
24 they were.

25 Q. And they accurately represent what they looked like

1 that day?

2 A. Yes, ma'am, they do.

3 MS. MIMS: Your Honor, at this point I would ask to
4 move in State's exhibit 10 and 11 into evidence.

5 THE COURT: Any objection?

6 MR. FALK: No objection.

7 THE COURT: They're in.

8 BY MS. MIMS:

9 Q. I would like to also show you State's exhibit 12
10 through 14. Do you recognize those photos?

11 A. Yes, ma'am.

12 Q. Were you there when those photos were taken?

13 A. Yes, ma'am.

14 Q. And do they accurately represent items that you
15 observed in the home on October 30th, 2014?

16 A. Yes, ma'am.

17 MS. MIMS: Your Honor, at this point I would ask to
18 move State's exhibits 12, 13 and 14 into evidence.

19 THE COURT: Any objection?

20 MR. FALK: No objection.

21 THE COURT: They're in evidence.

22 MS. MIMS: Permission to publish, Your Honor?

23 THE COURT: Yes, ma'am.

24 BY MS. MIMS:

25 Q. I'm going to show you State's exhibit number 10.

1 This is going back to the bottles. Why did you take this
2 picture or why was this picture taken?

3 A. This was the room that we encountered at the top of
4 the stairwell with overwhelming haze was coming from. These
5 bottles, you will be able to tell from the second picture the
6 white bottle is a bottle of muriatic acid. The green bottle
7 in the middle is either, it's an empty soda bottle which we
8 commonly see in a one pot manufacturing process. They use it
9 as a cooking vessel and just put all your ingredients in there
10 and shake it up. Hence the term shake and bake. And then the
11 red bottle to the right there is a fuel of some sort. There's
12 different types of fuel. Coleman camp fuel. That one
13 specifically is Liquid Fire. Things of that nature.

14 Q. So the items that we were just looking at on the
15 floor, these are the exact same items?

16 A. Yes, ma'am. Just photographed them from a different
17 angle so we could get identification on them.

18 Q. Would you use the muriatic acid and the Liquid Fire
19 to manufacture methamphetamine?

20 A. Yes, ma'am. It's two of the ingredients in the
21 manufacturing process.

22 Q. I'll show you what's been marked as State's exhibit
23 number 9. What is this a picture of?

24 A. Two mason jars that we located in the same
25 bathroom.

1 Q. Why were they photographed?

2 A. Commonly the methamphetamine manufacturers will use
3 mason jars as some sort of vessel for some sort of solvent or
4 some sort of chemical utilized in the manufacturing process.

5 Q. Okay. I'll show you what's been marked as State's
6 exhibit number 8. What is this a picture of?

7 A. That is a clear plastic bag of a white powder
8 substance that we believed at the time to be actual finished
9 product of methamphetamine.

10 Q. Is this what finished meth would look like?

11 A. Yes, ma'am.

12 Q. I'm going to show you what's been marked as State's
13 exhibits 15 through 24. Look through those pictures please
14 and tell me if you recognize them?

15 A. Yes, ma'am.

16 Q. What are those? Where were those pictures taken?

17 A. Some were photographed what appear to be outside the
18 residence and some inside. Specifically 15 and 16 from the
19 upstairs bathroom. The measuring cup in from what appears to
20 be the upstairs bathroom. Some of these were photographed
21 outside as well.

22 Q. Do you recognize all those items from being inside
23 the residence of 111 Marsh Point Road?

24 A. Yes, ma'am.

25 Q. Do they accurately represent what they looked like

1 on October 30th, 2014?

2 A. Yes, ma'am, they do.

3 MS. MIMS: Your Honor, at this point I would ask to
4 introduce these pictures into evidence.

5 THE COURT: Mr. Falk, any objection?

6 MR. FALK: No objection.

7 THE COURT: They are admitted.

8 MS. MIMS: Permission to publish, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. MIMS:

11 Q. What are we looking at here? What is this a picture
12 of?

13 A. You see two empty soda bottles. Once again these
14 items are commonly used in the one pot manufacturing shake and
15 bake process. To the right you have a Rosonol container of
16 lighter fluid which is an active ingredient used as a fuel in
17 the one pot manufacturing process.

18 Q. What is that blue thing sticking out? Is that in
19 the bottle?

20 A. It appears to be some type of straw or tube. It's
21 possible that was used as some sort of hydrogen chloride gas
22 generator at some point.

23 Q. Have you seen that before in your training and
24 experience?

25 A. Yes, ma'am.

1 MR. FALK: Your Honor, could I just ask that the
2 State identify which exhibit she's putting up each time?
3 I'm trying to keep track in my notes.

4 THE COURT: Ms. Mims, if you would just identify the
5 pictures.

6 MS. MIMS: Yes, ma'am. I'm sorry. I thought I was
7 doing. That's number 16.

8 THE COURT: Thank you.

9 BY MS. MIMS:

10 Q. This is State's exhibit number 18. What is this?

11 A. It's a Pelican case! It's a heavy duty, basically a
12 heavy duty briefcase is what I would compare it to.

13 Q. Why was this being photographed? Well, let me show
14 you the next picture. This is State's exhibit number 19. Is
15 this the same case?

16 A. Yes, ma'am, it is. Inside the contents of this case
17 you have numerous items that are utilized to manufacture
18 methamphetamine. I can see two containers worth of salt.
19 That white bottle here is your household drain cleaner or lye.
20 I'll refer to it as that. It's hard to tell from this but I
21 believe - this is another bottle of salt as well.

22 Q. Are those items necessary for manufacturing
23 methamphetamine?

24 A. Yes, ma'am.

25 Q. I'll show you what's been marked as State's exhibit

1 number 20. Do you recognize that?

2 A. Yes, ma'am.

3 Q. What is that?

4 A. It's your standard container of iodized salt.

5 Q. Is salt necessary for the manufacturing of
6 methamphetamine?

7 A. Yes, it is.

8 Q. I'll show you State's exhibit number 21. What is
9 this?

10 A. It's a bottle of household lye. That's also the
11 same thing that I circled initially that was in that black
12 container. That's another bottle of household lye or commonly
13 referred to as drain cleaner.

14 Q. Detective Allen, I'm now going to show you State's
15 exhibits 25 through 33. Can you look through those please.

16 A. Yes, ma'am.

17 Q. Do you recognize those photos?

18 A. Yes, ma'am, I do.

19 Q. Do they accurately represent what you found in the
20 house on October 30, 2014?

21 A. Yes, ma'am, they do.

22 MS. MIMS: Your Honor, at this point I would ask to
23 introduce 25 through 33 into evidence.

24 THE COURT: Any objection?

25 MR. FALK: No objection.

1 THE COURT: They are in.

2 MS. MIMS: Permission to publish, Your Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. MIMS:

5 Q. I'll show you what's been marked as State's exhibit
6 number 25. What is this a picture of?

7 A. It's a zip lock bag containing what we refer to as
8 airline tubing. It's basically plastic tubing. You will
9 commonly see this stuff used in hydrogen chloride gas
10 generators.

11 Q. What are we looking at here?

12 A. What you are looking at here is a hydrogen chloride
13 gas generator that I just mentioned a second ago. They use
14 the vessel or the bottle. This is basically your last stage
15 in the actual production of methamphetamine. They'll take the
16 tubing and it runs out of the bottle here, use straws, the
17 airline tubing, things of that nature that are utilized.

18 THE COURT: Solicitor what number is that?

19 MS. MIMS: That is number 27.

20 BY MS. MIMS:

21 Q. So is this a regular plastic bottle?

22 A. Yes, ma'am. It's either a Sprite bottle or Mountain
23 Dew, Coke bottle that you would buy at a convenient store.

24 Q. Okay. I show you what's been marked as State's
25 exhibit number 30. Can you tell us what we are looking at

1 here?

2 A. Yes, ma'am. What you see in the picture here is
3 your coffee filters. Why coffee filters is important is they
4 will actually utilize those filters to take, once you get your
5 chemical make-up they'll actually drain the substance and it's
6 just another step in the process of the manufacturing.
7 They'll utilize that and the funnel as well to remove liquids,
8 things of that nature.

9 Q. This is State's exhibit number 31. Can you tell us
10 what we're seeing here?

11 A. The black container in the middle is a pill grinder.
12 The white container here is another pill grinder and then you
13 have a measuring cup off to the left. I see some straws down
14 at the bottom and a piece of tubing down here that appears to
15 be discolored down at the bottom right hand side.

16 Q. Would all of these things be used to manufacture
17 meth?

18 A. Yes, ma'am.

19 Q. Finally I'll show you what's been marked as State's
20 exhibit number 33. What's in this photo?

21 A. There's quite a few items in this photo. Off to the
22 left you have your 24 hour cold medicine, pseudoephedrine
23 which is one of the key ingredients in manufacturing
24 methamphetamine. Above that you have your container of salt.
25 I can see two bottles of Rosonol fuel. Down here at the

1 bottom you have empty pseudoephedrine blister packs. This
2 item here is basically a twisted up coffee filter that has
3 some sort of remnants or some sort of residual items from a
4 manufacturing cook. We see that a lot. That's all that's in
5 that picture.

6 Q. Would you expect to find these things used to
7 manufacture methamphetamine?

8 A. Yes, ma'am. A lot of those items.

9 Q. Now, after you finished conducting your search of
10 the house, what happened next?

11 A. Once we completed the search of the residence, we
12 are medically cleared to go in and we are also medically
13 cleared when we come out. It's a OSHA standard. So the EMT's
14 show up and they take our vitals and things of that nature
15 before we go in. Once we are inside we execute or do what we
16 have to do and we come out and go through the same process.

17 On this specific day and time I came out with an
18 exposure basically. I was - they take pH paper to test your
19 pH level and the pH level on my person and my equipment was so
20 high that I had to be wet, decontaminated by the fire
21 department. That's how high the level of pH was as I came
22 out, myself and another detective present at which point the
23 fire department steps in and they wet, decontaminate us,
24 basically scrub us down and make sure we don't have any health
25 issues, clean off all of our equipment and I went and saw the

1 paramedics again to make sure that my medical vitals were
2 okay. That's an indication of how strong and how contaminated
3 that I was at that point.

4 MS. MIMS: I have no further questions. Thank you.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION

7 BY MR. FALK:

8 Q. The items that you referred to earlier that were in
9 plain view, straws, tubing, was that all upstairs?

10 A. A lot of the items that I saw in plain view were in
11 the bathroom. The room that we encountered with the closed
12 door and the heavy haze, yes, sir.

13 Q. They weren't in plain view from the stoop on the
14 outside of the house; is that correct?

15 A. No. No, sir. You wouldn't have been able to see
16 them until you went in the room.

17 Q. Okay. I think we saw a total of three green bottles
18 in those photographs?

19 A. If I remember correctly, yes, sir.

20 Q. Was there any methamphetamine in any of those
21 bottles?

22 A. From looking at the photos the most you might have
23 is some residue. I didn't see actual, not in the specific
24 pictures that I looked at. Now, the gas generator that I saw
25 was in a green bottle and obviously had some sludge or

1 something in it.

2 Q. But you never had any of those bottles tested; is
3 that correct?

4 A. I wasn't responsible for having them tested. I
5 wasn't the one that sent anything off. I can't testify to
6 what was sent off for testing.

7 Q. And you can't testify as to what was in the bottles
8 then as well; is that correct?

9 A. Not in the green bottles, no, sir.

10 Q. Okay. You had seen that, the heavy duty
11 briefcase?

12 A. The Pelican case, yes, sir.

13 Q. Pelican case?

14 A. Yes, sir. Referred to as a Pelican case.

15 Q. Where was that located?

16 A. I believe it was the bedroom -- If I can refer to my
17 --

18 Q. Sure.

19 A. I think we are calling it a frog over the garage
20 possibly. I believe it's going to be bedroom one. It says
21 camel type box. That's not what I know it as, but I think
22 that's what it's listed as here on the return.

23 Q. Do you have any evidence whether or not Mr. Kotowski
24 was ever near that box?

25 A. No, sir.

1 Q. You had shown a couple of cans, maybe twice, some
2 Rosonol fuel; is that correct?

3 A. The yellow bottles?

4 Q. Yes.

5 A. Yes, sir.

6 Q. Were they full?

7 A. I don't recall if they were full or partially full
8 or empty.

9 MR. FALK: No more questions.

10 THE COURT: Any redirect?

11 MS. MIMS: No, ma'am.

12 THE COURT: You may step down.

13 MR. FALK: May I? Let me just do this.

14 THE COURT: You have one more question?

15 MR. FALK: I have several more questions. I'm going
16 to do this here. If I may, Your Honor, may I go back on
17 cross examination?

18 THE COURT: You may.

19 MR. FALK: May I approach the witness?

20 THE COURT: Yes.

21 (Whereupon, Defendant's Exhibits #1 through #5
22 marked for identification.)

23 BY MR. FALK:

24 Q. I'm showing you what I had marked as defendant's
25 exhibits 1 through, I believe, 5. Were you present when those

1 -- I'm showing you defendant's 1 through 5.

2 A. Yes, sir.

3 Q. Do you recognize the items in those pictures?

4 A. Specifically, no.

5 Q. For example, there is a green glove in some of those
6 pictures; is that correct?

7 A. Yes, sir.

8 Q. Do you know if that was you?

9 A. I don't recall. It's a possibility. We all wear
10 the same gloves.

11 Q. But there were two people in the house doing that
12 search, doing that part, right?

13 A. Correct.

14 Q. Is it safe to say you were either the person holding
15 it or taking the picture of it?

16 A. It's a possibility. They're small items. The
17 person taking the pictures -- I know I'm not going to hold a
18 social security card for a guy so he can take a picture of it.
19 He can do that on his own so it might have been something the
20 photographer was taking while we were in there.

21 Q. Can you identify the items?

22 A. No.

23 Q. And you don't recall the -- There is a bottle in one
24 of those. Do you recall holding that?

25 A. I don't recall taking -- I wasn't responsible for

1 taking photographs. I do not recall watching anybody take a
2 picture of a social security card, some obvious paperwork,
3 no.

4 Q. How many people were taking photographs?

5 A. It's common practice just one person takes
6 photographs.

7 Q. That was not you?

8 A. No. I was not taking photographs.

9 MR. FALK: No further questions.

10 THE COURT: Any redirect?

11 MS. MIMS: No, ma'am.

12 THE COURT: You may step down. Thank you. Ladies
13 and gentlemen, it's about 12:45. It's a good time for us
14 to take our lunch break. If you would be back in your
15 jury room right at 2:00, that should give you sufficient
16 time to get some lunch and be back into the courthouse.
17 Again please remember my previous instruction. Do not
18 discuss this case at all even amongst yourselves or
19 anyone else. Have a nice lunch. We'll see you at 2:00.

20 (Whereupon, the jury was released for lunch recess.)

21 THE COURT: We are at ease until 2:00.

22 (Lunch recess.)

23 BAILIFF: All rise.

24 THE COURT: Thank you. Have a seat. Are the
25 parties ready to proceed?

1 MR. WARD: Yes, Your Honor.

2 THE COURT: Mr. Falk, are you ready?

3 MR. FALK: Yes, Your Honor.

4 THE COURT: All right. Let's have our jury please.

5 (Whereupon, the jury returned to the courtroom at
6 2:15 p.m.)

7 THE COURT: Welcome back, ladies and gentlemen of
8 the jury. I hope that you had a nice lunch. We are now
9 ready to proceed with the trial of this case. Solicitor,
10 you may call your next witness.

11 MR. WARD: Thank you, Your Honor. The State would
12 call Detective Lundberg.

13 Thereupon,

14 DANIEL LUNDBERG
15 after having been first duly sworn, testified as follows,

16 THE COURT: Your witness.

17 MR. WARD: Thank you, Your Honor. May it please the
18 Court.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. WARD:

22 Q. Detective Lundberg, where are you currently
23 employed?

24 A. I am currently employed by the Dorchester County
25 Sheriff's Office working in the Dorchester County Summerville

1 metro narcotics unit.

2 Q. How long have you worked in law enforcement.

3 A. I have been in law enforcement approximately nine
4 years and beforehand I got a Bachelor's degree in law
5 enforcement.

6 Q. How long have you been working with the narcotics
7 unit?

8 A. I have been in the narcotics unit for about five
9 years.

10 Q. Do you have any other training involving
11 methamphetamine investigation?

12 A. Yes, sir. During my involvement with the narcotics
13 unit, I have attended training being certified as a
14 clandestine lab investigator which is essentially to disable
15 and process methamphetamine labs and other sort of labs.

16 Q. All right. Were you on duty on October 30th of
17 2014?

18 A. Yes, sir, I was.

19 Q. Could you explain your involvement, how you began
20 involvement in this case?

21 A. During the normal work hours we went to the office
22 and Sergeant Thompson had approached me and another detective,
23 Detective Allen with assisting him with following up on some
24 information that he had received and going to 111 Marsh Point
25 Road and making contact with them in reference to a possible

1 methamphetamine lab so I went with him to the address which
2 upon arriving Sergeant Thompson and Detective Allen went to
3 the front door to knock on the door. At that time I just kind
4 of went around to the right side of the house where there is a
5 six foot wooden privacy fence on the right side just to kind
6 of peek over to see if maybe somebody was in the backyard
7 doing yard work outside, you know, just to kind of see if
8 maybe we would knock on the door and they would be outside and
9 won't hear us.

10 At that time I believe Sergeant Thompson began to
11 knock on the door and I just kind of hung out on the side of
12 the house to see what was going on just to kind of make sure
13 that while law enforcement is knocking at the front door,
14 somebody isn't slipping out the back and trying to flee just
15 so we have an idea or even coming out around and, you know,
16 possibly engaging us with a weapon.

17 While doing so, I waited for a couple minutes and I
18 could hear people which I believe was Sergeant Thompson
19 knocking at the door trying to make contact with whoever was
20 inside. At this time on the side of the house which was later
21 found to be a room above the garage, the window was
22 kind of facing in my direction. As I was standing there
23 somebody, I couldn't tell who, come to the window and there
24 was a window fan in the window. At that time somebody took it
25 out and shut the window and kind of dropped the blinds. I

1 remember thinking at that time because it kind of took me by
2 surprise hearing somebody in the window because I knew they
3 were sitting there knocking at the door and nobody was
4 answering, and then all of a sudden somebody is pulling
5 something out of the window and kind of scared me for a second
6 like somebody might start shooting at us so I kind of ducked
7 around the privacy fence and was looking up but I couldn't
8 tell who it was. I just know somebody was in there.

9 At that time I notified Sergeant Thompson and
10 Detective Allen via our radio just to let them know that there
11 was movement in the house and somebody was in there because I
12 knew they were still trying to make contact but for whatever
13 reasons somebody wouldn't come to the door. At that time they
14 did say that they also had some movement in the house. They
15 notified that there was some movement through some windows.
16 At that time I do believe they eventually got somebody to come
17 out because I heard some talking at which I started to hear
18 maybe like a little bit of confrontation about not shutting
19 the door and something like that. Kind of made me a little
20 leery about something maybe that was going to go bad so I
21 started to work around the corner of the house and kind of
22 stood in the driveway just to make sure that everything was
23 fine and they wouldn't need any of my help, you know, if
24 somebody became unruly or whatever happened which then
25 eventually a female and a male were outside and I stood by

1 while Sergeant Thompson spoke with them.

2 At that time Sergeant Thompson notified myself and
3 Detective Allen that he would like us to do a protective sweep
4 of the residence in which we would go into the residence to
5 kind of look around to make sure that there is nobody inside
6 the residence while we are there, possibly to destroy evidence
7 while we all stay outside, you know, possibly wait for a
8 search warrant in which we were going to go, you know, it
9 might take two to three - at this time it did end up taking
10 quite awhile and the whole time somebody could be inside
11 destroying any evidence that we look to preserve.

12 At that time myself and Detective Allen entered the
13 residence, just kind of making people aware that the Sheriff's
14 Office was coming in. We kind of identified ourselves as we
15 went in just in case somebody was inside. I know they said
16 there wasn't but as far as I know they weren't being exactly
17 truthful to Sergeant Thompson just from my involvement being
18 far away. I couldn't really tell what was going on, however,
19 as I walked by going into the house I did observe a strong
20 odor which I believe to be a kind of a ammonia smell on the
21 male subject who is the defendant today and which I kind of
22 had an idea that this was probably leading towards a
23 methamphetamine lab because I knew that smell from the past
24 dealing with multiple labs from previously that that smell
25 usually accompanies a methamphetamine lab which involves a one

1 pot because there is ammonia gas involved.

2 So I kind of had an idea going through what was
3 possibly going on and as we worked our way through we cleared
4 the bottom floor. We didn't locate anybody on the bottom
5 floor and started to work our way up the stairs. It's kind of
6 a winding staircase and as we come up and come around going up
7 the second flight of stairs up to the second story there was a
8 door straight ahead of us that was shut. However, coming up
9 at an angle you could see that the light was on under the
10 door. We weren't sure, you know, again if anybody was inside
11 so we kind of challenged the door hoping that if somebody was
12 in there, they would just come out and that would be the end
13 of it with no altercation or anything. However, nobody
14 answered and at that point I did notice that as we were going
15 up the stairs and got up there that the smell that I noticed
16 earlier outside on Mr. Kotowski's person was kind of the same
17 smell that I was beginning to smell, a little bit stronger now
18 that we were on the second floor.

19 As soon as we opened up the room that had the light
20 on which ended up being a bathroom, we were greeted with, it
21 was hazy, almost like a smoke. Like somebody had been smoking
22 a cigarette in there. It was kind of hazy in there and there
23 was a really strong chemical smell coming out of there and I
24 kind of at that time felt like there was possible seeing some
25 of the items on the counter just in plain view, I noticed some

1 mason jars and some empty bottles and kind of as I come in
2 towards the shower and the back of the toilet area I did
3 notice some chemicals right there on the floor and I did think
4 that it was possibly there was potential that some of the
5 chemicals got dumped out and that's why it was so gassy in
6 there due to something being in a possible bottle containing
7 this now out into the open and the gas is just kind of free
8 flowing.

9 At that time once we confirmed that there was
10 nothing going on in there and there was nothing like a heating
11 source producing that gas where it potentially is gonna blow
12 up, we continued clearing. However, it was such a strong
13 odor, I know I remember myself and Detective Allen we kind of
14 had to look and kind of knew that that stuff was terrible for
15 us to breathe. Usually something like that, even not at that
16 extreme level with the gas in there, we would have protective
17 breathing with filters on that help filter out that stuff so
18 that we don't breathe it in and it goes into our lungs. So I
19 know personally for the rest of the time I attempted my best
20 to breathe as little as possible. I held my breath for
21 probably a majority of the time that we were in there just
22 because I didn't want to be breathing all those chemicals in.

23 As we transgressed through the rest of the upstairs
24 there was a door pretty much to the right which, uhm, I
25 identified just by seeing kids toys as a child's room

1 possibly. We did locate some other stuff in there just in
2 plain view as I was making sure that there was nobody in a
3 closet area. I did observe some more bottles and stuff
4 commonly found in a methamphetamine lab until we went into the
5 room above the garage, the frog which I did see some
6 paraphernalia and possibly a white powder substance on one of
7 the wicker tables and at that point once we are assured that
8 there was nobody in the house, myself and Detective Allen, we
9 exited and kind of waited for the search warrant to come which
10 I provided Sergeant Thompson with all the information that I
11 saw while we were doing that protective sweep.

12 Q. I'm going to show you State's exhibit 10. You
13 stated when you were doing the protective sweep, you saw some
14 things in the bathroom. Are these the bottles that you were
15 speaking of?

16 A. Yes, sir.

17 Q. I'm showing you State's exhibit 16. What were -
18 where did you see these items?

19 A. I believe that is still also in the bathroom.

20 Q. Okay. And then after you conducted the protective
21 sweep, were you part of the execution of the actual search
22 warrant?

23 A. Yes, sir. I was part of the actual dismantling of
24 some of these items where we were going through the residence
25 and executing the search warrant and bringing these hazardous

1 items outside.

2 Q. Before you actually started bringing items out, were
3 you able to videotape anything?

4 A. Yes, sir. Normally we'll try to at first take a
5 video camera and kind of walk around the residence and kind of
6 see almost like a realtime type of thing. Do a kind of walk
7 through and kind of narrate some of the items where they are
8 at and what they may be involved in. It's kind of easier to
9 see what's going on compared to just a still shot. You know,
10 a picture can say a lot but then a video you can really walk
11 through and see the whole area besides just that one thing.
12 So we usually will take a video of the residence and all the
13 evidence that we see at first and then after the video we'll
14 go through and we'll photograph any evidence found before it's
15 moved.

16 Q. I'm showing you what's been marked as State's
17 exhibit 65 for identification purposes. Do you recognize
18 that?

19 A. Yes, sir.

20 Q. What is it?

21 A. It is a DVD which contains the photos and the video
22 of the search warrant that we did at 111 Marsh Point.

23 Q. Have you had a chance to review the video on that
24 disk?

25 A. I have.

1 Q. And is that a fair and accurate representation of
2 the video you conducted that night?

3 A. Yes, sir.

4 MS. MIMS: At this time, Your Honor, we would ask
5 for State's exhibit 65 to be admitted into evidence.

6 THE COURT: Any objection?

7 MR. FALK: No objection.

8 THE COURT: All right. It's admitted.

9 MR. WARD: May I publish, Your Honor?

10 THE COURT: Yes, sir. Ladies and gentlemen, if you
11 lift up the screen, you will be able to see on the
12 screens right in front of you.

13 (Whereupon, State's Exhibit #65 a video of the
14 search was played in open court.)

15 BY MR. WARD:

16 Q. So when you took that video, is that the first time
17 you kind of started moving things around?

18 A. Yes. I started trying to dig in a little bit into
19 like bags and different things like that. I know it was hard
20 to see and kind of manipulate. I had a big camera - not a
21 camera but a flashlight and then I had my gloves on and the
22 camera so I was just trying to peek in there the best to give
23 people the best idea of what was going on before we actually
24 started to dig and pull things out and photograph it.

25 Q. During the execution of the search warrant, who was

1 involved in taking out items?

2 A. Myself, Detective Hurschel Tanner, Detective Allen
3 and I believe Detective Strickland was outfitted as well. I
4 don't remember him necessarily making entry but I know for
5 sure it was Detective Allen, Detective Strickland and
6 myself.

7 Q. Is that common to have multiple people assist in
8 removing items?

9 A. Yes, sir. Especially on the size of a house like
10 that. I mean, we have anywhere from 45 minutes of air in a
11 tank but due to the physical exercise of, you know, breathing
12 heavy, walking to and from, some people will breathe a little
13 bit heavier so sometimes there's multiple times where you will
14 go through multiple tanks of air which is, you know, it's hard
15 on your body. I'm a fairly fit individual but after a couple
16 of tanks of air I'm pretty gassed. It's pretty hard to go
17 through there and kind of do all of that with that on your
18 back and everything else on you and you're sweating the whole
19 time and losing a lot of liquid so it's normal especially for
20 a house that size to have multiple people and have multiple
21 people on stand-by just in case there's something that happens
22 to one of us inside where somebody has to come inside and pull
23 us out.

24 Q. I'm showing you what's been marked as State's
25 exhibit 34 through 40 for identification purposes. Take a

1 look at all of those.

2 A. (Witness complies.)

3 Q. Are you able to recognize all of those photos?

4 A. Yes, sir.

5 Q. What are they?

6 A. They are items that I located which I kind of
7 verbalized in the video what I believe to be the child's room
8 just due to the toys but they are items commonly found in
9 manufacturing of methamphetamine.

10 Q. Are those fair and accurate representations of what
11 you found that night?

12 A. Yes, sir.

13 MR. WARD: At this time, Your Honor, we would ask
14 State's exhibits 34 through 40 to be admitted into
15 evidence.

16 THE COURT: Any objection?

17 MR. FALK: No objection.

18 THE COURT: All right. They're in.

19 BY MR. WARD:

20 Q. I'm going to show you some more photos. I'm now
21 showing you State's exhibit 41 through 54. Take a moment to
22 look at those.

23 A. (Witness complies.)

24 Q. Are you able to recognize photos 41 through 54?

25 A. Yes, sir.

1 Q. What do all of those show?

2 A. Further items commonly found in the manufacturing of
3 methamphetamine. Airline tubing. Two bottles with holes in
4 them. Chemicals like acetone.

5 Q. And were those found in the house that night?

6 A. They were found in the house, I believe, in the
7 white cooler that was also located in the child's room.

8 Q. Do those photos, 41 through 54, are those fair and
9 accurate representations of that night?

10 A. Yes, sir.

11 MR. WARD: At this time, Your Honor, we would ask
12 that State's exhibits 41 through 54 to be admitted into
13 evidence.

14 THE COURT: Any objection?

15 MR. FALK: No objection.

16 THE COURT: They are in.

17 MR. WARD: May I publish, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. WARD:

20 Q. I'm showing you State's exhibit 54. Could you
21 explain to the jury what they have here? What they're looking
22 at.

23 A. Yes. Essentially what we do like I explained
24 earlier, we bring these items outside and dismantle them and
25 get them out of the house and get them kind of out into the

1 air and bring them out and process them outside. What we do
2 is usually put down a plastic tarp which is just to prevent
3 any spills or anything like that so it's contained on the tarp
4 and we separate the different components of the
5 methamphetamine lab.

6 Q. I believe this is State's exhibit 34. Quickly what
7 is the jury looking at?

8 A. I believe they are a male's pair of jeans.

9 Q. All right. During the search of the residence, were
10 you able to recover any items that you were keeping to be
11 tested?

12 A. Yes, sir.

13 Q. I'm showing you what's been marked as State's
14 exhibit 1 for identification purposes. Do you remember what
15 items that night you removed and collected as actual
16 evidence?

17 A. I do. I mean, we removed numerous, numerous items
18 from the house some of which did get disposed of but then some
19 especially the drug or suspected drug evidence we then
20 collected and processed.

21 Q. Could you identify, and if you need to refer to your
22 notes, what those items are that were collected for actual
23 evidence?

24 A. Yeah. I'm referring to my notes. I believe they
25 were exhibits 1 through 6. Exhibit number 1 was an off white

1 substance which we did test on scene in the little field test
2 kit which just says that something may be presumptive. It's
3 not actually sending it to a lab and saying, you know, without
4 a doubt that it is, but it is more than likely what we are
5 testing it for and we try to, we tested it for methamphetamine
6 and got a presumptive result for that. It also contained
7 exhibit number 2 which was also a clear plastic bag which
8 contained a white powder substance which was also field tested
9 and test presumptive for methamphetamine. Drug exhibit number
10 3 was aluminum foil folded into what we refer to as kind of a
11 slang term, it's referred to as a boat. I don't know if you
12 remember as a child may be racing boats down the drain with
13 water, kind of folded in a V which users are known to kind of
14 almost free base the methamphetamine where they apply a heat
15 source underneath and kind of inhale the fumes.

16 Drug exhibit number 4 was a piece of airline tubing
17 kind of like that you saw. When they are used essentially in
18 a lab of such what they use them for is to put them with a
19 hydrogen chloride gas generator and what that is is usually
20 it's the final process of the manufacturing part where
21 they will combine different items such as muriatic acid and
22 aluminum foil or sulfuric acid and salt and they put them into
23 a bottle which creates a gas. What they do then is stick the
24 hose into the bottle and collect the gas and bubble it into a
25 liquid solution of meth turning the liquid into a useable form

1 like a salt or something like you would see the white powder
2 and that's definite. What we did is take the end of one of
3 the tubes that were located due to them usually what is called
4 bubbling, remove the end of it because it would have been in
5 contact with the methamphetamine and we usually collect that
6 end and send that to be tested to show that that was what the
7 air line tubing was for.

8 Drug exhibit number 5 were also the ends of three
9 pieces of airline tubing that were located in a gallon zip
10 lock bag. And number 6 was a liquid sample which we collected
11 from one of the green bottles that we located inside the
12 residence. We stuck a, essentially a straw that sucks out the
13 liquid and we put it into a sample bottle and submitted that
14 as evidence as well.

15 Q. I'm showing you State's exhibit 61. Is that the
16 bottle you're referring to?

17 A. Yes, sir.

18 Q. Okay. And in State's exhibit 1 that I handed up to
19 you, are you able to identify all six of those items in that
20 bag as the items you just described?

21 A. Yes, sir. To the best of my ability without having
22 it opened, yes, it looks like they are all in here.

23 Q. Okay. Once you collected all six of those items,
24 were they secured in any way until they could be processed
25 further?

1 A. Yes, sir. Obviously once they were obtained, they
2 were with us the whole time until they were brought back to
3 our secured location in our office to be processed. Once
4 being processed then submitted into the Dorchester County
5 Sheriff's Office evidence locker.

6 Q. I'm showing you what's been marked as State's
7 exhibit 3 for identification purposes. Do you recognize
8 that?

9 A. I do.

10 Q. Is that a fair and accurate representation of what
11 you found there that night?

12 A. Yes, sir.

13 MR. WARD: At this time, Your Honor, we would ask
14 State's exhibit 3 be admitted into evidence.

15 THE COURT: Any objection?

16 MR. FALK: No objection.

17 THE COURT: It's admitted.

18 BY MR. WARD:

19 Q. And one last thing. When we saw the video, it
20 looked like when you walked in you were able to find a male's
21 driver's license?

22 A. Yes, sir.

23 Q. Whose license was that?

24 A. Mr. Kotowski's.

25 MR. WARD: Nothing further. Please answer any

1 questions the defense may have.

2 THE COURT: Cross examination.

3 MR. FALK: May I approach the witness?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. FALK:

7 Q. I have shown you defense exhibits 1 through 5. Can
8 you look on the back as well. Do you see sort of a five digit
9 number?

10 A. Yep.

11 Q. On each one of them?

12 A. Yes. I see a six digit number.

13 Q. Okay. Now, you took a lot of photos when you went
14 through the house, did you not?

15 A. Yes, sir. I took a whole lot.

16 Q. So you might not have a specific recollection of any
17 one photo; is that correct?

18 A. It's hard taking them out of order like this one
19 random picture shown to you in the midst of hundreds. So yes.
20 Unless it's significant it's kind of hard for me to remember
21 without reviewing all of them in order because usually, like I
22 testified, we go through a room, you know, kind of one at a
23 time and see what's in there and usually we'll work room to
24 room to room so once we are in a room usually a good portion
25 of those photos are all evidence from that room and then we'll

1 all move on to another room. In that situation I do believe
2 we were trying to do multiple rooms at one time but for the
3 most part it's usually room to room to room.

4 Q. Do you have any reason to believe those are not
5 photos of items taken from the house?

6 A. No, sir.

7 Q. And do you have any reason to state that those are
8 not fair and accurate representations of the items?

9 A. No, sir.

10 MR. FALK: We would move to introduce and I have
11 shown them to counsel defense exhibits 1 through 5.

12 THE COURT: Any objections?

13 MR. WARD: No objection, Your Honor.

14 THE COURT: All right. They're in.

15 MR. FALK: May I publish?

16 THE COURT: Yes, sir.

17 BY MR. FALK:

18 Q. I'm showing you what was marked as defense exhibit
19 1. Do you know what that is?

20 A. It appears to be a prescription bottle.

21 Q. Can you read what it is a prescription bottle of?

22 A. Hydrocodone, acetaminophen.

23 Q. Can you see who the prescription is made out to?

24 A. Yes, sir.

25 Q. And that is -- Can you read that name?

1 A. Lowell Williams.

2 Q. That was found inside the house?

3 A. Yes, sir.

4 Q. I'm going to show you exhibit number 2. Does that
5 appear to be a driver's license coming out of a wallet?

6 A. No. It's an identification card.

7 Q. Excuse me. But can you tell that that's also a
8 wallet there or some kind of container?

9 A. Yeah. It does appear to be a wallet.

10 Q. Can you read the name on that?

11 A. Collin B. Dameron.

12 Q. Okay. Thank you. And again this was found inside
13 the house?

14 A. Yes, sir. To the best of my knowledge.

15 Q. And I'm showing you what is defense exhibit 3. Did
16 you also find this inside the house?

17 A. To the best of my knowledge.

18 Q. Can you read the defendant's names? It says South
19 Carolina Department of Social Service versus and can you read
20 those names?

21 A. Yeah. They might be butchered a little but I'll
22 give it a college shot. Jessica Schmaltz, Theresa Fau, and
23 Thomas Powell.

24 Q. Thank you. And this again was found inside the
25 house?

1 A. To the best of my knowledge, yes, sir.

2 Q. I'm showing you what's marked as defense exhibit 5.

3 Do you recognize that?

4 A. Yes, sir.

5 Q. A Social Security card?

6 A. Yes, sir.

7 Q. And the name on there is Evan Rush Rutter?

8 A. Yes. That's what it appears to be.

9 Q. And that was found inside the house too?

10 A. To the best of my knowledge, yes, sir.

11 Q. Okay. Because I showed this to you before, this is
12 defense exhibit 4, and again that was found inside the
13 house?

14 A. To the best of my knowledge.

15 Q. And this looks like it says -- Can you read what it
16 says up in top right corner?

17 A. The top right?

18 Q. Yes.

19 A. In the family, and a first initial.

20 Q. Okay. So does that look like to you some legal
21 documents?

22 A. Yes, sir.

23 Q. Again found inside the house?

24 A. Yes, sir.

25 Q. Thank you. Now, of all the items that you have

1 testified to finding inside the house, did you ever -- First
2 of all I think you testified that you saw a fan being moved?

3 A. Yes, sir. Initially when I was outside.

4 Q. You weren't able to identify who moved the fan, were
5 you?

6 A. No, sir, I wasn't. At that point like I said it
7 kind of took me by surprise at first. I did at first kind of
8 duck behind that fence a little bit just because I didn't know
9 the intentions of what was happening and then by the time I
10 was able to look up and get it, they were pulling it out and
11 shutting the window.

12 Q. Okay. Did you see the fan again when we saw the end
13 of the video?

14 A. Yes, sir.

15 Q. Can you describe the location where it was?

16 A. It was in the window to the best of my knowledge.
17 Usually in something like that in some of the pictures that we
18 do have, we do have an air monitor which we wear on us or will
19 put in there to kind of gauge some of the things in the air at
20 the time and I believe the one that we have does measure
21 explosive levels in the air if it's too high or too low and
22 for it to be unsafe for us to go in there and due to the
23 overwhelming smell that we smelled in the bathroom initially,
24 it was obvious what was happening there and it is normal for
25 us at these methamphetamine labs to air them out. A lot of

1 times where we'll even call - well, we always usually have
2 fire personnel with us on scene just in case there is some
3 kind of flammable issue or something like that but they will
4 also bring their big fans and we'll stick them in door and
5 kind of suck all that air in there to get some free flowing
6 air just to kind of get all that gas out of there so it's safe
7 for us to go in because we don't really want to go in there,
8 you know, when it's unsafe. So to say a bull in a China shop,
9 we have all that equipment on and we're knocking something
10 over and it mixes and explodes, we're in a world of hurt if
11 that happens. It's terrible. To the best of my knowledge I
12 didn't personally put it in.

13 Q. And you didn't see anybody put it in?

14 A. No. Because after I left, what we do is get
15 medically cleared beforehand so once the search warrant was
16 obtained EMS arrived on scene and what they do is kind of take
17 our vitals. They'll kind of take our blood pressure. Sort of
18 say EKG where they hook us up and kind of just monitor
19 everything to know that we are okay to go in from going under
20 that physical stress and what they'll do is then monitor us
21 after to make sure that we are not exceeded above normal
22 levels so we don't need any kind of medical attention which in
23 the past some of us have come out and needed some fluids and
24 stuff like that. Like I mentioned, being in that suit, it's
25 just a waterfall of water coming out of your gloves just due

1 to the amount of sweat that you perspire.

2 Q. Do you recall testifying here yesterday?

3 A. I do.

4 Q. And do you recall me asking you for an
5 explanation?

6 A. Yes, sir.

7 Q. And at that time you didn't have an explanation?

8 A. I was unsure at that time what was happening but as
9 I thought about it and I got to kind of reflect on the issue
10 that is normally -- And again I didn't see it. This is all
11 just kind of --

12 Q. Speculation?

13 A. -- what is normal procedure.

14 Q. It's obviously speculation?

15 A. Yes. It's speculation.

16 Q. And we're speculating that you looked at the gauges
17 inside the house to know what the air quality was because
18 there's been no testimony to that so far?

19 A. Yes, sir.

20 Q. So there might not have been bad air quality in the
21 house that would have registered on gauges that you are
22 referring to now?

23 A. Yes, sir. There is a picture that showing that it
24 was there but it wasn't - it wasn't testified about.

25 Q. Okay. So you never saw any of these belongings in

1 Mr. Kotowski's possession?

2 A. No, sir. At the time I even had any contact with
3 him he was already outside of the residence.

4 Q. Okay. And when you said you came by Mr. Kotowski,
5 the door was open at that time, right?

6 A. Yes, sir. He had already come out and they were
7 talking with Sergeant Thompson.

8 Q. Did you find any, other than what may have been on
9 that, that may have been Mr. Kotowski's driver's license, did
10 you find any other personal belongings of Mr. Kotowski's in
11 there?

12 A. Not necessarily that I recall as far as
13 identification that says specifically it belonged to him.

14 Q. Had that been something that you would have been
15 looking for?

16 A. Yes, sir.

17 Q. So you didn't find a Social Security card for Mr.
18 Kotowski, did you?

19 A. No, sir. Not to my recollection.

20 Q. You didn't find any court papers for Mr. Kotowski,
21 did you?

22 A. No, sir.

23 Q. Would it have been, when you were going through and
24 executing the search warrant, were you supposed to get all the
25 methamphetamine that was in the house?

1 A. I was supposed to attempt to locate all the
2 methamphetamine.

3 Q. Okay.

4 A. I do my best. As you can see from the video, it was
5 at times even hard to walk through rooms due to the amount of
6 stuff and even in the first room upstairs I kind of laugh
7 because I think I almost fell once or twice and that would
8 have been pretty embarrassing on camera.

9 Q. Were you looking for it?

10 A. Methamphetamine? Yes. I was looking for any kind
11 of evidence that I could locate within the house that I would
12 feel would be a part of or relevant to the case.

13 Q. I think we looked at a baggie that had a white
14 substance in it?

15 A. I believe so. You would have to be more specific
16 about -- What are you talking about?

17 Q. (Proffering.)

18 A. (Witness nodding head.)

19 Q. I have just shown you State's exhibit number 8. To
20 your recollection is that the only bag of product that could
21 have been any type of measurable quantity of methamphetamine
22 that was found in the house?

23 A. That was not the only bag. I believe there were
24 multiple bags that we brought out as far as weightable
25 evidence. I mean, anything that is observable would be

1 weightable if we can --

2 Q. Okay. Other than residue was there any bag that
3 contained any kind of substantial quantity?

4 A. As far as I know listed on the return that there was
5 another bag that come out of the frog. As far as the actual
6 weight on it I'm not sure. I didn't process the actual drugs
7 and weigh them. What I did was I photographed them, brought
8 them out, and in return Detective King who did the search
9 warrant return -- Usually when we do a search warrant what we
10 do is list items on like essentially a receipt showing items
11 that we took from the residence that's left there at the
12 residence so the home owners and the people involved know kind
13 of what we took which then that person will then usually
14 process the evidence that they have collected from there.
15 What I did was just bring it outside.

16 Q. State's exhibit 1 was the green bottle with the
17 tubing inside of it?

18 A. The green bottle with tubing?

19 Q. Yes.

20 A. Yes.

21 Q. When was that used?

22 A. I don't know when it was used. I wasn't there.

23 Q. So you don't have any information whether that was
24 used on the 27th of October?

25 A. No, sir. I don't. I wasn't there. It could have

1 been that today or it could have been the day before. I'm not
2 the sure.

3 Q. Thank you. Did you find any items inside the house
4 that, from which you could determine when they were used in
5 the process of manufacturing?

6 A. Not necessarily specifically saying that it was
7 there, however, I could kind of determine that it hadn't been
8 too long due to there still being liquid in the bottle. You
9 know, if they had been there for years at a time and just
10 randomly been there, it probably would have been dried up. I
11 can determine that it was sometime recently and due to the gas
12 in the air I can kind of at least speculate that most of that
13 stuff was there on scene when we were there, however, it was
14 just destroyed.

15 Q. I'm sorry. What were you saying?

16 A. Due to the gas in the air, I mean, the gas isn't
17 just normally in the air. There was something there that
18 caused ammonia gas to be in the air, however, I couldn't say
19 specifically where it come from due to the probability of it
20 being down the drain or in the toilet. Something caused it
21 and when we were there, it was no longer there.

22 Q. Okay. And it was your testimony that the smell was
23 overwhelming coming out of the house, is that not correct?
24 That inside the house it was an overwhelming smell?

25 A. Yes. Inside the house especially going up to that

1 door it was overwhelming. It was bad.

2 Q. We saw tubing that was in containers. I mean, the
3 air tubing that we saw, now you didn't put those in the
4 baggies. They were in the baggies; is that correct?

5 A. Yes, sir. Some of them which I think that you're
6 talking about were located in a zip lock bag. I believe we
7 took a zip lock bag that contained three and we cut off the
8 ends and submitted them, I believe.

9 Q. Okay. Do you know if any of the cans of fuel that
10 you found in there were full or empty?

11 A. To the best of my knowledge some had some in them
12 and some were empty. I know on the video I could hear myself
13 saying that the muriatic acid bottle in the bathroom was
14 empty, however, the sulfuric acid had stuff in there.

15 Q. So you again don't know when those --

16 A. Not to my memory. I know it's on the report, the
17 return report that some had some, a quantity of liquid in them
18 but just going off my memory of handling them I don't
19 necessarily remember which ones were full or which ones were
20 empty.

21 Q. I'm showing you State's exhibit 38. Do you recall
22 that?

23 A. Yes, sir.

24 Q. Can you tell me the condition of that can?

25 A. Uhm, as far as?

1 Q. Is there any rust on it?

2 A. On the top, yeah.

3 Q. Looks like an old can?

4 A. The top looks old. The cap is pretty shiny and
5 white. But yeah, the top looks a little oxidized and
6 rusted.

7 Q. So if the tubing was used in the manufacturing of
8 meth, would you expect there to be some type of detectable
9 amount?

10 A. Potentially. I don't know exactly how they test it.
11 I know in the past we have submitted it and it has shown the
12 presence of methamphetamine.

13 Q. Because in the process does it go through --

14 A. Yes. Essentially as I mentioned they take the
15 airline tubing and put it into the liquid and it bubbles
16 turning the liquid into a salt so essentially it is in contact
17 with it.

18 MR. FALK: No further questions.

19 THE COURT: Any redirect?

20 MR. WARD: Nothing, Your Honor.

21 THE COURT: You may step down. Thank you. Call
22 your next witness.

23 MR. WARD: The State calls Detective King.

24 Thereupon,

25 JAMES KING

1 after having been first duly sworn, testified as follows,

2 MR. WARD: May it please the Court.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. WARD:

6 Q. Detective King, where are you currently employed?

7 A. Dorchester County Sheriff's Office, metro narcotics
8 division.

9 Q. How long have you worked in law enforcement?

10 A. Eight years in May of next year. A little over
11 seven.

12 Q. When did you start in the narcotics unit?

13 A. Roughly around the end of August of 2014.

14 Q. Okay.

15 A. Beginning of August, somewhere in there.

16 Q. Could you tell the jury how you began or became
17 involved in this case?

18 A. I was with the metro unit and was called out to the
19 incident scene to assist Detective Thompson with his
20 investigation.

21 Q. What were you instructed to do while you were out on
22 the scene?

23 A. My duties were assisting Detective Thompson with the
24 investigation was to record items that were being removed from
25 the residence as detectives pulled evidence from the inside.

1 Q. And were any of those items retrieved by you and
2 taken somewhere else?

3 A. Yes. There's a process in which we do things. We
4 collect evidence there on the scene and they are separated out
5 obviously for hazardous reasons, they're put into bags and
6 brought back to our unit office where we take additional
7 pictures of it and process whatever we believe to be an
8 illegal narcotic.

9 Q. I'm showing you what's been marked as State's
10 exhibit 55 through 60. Do you recognize those items?

11 A. I do.

12 Q. And what are items 55 through 60 pictures of?

13 A. This would have been evidence that was collected
14 from the incident scene that we brought back to Detective
15 Tanner and I would have brought back to our unit office taking
16 pictures of it. The placard is with the case number and the
17 date and obviously it starts with exhibit 1 through exhibit
18 6.

19 Q. Are all those photographs fair and accurate
20 representations of what you took pictures of that night?

21 A. They are.

22 MR. WARD: At this time, Your Honor, we would ask
23 that State's exhibits 55 through 60 to be admitted into
24 evidence.

25 THE COURT: Any objection?

1 MR. FALK: No objection.

2 THE COURT: They're in.

3 MR. WARD: May I publish, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. WARD:

6 Q. Detective, were you in charge of processing the
7 evidence that was collected?

8 A. I was, yes.

9 Q. So you were the one that assigned exhibit numbers?

10 A. Yes. As we remove them from the bags that we took
11 from the residence, we place them out and capture pictures of
12 the evidence in front of that placard. Keeps up with what
13 evidence is what as far as a photo identification.

14 Q. Okay. After you photographed the exhibits to the
15 corresponding numbers, what did you do with the evidence
16 at that point?

17 A. Some of the evidence could be tested. At that point
18 I don't believe that I may have tested any at all. That
19 evidence is then placed into a bag that's provided by SLED so
20 a BEST bag and it's numbered. Some of that evidence would
21 have been weighed if it had any narcotic value to it and
22 recorded in a BEST bag that's provided by SLED.

23 Q. I'm showing you what's been marked as State's
24 exhibit 1 for identification purposes. Do you recognize that?

25 A. Yes, sir.

1 Q. What is it?

2 A. This would be the SLED drug analysis security
3 envelope or the BEST bag in reference to the incident that
4 occurred.

5 Q. Did you place all of the items into that BEST bag?

6 A. Yes, I would have.

7 Q. And are those sealed and secured?

8 A. Yes, they are.

9 Q. How do you seal and secure those items?

10 A. The evidence is secured in a plastic heat sealed bag
11 first and then those items that are sealed go into this BEST
12 bag and there is a seal at the top that's folded over and
13 pressed with my fingers therefore completely sealing the bag
14 off.

15 Q. Do you sign your name to that bag anywhere?

16 A. I do.

17 Q. Do you see your name on that bag?

18 A. Twice.

19 Q. Once you seal the bag, where would you have taken
20 it?

21 A. That evidence would have been taken to the
22 Dorchester County Sheriff's Office evidence room and placed in
23 a locked secured box with the chain of custody.

24 Q. And are you aware, were these sent to SLED at some
25 point?

1 A. Yes. They are sent to SLED for further testing for
2 chemical analysis.

3 Q. Is that the extent of your involvement in this
4 case?

5 A. Yes, it is.

6 MR. WARD: Thank you. No further questions. Please
7 answer any questions the defense may have.

8 THE COURT: Cross examination.

9 CROSS EXAMINATION

10 BY MR. FALK:

11 Q. That one bag is the only bag of meth that you
12 weighed; is that correct?

13 A. The evidence that I presented would have been listed
14 in the search warrant return and the documentation of the
15 incident report and on the BEST bag.

16 MR. FALK: Thank you. No more questions.

17 MR. WARD: Nothing further.

18 THE COURT: Step down, sir. Thank you.

19 Ladies and gentlemen of the jury, are you all okay
20 or do you need a brief restroom recess? We'll take a
21 brief break. Let us know when you're ready to proceed.

22 (Whereupon, the jury entered the jury room.)

23 (Short recess.)

24 BAILIFF: All rise.

25 THE COURT: Thank you. Please be seated.

1 MS. MIMS: Thank you, Your Honor. May it please the
2 Court. The State calls Douglas Robinson.

3 Thereupon,

4 DOUGLAS ROBINSON

5 after having been first duly sworn, testified as follows,

6 DIRECT EXAMINATION

7 BY MS. MIMS:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Mr. Robinson, where are you employed?

11 A. The South Carolina Law Enforcement Division commonly
12 known as SLED.

13 Q. What do you do at SLED?

14 A. I'm a forensic chemist assigned to the drug analysis
15 department.

16 Q. How long have you been with that department?

17 A. Just over seven and a half years.

18 Q. What type of educational background do you have in
19 order to allow you to have that type of position with SLED?

20 A. I received my Bachelor of Science in chemistry from
21 the University of South Carolina and after graduating I spent
22 approximately three years performing chemical analysis in
23 environmental chemistry field. Upon being hired at SLED I
24 received law and legal training through the South Carolina
25 Criminal Justice Academy as well as inhouse training on the

1 analysis of controlled substances through the SLED drug
2 analysis department. I have also attended the Drug
3 Enforcement Administration Forensic Chemists seminar.

4 Q. Have you ever testified in court before?

5 A. Yes, ma'am.

6 Q. Do you know approximately how many times you have
7 testified?

8 A. 21.

9 Q. Were you qualified as an expert every time you have
10 testified?

11 A. Yes, ma'am.

12 MS. MIMS: Your Honor, at this point I would ask
13 that Mr. Robinson be qualified as an expert in analysis
14 of controlled substances.

15 THE COURT: Any objection?

16 MR. FALK: No objection.

17 THE COURT: He's so qualified.

18 MS. MIMS: Thank you, Your Honor. May I approach
19 the witness, Your Honor?

20 THE COURT: Yes, ma'am.

21 BY MS. MIMS:

22 Q. Mr. Robinson, I would like to show you what's been
23 identified as State's number 1. Do you recognize that
24 package?

25 A. Yes, ma'am.

1 Q. Can you tell the jury what that is?

2 A. Well, there are several different things associated
3 here. The outer bags is what we refer to as a KPAC. This a
4 heat sealed bag that we can use to recontain the evidence
5 after analysis has been completed. You can see across the
6 bottom in green ink are my initials and the date the seal was
7 made. This date corresponds to the date the analysis was
8 performed. Inside of this outer packaging is a bag with a
9 red top across the top here and a blue swirl pattern going
10 around. This is what we call a BEST bag. BEST is short for
11 best evidence sample testing. This is a bag that's part of a
12 system that we use to ensure evidence can pass through the
13 chain of custody with assurances that it's not tampered with.
14 We provide these bags to local law enforcement agencies. They
15 are able to seal the drug evidence within the bag. The bag is
16 tampered evidence so if anyone was to try and stretch or tear
17 it open, it would be readily apparent. It can only be sealed
18 once with the glue top.

19 Once we receive it, we cut along the bottom to
20 remove the evidence. We would never try to open the glue
21 strip. On the reverse side are several items including a
22 plastic bottle, plastic cup and several plastic bags with the
23 words bag added. The bag added bags are bags that I would
24 have added during the case. That's why it's denoted as bag
25 added. It's not part of the original packaging.

1 Q. What condition was that BEST bag in when it got to
2 you?

3 A. May I refer to my notes?

4 Q. Yes.

5 A. So when the bag, when I received it and did my
6 initial inspection before analysis, the bag was sealed.
7 That's noted two different places. That's noted on my
8 worksheet as bag sealed. It's also noted that we received it
9 on the report. It's several places, locations throughout the
10 paperwork but it was, in fact, sealed.

11 Q. It was sealed when it got you to?

12 A. Yes, ma'am.

13 Q. Okay. Once it got to you, what did you do with that
14 bag? Did you analyze what was in the bag?

15 A. Yes, ma'am. So when it's time to do analysis, I
16 will request to pick up the evidence. We don't have
17 technicians within our department so I will personally go down
18 to our evidence control, sometimes referred to a log in
19 department. This is where the evidence is initially received.
20 I would retrieve the evidence from there, bring it up and
21 either store it until the time of analysis we're doing or
22 immediate analysis. At the time of analysis I remove it from
23 an outer manila envelope. It's just used for transportation
24 purposes to protect the bag. Immediately the seals are
25 checked before we do any analysis. After the seals are

1 checked and I have ensured that it is sealed, I would cut into
2 the bag as I previously mentioned and separate out each item
3 for individual analysis. Each one is individually analyzed.

4 Q. So can you tell the jury a little bit about what you
5 do when you begin your analysis? Are you checking for a
6 specific drug or are you checking for all types of controlled
7 substances?

8 A. We treat each case as a general unknown so
9 regardless of what may be mentioned in the paperwork, we are
10 doing a general analysis on the case to check for any
11 controlled substances that may be present.

12 Q. Okay. Did you happen to sample the items that are
13 actually in this bag? Can you tell the jury what type of
14 analysis you did on those items?

15 A. Yes, ma'am. Once each item was separated out, each
16 item goes through a full test. The first step would be to
17 remove the substance in question from all packaging so a net
18 weight is taken. This would only include the substance
19 separate from all packaging. Once that weight is obtained, if
20 applicable it would then go through an initial or indicative
21 testing. There's different types but in this case I used a
22 chemical color test. That color test on all of the items that
23 I got a response for was indicative for methamphetamine.
24 Based on that result I proceeded to do an extraction and
25 analysis on confirmational instrumentation. That

1 instrumentation can actually identify substances to the
2 exclusion of all other compounds so that process was taken for
3 each one of the items in the case.

4 Q. So you got positive results on the items in the bag
5 in terms of methamphetamine. Was there a finding of -- Were
6 they positive for methamphetamine?

7 A. Some of them were, yes.

8 Q. How many of the items -- How many items are in the
9 bag?

10 A. There was a total of six items that were
11 submitted.

12 Q. Of the six how many were positive for
13 methamphetamine?

14 A. Four of them.

15 Q. Four of them?

16 A. Yes, ma'am.

17 Q. Okay. Let me ask you this question: If we go -- I
18 want to let the jury see a little bit of each item as we go
19 through. Can you show item number 1.1 and tell me what
20 exactly that might be?

21 A. I'll do my best. There's actually a lot of
22 packaging within the BEST kit but I'll do my best. Item 1.1
23 was described as a heat sealed bag marked EX1 containing a
24 plastic cup containing plastic corner bag with residue. You
25 can see the plastic cup. There is no lid on it. It's just a

1 small plastic almost like a food storage cup. Inside of that
2 was a plastic corner bag. So if you think of a plastic
3 sandwich bag and you were to cut one of the corners off,
4 that's basically what you have. It's commonly used in
5 packaging of controlled substances for street sale. You can
6 place it in the corner and then tie it off to make a closed
7 container. But In this case it was a plastic corner bag with
8 residue so there was some residue loose with the bag. It
9 wasn't actually contained inside the bag. The results of that
10 item were methamphetamine C2 found in the sample tested. One
11 tested, no weight obtained.

12 Q. Okay. What was item 1.2?

13 A. 1.2 was described as a heat seal bag marked EX2
14 containing plastic corner bag containing powder substance.
15 Again with the amount of packaging that's in here there is no
16 way to really show it without opening the bag, but it's the
17 same type of bag that I just described, the little corner bag
18 off of a plastic sandwich bag. The results from this item
19 were methamphetamine C2 found in the sample tested, one
20 tested. Net weight 0.66 plus or minus 0.01 grams, 10.18 plus
21 or minus 0.15 grains. Confidence level for the weight is 99.7
22 percent.

23 Q. And that also tested positive for methamphetamine?

24 A. Yes, ma'am.

25 Q. I would like to show you what's been marked as

1 State's exhibit number 56. Is that a photo you recognize?

2 A. Specifically, no. It looks like a plastic corner
3 bag containing a powder substance so generally speaking it's
4 consistent with what I just described.

5 MS. MIMS: Your Honor, may I publish to the jury?

6 THE COURT: Yes, ma'am.

7 BY MS. MIMS:

8 Q. This would be consistent with a corner bag you were
9 describing?

10 A. Yes, ma'am. If you look at the bag, on one end it
11 comes to a point. To the jury's left it comes to a point.
12 That would be the actual very corner of the bag and what
13 they will do many times is take that top portion and roll it
14 down a little bit and then just tie it off in a very simple
15 knot and you can actually see the tie holes, the knot holes.
16 On the bottom section and on the right side it would have been
17 tied off to close it.

18 Q. So when items are turned into SLED from the police
19 department, are they generally marked such as this one is
20 exhibit number 2?

21 A. Sometimes they are. Sometimes they're not. That's
22 the law enforcement's prerogative.

23 Q. Okay. And the third item, can you identify that
24 one?

25 A. Yes, ma'am. Item 1.3 was a heat sealed bag marked

1 EX3 containing two pieces of foil containing residue. The
2 foil is visible. It may be hard to see from here. It may
3 catch the light right up top but essentially it was just a
4 small piece of foil perhaps two by four inches, something like
5 that just folded over to contain the residue in this case.
6 The results were methamphetamine C2 found in the sample
7 tested, two tested. No weight obtained.

8 Q. And items number 1.4 and 1.5, what were those?

9 A. 1.4 was a heat sealed bag marked EX4 containing
10 plastic tubing with residue. The results were no controlled
11 substances detected in the sample tested, one tested, and 1.5
12 was a heat sealed bag marked EX5 containing plastic tubing
13 with residue, no controlled substances detected in the sample
14 tested, one tested.

15 Q. Okay. Let's move onto 1.6. I would like to show
16 you what's been marked as State's exhibit number 60. Do
17 recognize that bottle?

18 A. It appears to be the bottle that's contained here in
19 the BEST bag. The markings number 1 is the same. I can't
20 quite read the numbering but it does seem to be consistent
21 with what was submitted as item 1.6.

22 Q. Now, can you tell the jury about what's in that
23 bottle?

24 A. Yes, ma'am. 1.6 was a heat sealed bag marked EX6
25 containing plastic bottle containing glass vial containing one

1 milliliter of liquid substance.

2 Q. Did you say liquid substance?

3 A. Yes, ma'am. The results were methamphetamine C2
4 found in the sample testing.

5 Q. So it tested positive for methamphetamine as well?

6 A. Yes, ma'am.

7 Q. The liquid?

8 A. Yes, ma'am.

9 MS. MIMS: Your Honor, at this point I would ask for
10 State's exhibit number 1 to be admitted into evidence.

11 THE COURT: Any objection?

12 MR. FALK: No objection.

13 THE COURT: All right. It's admitted.

14 MS. MIMS: No further questions.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. FALK:

18 Q. So item 1.2?

19 A. Yes, sir. Item 1.2.

20 Q. Yeah. Was that weighed before you did the testing
21 or after, that weight that you --

22 A. It's an initial net weight so the weight was taken
23 after all packaging was removed but before any was taken for
24 analysis.

25 Q. And just for my benefit, so are you saying that the

1 packaging weighs, because the initial scale in exhibit 56 that
2 we saw, we had the thing on the scale and it showed a weight
3 of .8, so is it your testimony that two tenths of a gram is
4 the packaging?

5 A. It's my testimony that the substance itself weighed
6 0.66 grams. I can't speak to anything with the scale at the
7 scene.

8 Q. Because it seems to me that's about an eighth of a
9 gram off from .8 to .66?

10 A. Again all I testify to is the weight I took during
11 my analysis in the lab.

12 Q. But you wouldn't have needed to destroy an eighth of
13 a gram in order to do this testing, would you have?

14 A. Well, the weight was taken before any testing is
15 done so we use a very small amount of testing, but the weight
16 was taken before any testing was done.

17 Q. All right. You tested a couple of these things. It
18 says no weight obtained?

19 A. Yes, sir.

20 Q. Does that mean you didn't try or does that mean
21 there wasn't enough to try?

22 A. In certain cases a lot of times with residue it's
23 not feasible to take a weight. In the case of 1.4 and 1.5
24 these items were actually swabbed so there wasn't even enough
25 of anything to even scrap off. I did not do a swab on 1.1,

1 but it was such a small amount. There was enough to collect
2 and do the testing on but it wasn't feasible to take a weight
3 of it.

4 Q. So all of the evidence that you tested and you
5 weighed them all, the only quantity of methamphetamine that
6 you weighed was the .66 grams; is that right? That's a
7 terrible question.

8 A. I'm afraid I don't understand.

9 Q. I know what you're saying. Because there was
10 testimony earlier that there were other bags of
11 methamphetamine and I was just trying to get a handle on how
12 much was recovered from the house. These 1.1 and 1.4 didn't
13 really have any significant quantity of methamphetamine; is
14 that right?

15 A. Well, 1.4 was the plastic tubing with residue.

16 Q. Excuse me. I'm sorry. 1.1 and 1.3.

17 A. 1.1 methamphetamine was found but there was no
18 weight obtained, that is correct. And 1.3, yes, that was two
19 pieces of foil that had residue contained within them. Both
20 of them were tested but no weight was reported for either of
21 those. No weight obtained. It was a very small amount.

22 Q. 1.4 says that there was residue in the tubing?

23 A. Yes, sir.

24 Q. 1.5?

25 A. Yes, sir.

1 Q. But that was not methamphetamine?

2 A. It did not test positive for methamphetamine.

3 Q. It could have been anything, right?

4 A. All I can speak to is that it did not come out as
5 any controlled substance.

6 Q. Okay. Were you asked to do any other -- The
7 Forensics Services Lab, do they do other testing besides
8 chemical testing on controlled substances?

9 A. Yes, sir.

10 Q. So that lab is equipped to do trace DNA testing; is
11 that right?

12 A. Yes, sir.

13 Q. Fingerprint testing?

14 A. Yes, sir.

15 MR. FALK: No further questions.

16 THE COURT: Any redirect?

17 MS. MIMS: No, ma'am.

18 THE COURT: You may step down, sir. Thank you.

19 MS. MIMS: Your Honor, may Mr. Robinson be excused?

20 THE COURT: Any objection?

21 MR. FALK: No objection.

22 THE COURT: You're excused, sir. You may call your
23 next witness.

24 MR. WARD: The State calls Detective Hurschel
25 Tanner.

1 Thereupon,

2 HURSCHEL TANNER

3 after having been first duly sworn, testified as follows,

4 THE COURT: Your witness.

5 MR. WARD: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes.

8 DIRECT EXAMINATION

9 BY MR. WARD:

10 Q. Detective Tanner, where are you currently
11 employed?

12 A. I'm employed by the Summerville Police Department.

13 Q. How long have you worked in law enforcement?

14 A. 15 years.

15 Q. What training and experience do you have involving
16 methamphetamine?

17 A. In 2005 I became certified as a meth tab technician
18 site safety officer through the DEA, Drug Enforcement
19 Administration. Since then I have done multiple training to
20 further my education and also refresher courses.

21 Q. Okay. During those courses, what types of things
22 are you taught?

23 A. Taught dismantlement or location. Identification
24 and dismantlement.

25 Q. Any of your certifications, I guess, go into the ins

1 and outs of how methamphetamine is made?

2 A. They do. They go into the creation of it. During
3 your certification you actually create it. You're taught
4 under lab conditions to create the methamphetamine so that way
5 you can better identify it and then they teach you through red
6 phosphorous and shake and bake or the one pot method.

7 Q. During your time in law enforcement, about how many
8 methamphetamine lab investigations have you been involved
9 in?

10 A. I started with the DEA task force from 2006 to 2014
11 and during my time there alone over 400 meth labs.

12 Q. Have you supervised other detectives in
13 methamphetamine investigation?

14 A. I have.

15 Q. Have you taught any classes on methamphetamine
16 investigation?

17 A. I haven't taught officers. I have taught the public
18 like with Crime Watch type awareness identification and then
19 in August of this year I went through basic instructor with
20 the South Carolina Criminal Justice Academy and my main topic
21 there was meth lab identification and dismantlement.

22 MR. WARD: At this time, Your Honor, the State would
23 move to qualify Detective Tanner as an expert in
24 methamphetamine investigation.

25 THE COURT: Any voir dire?

1 MR. FALK: No, Your Honor.

2 THE COURT: The Court finds that he's qualified.

3 BY MR. WARD:

4 Q. Detective Tanner, could you explain to the jury
5 items commonly found to manufacture methamphetamine?

6 A. The items you're commonly gonna see when it comes to
7 manufacturing methamphetamine is gonna be your pseudoephedrine
8 or ephedrine, a reaction vessel which can be a Gator-Aid
9 bottle, a soda two liter or one liter bottle. It could be an
10 aluminum gas can. It could be all kinds of what we call
11 vessels but typically they use soda bottles and Gator-Aid
12 bottles. Also you will see tubing like for fish tanks, or
13 like the irrigation tubing for the fish tank. You will see
14 that. You'll see hydrochloric gas generators which is they
15 use the bottles like a 20 ounce soda bottle to make a gas
16 generator out of. You'll see ammonia nitrate or ammonia salts
17 and those are commonly found like in fertilizers, cold packs,
18 thing of that nature and you also got your organic solvents or
19 your white gases which the most common one is gonna be like
20 Coleman camp fuel. You're gonna have your reactive metal
21 which commonly is gonna be lithium removed from lithium
22 batteries. They take the stripping out of the lithium battery
23 casing and then you're gonna see water which is inside the
24 cold packs they'll have little packets of water which reacts
25 when you use it the proper way and they use that water or

1 sometimes they have bottles of water laying around to activate
2 the shake and back reaction.

3 Q. So when you would go into a house suspected of
4 manufacturing methamphetamine, are you looking for them to be,
5 these items to be in close proximity?

6 A. They'll be a lot of times in close proximity with
7 each other. You'll have your white gases sitting along with
8 your sodium hydroxide, your lyes. You'll have your ammonia
9 nitrate, everything is almost like a, it will be a lot of
10 times stored in one common area. I have seen it where they
11 were stored throughout a location, a car or a house or
12 whatever type of location we are investigating but a lot of
13 times it will be stored commonly in a common area.

14 Q. I'm showing you State's exhibit 11. We have heard
15 testimony about this being a one pot method manufacturing
16 process at this house. Could you explain how that process
17 works?

18 A. That's your muriatic acid. That's the soda bottle I
19 was telling you about. You use those for the gas generators
20 but you'll use the muriatic acid and with muriatic acid you're
21 gonna use a lot of muriatic acid or aluminum foil to create a
22 gas generator or you can use sulfuric acid with salts to
23 create a gas generator which is used to salt out or make
24 methamphetamine hydrochloride, methamphetamine for your body
25 to consume it.

1 Q. I'm showing you State's exhibit 27. Could you
2 explain what you see in that picture?

3 A. Is that straw protruding from the bottle? All
4 right. There you go. All right. With the tubing coming out
5 of the bottle that's going to be your gas generator.

6 Q. Let's kind of step back here. Once someone collects
7 all the items needed to manufacture methamphetamine, what
8 items go together first and then what would the picture show?
9 When would they need that?

10 A. All right. So when they collect all the items like
11 I stated, they're gonna need a vessel that they're gonna have
12 to use which a lot of times are Coke bottles or a soda bottle
13 or a Gator-Aid bottle. Within that vessel they're gonna place
14 in the pseudoephedrine, ammonium nitrate, the sodium hydroxide
15 and organic solvents, your lithium, and then when they put all
16 that in there, they're gonna add a little bit of water to it.
17 And what that water does is it's gonna help react, make the
18 reaction begin. You have to manipulate the bottle. That's
19 why they call it shake and bake. They shake the bottle pretty
20 violently to get it going and once the water mixes in there,
21 it will actually start reacting or bubbling or boiling phase
22 and then it will go, it will react for a short period of time,
23 approximately five minutes or so before the bottle would
24 equalize. When that bottle equalizes, you start seeing the
25 bubbling stop and then at which time they have to remanipulate

1 it, burp it or let some of the ammonia gases that are created
2 up in there out and when they burp it, it allows in more
3 oxygen and lets some of the gases out and it will start
4 bubbling again and start reacting further.

5 They'll do this numerous times throughout the cook
6 until the salt inside, the sodium hydroxide and some of the
7 other salts are starting to get consumed and then that's when
8 the cook will start to finish. They will be complete. And
9 during this time you're gonna have the ammonia gasses in there
10 will react with the lithium and then when that happens you're
11 gonna start seeing the lithium within the bottle change
12 colors. It will get a bluish or greenish tint and that's with
13 the one pot cook. Then as that goes along you're gonna start
14 seeing the methamphetamine being produced and that's when
15 you're gonna start seeing little gold beads inside. And once
16 you're done producing the methamphetamine in the oils in the
17 bottle, that's when you're gonna need the gas generator, the
18 hydrogen chloride generator or HCl gas generator. That's when
19 you're gonna need the generator to salt out the
20 methamphetamine that's been removed from the one pot and until
21 you turn it into the methamphetamine hydrochloride, the salt
22 form, your body can't ingest it to do any effects to you. So
23 once you turn it into the methamphetamine hydrochloride, then
24 you can ingest it and that's what this apparatus here is.
25 This vessel is used for the HCl gas generator and that's where

1 they added the acids to salt it out, to crash out the dope for
2 a finished product.

3 Q. I'm going to show you a series of photos. State's
4 exhibit 16. I'm just gonna go through briefly with you and
5 can say what's on them?

6 A. There's soda bottles, 20 ounce soda bottles,
7 something like that that they use that for the one pot for the
8 reaction vessel for the gas generator. Then you've got your
9 lighter fluid which is a white gas, Coleman fuel, lighter
10 fluids, any of that stuff, that's added into the initial one
11 pot methamphetamine cook.

12 Q. Is there a reason a methamphetamine cook would have
13 to use oven mitts or oven gloves?

14 A. The reaction gets very hot. It's a very, very
15 violent reaction within that bottle and then while it's making
16 ammonia gas, it warms up and it gets hot. A lot of times
17 they'll use mitts or shirts to be able to hold that vessel.

18 Q. I'm showing you State's exhibit 9.

19 A. It's also glass mason jars or mason type jars. They
20 could also be used as a vessel. They could be used for pill
21 wash which is another form of making methamphetamine using red
22 phosphorous stage. You will see these in multiple stages for
23 multiple ways of cooking methamphetamine but it also can be
24 used as a vessel. A lot of cooks don't like to use glass
25 because especially with the one pot shake and back if it

1 ruptures, then you have got glass shrapnel falling within the
2 cook but they have used them.

3 Q. State's exhibit 11 I showed you already. And then
4 again you stated distilled water or some type of water would
5 be needed?

6 A. Correct. Water is what they put in last to initiate
7 the reaction.

8 Q. I'm showing you State's exhibit 12. What is this a
9 picture of?

10 A. That's a picture of a gallon jug of Distilled
11 water.

12 Q. I'm showing you State's exhibit 52. What do you see
13 in that picture?

14 A. That's a cold pack which the cold pack is what
15 contains ammonium nitrates for the initial cook.

16 Q. It looks like on the side there may be a cut cold
17 pack bag?

18 A. It appears to be cut and open which is - it
19 coincides with methamphetamine cooks. There is no medical
20 reason or need to manipulate or cut a cold pack further than
21 what the manufacturer recommends which is gonna be simply
22 breaking the water pack that's inside shaking it so that way
23 it mixes with the ammonia nitrate. It turns cold for like an
24 injury or something of that nature. There is no manufacturer
25 recommendation or need to manipulate that package to where you

1 remove the contents.

2 Q. I'm showing you State's exhibit 51. What is that a
3 picture of?

4 A. It's gonna be a picture of pseudoephedrine 12 hour
5 decongestant.

6 Q. And all these photos were taken from the scene of
7 this incident. From what you have seen there do you believe a
8 methamphetamine, someone could be manufacturing
9 methamphetamine there?

10 A. I do.

11 Q. I'm showing you State's exhibit 47. Could you
12 explain to the jury what this is?

13 A. It's a soda bottle with some little bit of sludge.
14 To be honest with you I can't really - I can't tell if there
15 is liquid in there or not, but it looks like to me to be some
16 kind of salt in the bottom of the soda bottle.

17 Q. In your experience seeing these types of things in a
18 soda bottle would that be indicative of manufacturing
19 methamphetamine?

20 A. It would be. It could be. It appears to be. Yeah.
21 I'm not exactly sure what's in that photo. It looks like it's
22 just some kind of a salt that was in some kind of a solvent.
23 I can tell it's a very wet salt, but I can't tell you what
24 kind of salt it is.

25 Q. That's fine. Are there other types of methods to

1 manufacture methamphetamine besides the one pot method?

2 A. There is. There's a red phosphorous method.

3 Q. I'm showing you State's exhibit 46. Could you read
4 those items that you see in the picture?

5 A. Ten boxes of matches. Two bottles of peroxide. Ten
6 bottles of iodine. One lye. One muriatic. Three boxes of
7 12, 20, and then coffee filters.

8 Q. What would those things -- Does that have any
9 significance to you?

10 A. Yeah. Looking at that, that's a recipe or a
11 shopping list for items for a red phosphorous meth cook.

12 Q. I'm showing you State's exhibit 3.

13 A. All right. That's multiple cases of match books
14 which they use the striker plates of the match books to obtain
15 the red phosphorous for the red phosphorous cook. They take
16 the match books and they soak them into like a alcohol or into
17 a heat or an alcohol and let them sit and after they sit for a
18 short period of time, they get real wet and they'll scrape off
19 the red phosphorous from the striker plates and then they dry
20 it out and then they have the red phosphorous for the red
21 phosphorous cook.

22 Q. Could you explain to the jury kind of what some of
23 the dangers are of manufacturing methamphetamine?

24 A. The air quality levels are very dangerous to the
25 human body when you're in there. Different cooks have

1 different dangers. One pots, they are very volatile when it
2 comes to, you have got the flammables with inside of a vessel
3 that's pressurized with ammonia nitrate it's very dangerous
4 when it comes to explosion and fire and then you have the red
5 phosphorous which is also dangerous because there's flammable
6 items in that cook as well. But there the air quality is not
7 as good. You have iodine in the air and red phosphorous in
8 the air and there's only so many parts per million before your
9 lungs, they'll attack your lungs and you can't breathe so we
10 have to wear, in some cooks you have to wear a full apparatus
11 so that way you can have a good quality of breathing air and
12 then you have to wear like a Tyvek suit so that way you don't
13 get iodine and red phosphorous on you during the dismantling.
14 So there's high dangers of both of them of flammability and
15 explosion and then you got a lot of ammonia gases when it
16 comes off the cook. It turns to ammonia gas. So it's not -
17 the air quality is not compatible with breathing. A lot of
18 people, cooks who do it will do it without using apparatus and
19 breathe but after a short time or doing it for a while they'll
20 start having lung problems and have a hard time breathing. It
21 causes a lot of problems for the human body.

22 Q. You stated there's a lot of ammonia gas expended
23 during the cooking process; is that correct?

24 A. Correct.

25 Q. Would someone have that odor on them just from being

1 present just for a few moments? How long -- Could you explain
2 kind of how it would take someone to have an overwhelming odor
3 on them?

4 A. The best way I guess to describe it cigarette smoke.
5 If somebody walks by somebody smoking a cigarette, you will
6 smell the cigarette smell on their clothes. Somebody who is
7 cooking methamphetamine and especially like a one pot shake
8 and back method, when they're burping that bottle, it's
9 releasing a bunch of gas and it's gonna get on you if you're
10 in close proximity when they're actually depressurizing the
11 vessel and you are gonna smell an ammonia smell. And also
12 with a red phosphorous phase, a lot of that is more of an open
13 cook. You have got open bottles. You have got a lot more -
14 the solvent is out in the open so you're gonna smell it and
15 it's permeating into your carpet, walls just like any other
16 cook. You can smell it if you walk up, you get around it
17 within proximity you're gonna smell the ammonia.

18 Q. So you have got to be in pretty close proximity to
19 the actual one pot for it to get onto your clothing?

20 A. Correct.

21 MR. WARD: Nothing further. Please answer any
22 questions the defense may have.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MR. FALK:

1 Q. How much red phosphorous is necessary to -- I'm
2 trying to get an idea. Is that an amount of red phosphorous
3 necessary to make 8/10ths of a gram?

4 A. That's going to make a large amount. That's going
5 to be multiple cooks. It's not a certain amount of red
6 phosphorous for the cook. What it is is how much red
7 phosphorous for a cook and this would show me there's multiple
8 cooks going on, that there's not just one cook but
9 multiples.

10 MR. FALK: No further questions.

11 THE COURT: Any redirect?

12 MR. WARD: Nothing further, Your Honor.

13 THE COURT: You may step down, sir. Thank you.

14 Counsel, please approach.

15 (Side bar off the record.)

16 THE COURT: You may call your next witness,
17 Solicitor.

18 MR. WARD: At this time, Your Honor, the State would
19 rest.

20 THE COURT: Ladies and gentlemen, it's about 4:30.
21 The State has rested their case. We still have to
22 continue with the trial of this case. It's a good
23 stopping point for us. I know many of you don't live
24 right next door here to the courthouse and it takes a
25 little while to get home, so I'm gonna make sure you have

1 enough time to get home to your family duties and do
2 whatever you need to do and then we'll resume the trial
3 in the morning. Again, please remember my previous
4 instruction to you not to discuss the case at all. That
5 includes among yourselves or with anyone else. Don't do
6 any independent research on the case. If you would
7 please be back in your jury room again at 9:30 and then
8 we will resume with the trial of this case. Have a nice
9 evening.

10 (Whereupon, the jury was released for the evening at
11 4:30 p.m.)

12 THE COURT: Any motions at this time?

13 MR. FALK: Yes, Your Honor. First I want to renew
14 my evidentiary motions. I'm not sure as far as issue
15 preservation if I have to renew my motion about the NPLeX
16 testimony because Officer Thompson had testified
17 regarding his knowledge of the database that was used, of
18 the process that was used and I think based on that
19 testimony that he gave it shows there was not a
20 ~~foundation for that and we would ask that that evidence~~
21 be stricken.

22 THE COURT: All right. Sir, again for the same
23 reasons as previously articulated by the Court your
24 motion is respectfully denied.

25 MR. FALK: Thank you, Your Honor. We would also at

1 MR. FALK: The defense rests.

2 THE COURT: Ladies and gentlemen of the jury, both
3 sides have arrested their case in this matter. It is now
4 time for us to go into the closing arguments of counsel.
5 Please pay close attention. Solicitor.

6 MR. WARD: Thank you, Your Honor.

7 Good morning, ladies and gentlemen. I want to thank
8 you for your service these last few days in this trial.
9 We are at the point in the trial now where the State and
10 the defense are going to present our closing arguments.
11 Briefly I'm going to go over the law in this case to give
12 you a little better understanding of what to look for
13 during our closing arguments. Once I get done, the
14 defense is going to get up and present their argument and
15 then I'll have an opportunity to get up after him and
16 respond.

17 As you were instructed by the Judge one of the
18 crimes the defendant is charged with manufacturing
19 methamphetamine and it's kind of a long definition but a
20 person who manufactured, distributed, dispensed,
21 delivered, purchased or provided financial assistance or
22 otherwise aided, abetted, attempted or conspired to
23 manufacture, distribute, dispense, deliver, purchase or
24 possess with the intent to distribute or deliver
25 methamphetamine. I want you to pay attention to the

1 words manufactured. Again that's simply what the
2 officers referred to as cooking meth, taking all the
3 items that you saw in the house and turning them into
4 methamphetamine.

5 Otherwise aided or abetted. You're gonna hear the
6 Judge instruct you on the hand of one is the hand of all.
7 Basically what that means is if two people are acting
8 together in committing a crime and they have knowledge of
9 it and one person, let's just take the example of murder,
10 two people are acting together, one person has the gun
11 and shoots another person, the second person may not have
12 actually shot the gun, he can also be charged with
13 murder, he or she.

14 So in the case here I believe the hand of one hand
15 of all would mean the defendant wouldn't have to be
16 sitting there shaking the bottle actually producing the
17 meth. If he was aiding and abetting the co-defendant in
18 this case, Michelle Vining, he could be found guilty.

19 And again the definition of manufacture just means
20 ~~to produce, prepare, convert, process, plant, cultivate,~~
21 grow or harvest a drug naturally or chemically. Again,
22 just like I said, that means the cook as the slang term
23 is to process or convert all these items and take the
24 pseudoephedrine and then convert it into the active
25 methamphetamine.

1 Intent. This is important. Possession of equipment
2 or paraphernalia used in the manufacturing of
3 methamphetamine is prima facie evidence of the intent to
4 manufacture. Basically you can infer from all the
5 photographs that you will have back in your jury room,
6 you can infer from all those items and from what you
7 heard Detective Tanner testify to about items used to
8 manufacture methamphetamine, that shows there was the
9 intent to manufacture.

10 The second charge what he's charged with is
11 possession of methamphetamine. Simply a person who
12 possesses less than one gram of methamphetamine. You
13 heard there was less than one gram of methamphetamine.
14 .66 grams in a powder substance. And there's two types
15 of possession. Actual and constructive. Actual is very
16 simple. If the defendant actually had the drugs on him
17 when he was arrested, that would be actual possession, in
18 his hand, in his pocket. That's pretty simple.

19 Constructive occurs when the person charged with
20 possession has dominion and control or the right to
21 exercise dominion or control. And again when I get up
22 here after the defense has their closing argument, I'll
23 explain to you how and why the State has proved beyond a
24 reasonable doubt the defendant had the right to exercise
25 dominion and control over the items to manufacture and to

1 possess the baggie of methamphetamine. And Possession
2 may be shared. So simply just because one person may
3 have had it or constructively had it, another person --

4 MR. FALK: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 (Side bar off the record.)

7 THE COURT: Proceed.

8 MR. WARD: Thank you, Your Honor.

9 More than one person can actually have possession of
10 the same item. And the Judge is going to instruct you
11 it's the State's burden to prove the defendant guilty of
12 both charges beyond a reasonable doubt. That doesn't
13 mean proof beyond any and all doubt. Again, the example
14 I have up here, some people may believe the earth is flat
15 but is that really reasonable? Another way of looking at
16 reasonable doubt is if you are firmly convinced the
17 defendant committed these crimes, then you must find the
18 defendant guilty. Thank you.

19 THE COURT: Mr. Falk.

20 MR. FALK: Ladies and gentlemen, this is now my
21 time. This is really the only time you're gonna be
22 hearing from the defendant in this case and I'm speaking
23 for the defendant. I think the State did a great job of
24 proving that Michelle Vining was running a meth lab at
25 111 Marsh Point Road. There was lots of stuff in that

1 house. There was recipes. There's evidence of recipes
2 for making a one pot method. Something called a red
3 phosphorous method. That was a meth lab at 111 Marsh
4 Point Road. And I think you will see if you get an
5 opportunity to look back over the video of the search
6 through the house, you will see that that was her house.
7 You will see - you saw woman's clothes in the house and
8 woman's toiletries in the bathroom to the extent there
9 were any toiletries. The State's really offered no
10 evidence that my client lived in that house or had any
11 possibility -- excuse me. That my client lived in the
12 house or had any possession interest in the house. He
13 was just there. As I said from the very beginning he was
14 in the wrong place at the wrong time.

15 Now, the State -- In order for you to convict my
16 client, the State's gonna have to have you believe that
17 Michelle Vining went out and bought all the meth - bought
18 all the pseudoephedrine which is sort of the hard piece
19 in this recipe. That's the only thing you can't go to
20 the Wal-Mart store and buy in significant quantity. That
21 she provided the meth (sic) and my client was the cook.
22 That is the scenario that you're gonna have to believe in
23 order to convict my client and I submit that is a
24 possible scenario. But I submit it is not the only
25 scenario that we can look at from these facts.

1 I'm going to show you some exhibits of personal
2 items that people would leave. That it's not just going
3 to fall out of your pocket and not worry about. I mean,
4 these are items that show that you have been in this
5 house for a bit of time. I mean, people don't just have
6 - don't just leave of bottle of hydrocodone lying around
7 in their neighbor's house. So was the cook - was it
8 William Lowell that was the cook in this case or was it
9 my client?

10 Here is another sort of personal document that you
11 just don't leave anywhere. Here is a pleading from a DSS
12 case where the South Carolina Department of Social
13 Services has filed some type of action against defendants
14 Jessica Schmaultz, Theresa Fau and Thomas Fowler. Now, I
15 don't know who these people are, but you don't leave this
16 kind of document just laying around in your neighbor's
17 house. So again, who is the cook? Who is the cook in
18 this case? Is it Jessica Schmaultz? Theresa Fau?
19 Thomas Fowler? Or maybe it's Collin Damian? The kid who
20 left his wallet with his driver's license in it. Or
21 maybe the cook was Evan Rutter. These are all personal
22 items that the police found when they were looking for
23 evidence. These were all items that were found in the
24 house. These are all possible evidence of who the cook
25 is.

1 If you believe that Michelle Vining is not the cook
2 and there is really no evidence to say that she is the
3 cook or isn't the cook, but there is certainly no
4 evidence to say that my client is the cook.

5 Now, I expect the State to say that the only logical
6 scenario here is that my client was the cook because of
7 the smell and the smell is the thing that's always
8 bothered me in this case. The only evidence that the
9 State has offered really to tie my client to the cooking
10 method is the odor. So the door to the house is opened
11 up, client walks out and they immediately said, oh,
12 there's such an odor, we know it's on your body. That's
13 what the testimony is. Not that the odor was coming out
14 of the house, out of the open door, but that it came from
15 my client. That's the only piece of evidence that's
16 going to tie my client to any type of manufacturing here.
17 And it's the only kind of evidence that exists that you
18 don't have the opportunity to experience for yourself.

19 If there was a photograph of my client in the house,
20 you could look with your eyes and see that my client was
21 in the house. If there was -- Well, there was a
22 photograph of my client on the outside of the house, yes.
23 So you can see that. Or if there was a tape of my client
24 talking about cooking, then you could have heard that.
25 But you can't reproduce a smell in here. And that's the

1 only piece of evidence that the State has that they're
2 gonna try and link my client to a pretty serious crime of
3 manufacturing methamphetamine.

4 I expect the State -- I expect the Court is going to
5 give you an instruction that says that the mere presence
6 at a place where methamphetamine is - or mere presence at
7 a crime scene or mere presence where something is going
8 on is not sufficient evidence to show that somebody is
9 responsible for that conduct. Just because you're there
10 that doesn't mean that you're responsible for the
11 manufacturing. Just because you're there that doesn't
12 mean that you're responsible for any cocaine that might
13 have been found in the room or any methamphetamine that
14 was found in the room. Mere presence is not enough.

15 Now, the State was talking about aiding and abetting
16 and again mere presence doesn't get you aiding and
17 abetting. That's like, you know, standing in your
18 grandmother's kitchen while she's cooking Thanksgiving
19 dinner and telling her that you, you know, you're aiding
20 and abetting her cooking dinner. -- No. -- I mean, she's the
21 cook. In this case I believe Michelle Vining is the
22 cook.

23 But again they talk about the odor. I want to come
24 back to odor. I think that the police department was
25 playing a little fast and loose with the evidence of the

1 odor, and the reason why is Detective Thompson testified
2 and he's the investigating officer in this case, and he
3 testified that when he filled out his police report which
4 was a lengthy police report, you know, and he told you
5 that it's important to put all the evidence in that
6 police report, why you suspect that a crime has been
7 committed, you want to write it down in the police
8 report, that's why you have police reports, and he
9 doesn't say that there was any smell on the female in the
10 house.

11 Now, granted there was some question that maybe at
12 the time of who the female was and maybe he didn't know
13 initially that the female in the house was also the home
14 owner of the house, but he did talk about that. He
15 didn't put that in the police report. But then I don't
16 know why when the search warrant is being prepared, they
17 kind of add that into the search warrant to show that -
18 well, there's probable cause because there was odor
19 coming off of Michelle Vining who at that time he knew
20 was the owner of the house and maybe that's what they had
21 so they maybe want to put the odor also on Michelle
22 Vining. But they want to say it's the odor and they want
23 to tell you that the only reason that the odor links my
24 client to this manufacturing is because you would have
25 had to have been right there. I think there was

1 testimony about you're gonna get that odor on you when
2 you're burping the bottles and that you have to be right
3 on top of it. I don't know. I have not been in a meth
4 lab before, but I have been in my uncle's house who
5 smokes two packs of Camels, or smoked two packs of Camels
6 non filters everyday and -- Well, he doesn't anymore for
7 obvious reasons. But anyway, I'm telling you that I
8 could be at his house when he wasn't smoking and I would
9 come home and my wife wants to know where I have been
10 smoking.

11 I get that there could have been an odor emanating
12 off of somebody that's in a room that's really smokey.
13 There was a haze upstairs that they were talking about.
14 I mean, I get it. I don't know. The State never offered
15 you any evidence of how long haze would stay in a room.
16 Two days? Three hours? I mean, I don't know. The State
17 hasn't told you. There is no indication that you get
18 done cooking meth and then immediately the odor is gone.
19 I think the odor probably lingers and I think if there
20 was an odor coming off of my client because he was in a
21 house where they had been cooking meth just like I always
22 smelled like cigarettes when I came home from my uncle's
23 house.

24 Again, they want to focus on the odor, but only,
25 they only want you to focus on the odor in order to put

1 it on my client because they want to try and explain,
2 well, there wasn't any odor on Michelle Vining maybe
3 because, you know, you can't get the odor from just being
4 in the house. I'm not sure what it is. But their
5 explanation for the odor was he's burping these bottles.
6 If that is true, I have no idea why, and they testified,
7 you know, where they thought this was going on, they
8 showed you a bunch of green bottles and they showed you
9 these are the kind of bottles, if they really believed
10 that, I don't know why they couldn't have taken that
11 bottle to the SLED forensic lab and have it tested to see
12 if there are any fingerprints on it or any DNA on it or
13 anything that could have linked the bottle which they're
14 saying is the source of the odor to my client. I don't
15 know why. I think they owe that to you. I mean, that's
16 not a long shot. That's not something that, you know, is
17 unheard of to maybe get some fingerprint evidence to try
18 and tie in effect the essential piece of evidence to my
19 client. I mean, obviously you can't fingerprint the odor
20 but they're saying it came from the bottle, but they
21 can't say that that bottle was ever in my client's
22 possession.

23 In fact, they testified that they can't say - nobody
24 testified that any of those items in that house were ever
25 in my client's possession. Also I want you to remember

1 that there was testimony that they can't tell you when
2 any of those items had been used. It could have been a
3 week ago. It could have been a day ago. It could have
4 been a month ago. I mean, there was no testimony from -
5 they didn't - there was no way to evaluate -- I mean, you
6 saw that ugly looking green bottle with straws on it. I
7 don't know if that had been there a month, a day, a week,
8 and they can't tell you that.

9 They can't put my client in that house when there
10 was manufacturing. Now, maybe he was going there to
11 purchase methamphetamine. Maybe Michelle Vining was his
12 girlfriend. I don't know. I mean, I get that he was at
13 the house. I get that he was at the house at
14 unfortunately the wrong time. But I don't get that he
15 was actually manufacturing methamphetamine at the time.

16 And also, I mean, they had an opportunity. They had
17 a meth expert on the stand and he didn't tell you how
18 long the smoke would linger in the house. Nobody could
19 testify that any of those items were used on 10/29 and
20 nobody even testified that any - nobody testified that
21 any manufacturing was going on at the time or even on the
22 day that my client was in the house.

23 The State wants you to say, well, we took real
24 meticulous care of the evidence in this case and there
25 is, you know, this chain of custody that they have. What

1 concerns me about the chain of custody is that you will
2 see from State's exhibit, I guess State's exhibit 56,
3 they took 8/10ths of a gram of methamphetamine out of the
4 house, but you heard when the lab guy testified it was
5 .66 grams of methamphetamine in the house. I don't know
6 what happened to that 1/8th of a gram. The lab expert
7 testified that the 1/8th of a gram wouldn't have been
8 consumed during any testing. So their own evidence is
9 that they didn't handle all the evidence accurately.
10 They didn't handle all the evidence carefully.

11 And again, I keep coming back to the odor in the
12 house. And here is the last of my problem with the odor
13 in the house. You heard Officer Lundberg testify that he
14 saw a fan and that's kind of what alerted to him that
15 maybe there was a bunch of people in the house. He never
16 said who moved this fan but he said that he saw a fan
17 moved from a window and then shutting the door (sic) and
18 I think they probably want you believe that there was
19 some kind of, some kind of, by moving the fan some type
20 of intent to conceal what was going on in the house. And
21 again, I don't know. But there was a lot of testimony,
22 everybody said that, Officer Lundberg said that the fan
23 got moved. You saw the video and you saw the video in
24 that last room on the video, that 15 minute video was
25 this frog, you know, a fixed room over the garage, that

1 was the room where the window was. That's the room where
2 the fan was removed from the window, and you saw the fan
3 in the window.

4 I asked Officer Lundberg, can you explain that
5 discrepancy? He said I can't. And then in his attempt
6 to kind of paint the picture in order to sort of fill in
7 the gaps that the State isn't able to do, he gave us a
8 story that I think is more troubling than anything else.
9 He said, well, maybe some people came in and vented out
10 the place, meaning some people came in because originally
11 they want you to believe the testimony is Officer
12 Lundberg and Allen go through and do this protective
13 sweep, they come out and they get all geared up in their
14 HAZMAT suits and they come back in. But at the same time
15 he thinks there's a possibility that maybe some other
16 people, I guess with Dorchester County Sheriff's Office
17 came in and were moving stuff around in the house. And
18 if they were, then I don't know if any of these other
19 pictures, then are they -- Were they moving stuff around
20 in the house? Were they setting up some other things,
21 some other vignettes to look at to say, oh, we've got two
22 mason jars next to a green bottle. That means they're
23 manufacturing methamphetamine. I don't know.

24 But I do know that Officer Lundberg thinks there's a
25 possibility that somebody came into the house and moved

1 some stuff around and put the fan in and started venting
2 it out. He also testified that the smell was bad
3 upstairs. It was so bad. It was so bad upstairs that
4 they want you to believe that you could walk through that
5 hallway and get the smell on you -- No. That you
6 couldn't have walk through the hallway and get the smell
7 on you. That would explain why there was smell on my
8 client's clothes but it was - you heard all this other
9 testimony about breathing apparatus and toxic smoke and
10 all that.

11 So, I mean, the State has to prove that my client
12 was manufacturing. I don't have to disprove anything.
13 They have to prove that my client is manufacturing. They
14 proved, I'm convinced they proved that Michelle Vining's
15 house was a meth lab and they proved that methamphetamine
16 was manufactured in that house at sometime. But I have
17 also showed you that a lot of people had been in and out
18 of that house. A lot of people could have been
19 manufacturing at that house. There were certainly people
20 who had been there a significant amount of time to have
21 left their Social Security card, their driver's license
22 and leave, you know, pleadings from the Dorchester County
23 office of DSS, Department of Social Services.

24 And they also showed that, and I also brought to
25 y'all's attention that Officer Thompson was not

1 necessarily consistent when he was describing this event.
2 He said that there was no smell coming from -- Well, he
3 didn't include the fact that he thought there was smell
4 coming from the owner of the house when he wrote up his
5 police report, but then later he said, oh, yeah, there
6 is. Yeah, I think there was smell and we ought to use
7 that in order to get the warrant.

8 If you take a step back how this case happened,
9 Officer Thompson testified that he got alerted that there
10 was some third party. I overheard somebody say this kind
11 of thing, some methamphetamine was being manufactured in
12 the house at 111 Marsh Point Road, and then he started -
13 and then he looked and saw that some people had been
14 purchasing methamphetamine at that address. He saw that
15 because of that - and again that's another name. I guess
16 it was Evans. Mr. Evans was also one of the people who
17 were at that address and they were buying methamphetamine
18 in quantity and I don't know if Mr. Evans is not the
19 cook. So he - this somehow hit his radar that there's
20 problems at that house and from June to October, or
21 almost - yeah, almost the first of November, from June to
22 the end of October he drove by one time and found a car
23 was parked in the driveway of somebody who he knew was a
24 meth cook and that's really all that happened.

25 I mean, he didn't really have anything else until a

1 computer, I think the computer database is maintained in
2 Kentucky, but anyway, a computer called Officer Thompson
3 and told Officer Thompson that somebody had bought too
4 much pseudoephedrine, sudafed from a drugstore, and that
5 gives Officer Thompson in his mind the right to come up
6 to the house after dark and knock on the door. That
7 gives - he's saying that that gives him the right to come
8 in and anything could be going on in that house. Anybody
9 -- Somebody bought too much pseudoephedrine. Anybody
10 could buy too much pseudoephedrine. Anybody can attempt
11 to. I mean, granted I think probably a lot of people who
12 are cooking meth maybe buy too much pseudoephedrine.
13 There's no testimony that my client bought too much. He
14 bought, you know, two boxes.

15 There's nothing wrong with pseudoephedrine. Hey,
16 you know, somebody's got hay fever and you find a drug
17 that works for your hay fever and you stick with it and
18 he takes pseudoephedrine for his hay fever. I mean,
19 there's no problem with that. So they - but they want to
20 - they've thrown all this information together. They
21 have given you a lot of testimony about stuff going on,
22 but really at the end of the day the only testimony they
23 have that puts my client is the fact that he was at a
24 manufacturing point. The only testimony that they given
25 you is that my client was there. He came out of a smoke

1 impregnated house and he smelled like smoke when he came
2 out of the smoke impregnated house and he bought sudafed.
3 That's really it. They have given you nothing else
4 that's gonna sort of close that gap.

5 Again I don't think it would have been hard for them
6 to have provided some type of evidence to show that my
7 client ever had his hands on those items and they've
8 offered no evidence as to when the meth was being cooked.
9 They have offered no evidence as to who was cooking the
10 meth. They just want you to assume. It's just as easy
11 to assume that Michelle Vining was cooking the meth.
12 It's a one pot method. You heard how easy it is. You
13 put the stuff, you shake the bottle up and there you are.

14 So at the end of the day the State's gonna -
15 there'll be a lot of stuff, but at the end of the day
16 just sort of pick through it and look and see what they
17 have given you. There's a smell and again that's the
18 only piece of evidence that we can't really corroborate
19 in front of you. We just have to trust the police
20 department's statement that, yeah, he smelled. And I'm
21 not even sure how strong that evidence is. But you got
22 the smell and you have my client's hay fever so he bought
23 pseudoephedrine and he was at a house maybe to buy some
24 meth, maybe because he had a relationship with the woman,
25 but there is no reason for us to believe that he was

1 cooking meth in that house.

2 I think when you analyze the evidence, get a chance
3 to maybe look at the video, look at whatever evidence
4 you want, I think you're going to have to come to the
5 conclusion that the State has not proved its case and the
6 State really owes us proving the case and if they really
7 thought my client was the guy up there burping the
8 bottle, they would have gotten fingerprint analysis on
9 the bottle. When they sent the samples off to get
10 evaluated, they could have sent the bottle. There's no
11 fingerprint. I'm not saying - I'm not saying my client
12 ever touched the bottle. I don't think he ever did, but
13 the State had the opportunity to try and prove that to
14 you. They haven't. I think you're gonna have to come to
15 the conclusion and reach a verdict of not guilty. Thank
16 you.

17 THE COURT: Solicitor.

18 MR. WARD: Thank you, Your Honor. May it please the
19 court.

20 THE COURT: Yes, sir.

21 MR. WARD: The defense is right, it was a meth
22 house. He's absolutely correct. All the items we found
23 in the house, they weren't being hidden. Law enforcement
24 didn't find just one baggie hidden in a drawer of
25 methamphetamine or just one soda bottle hidden behind a

1 couch. All of these items were out in plain view. It
2 wasn't just one room, just one little area. All over the
3 house there's items to cook methamphetamine. Not just do
4 one cook, but multiple cooks. And as Sergeant Thompson
5 told you, it all started with an anonymous tip and that
6 tip was true. He investigated. He ends up doing the
7 knock and talk where the defendant comes to the door and
8 what do they ultimately find? A house full of meth. And
9 the defense real quickly wanted to say, well, what about
10 all these other people? Well, with all the items they
11 had in the house and I submit to you the amount of
12 methamphetamine they could possibly produce with
13 everything they had in the house, I'm sure people were
14 coming in and out, coming through the house, hanging out,
15 coming by to pick up some meth just like he said his
16 client may have been doing. But that doesn't mean those
17 people in those pictures had anything to do with cooking
18 and especially not that night because there is only two
19 people in the house that night, the defendant and his
20 girlfriend and co-defendant Michelle Vining.

21 Now, I'm going to go through with you just some of
22 the photos that were taken to just show you to prove that
23 there was definitely meth being cooked in this house.
24 The mason jars. You heard Detective Tanner, I showed him
25 a few of these photos yesterday. He stated from those

1 items you could produce methamphetamine. Salt. Not just
2 one jar. Another one. More salt. Remember he said the
3 salt is used with sulfuric acid to use in the hydrogen
4 generator which is used to actually produce the
5 methamphetamine from the liquid. I don't know about you.
6 You may have these items in your house, but you don't
7 keep salt, pseudoephedrine and Rosonol lighter fluid all
8 right next to each other unless you're cooking
9 methamphetamine.

10 Airline tubing, coffee filters, all items used to
11 manufacture methamphetamine. Remember this one? Soda
12 bottle which Detective Tanner stated could have been the
13 ammonium nitrate out of a cold pack. Remember what he
14 said? There's no reason to cut open a cold pack unless
15 you're trying to get the ammonium nitrate to produce
16 methamphetamine. The gas generator that you heard
17 Detective Allen and Detective Lundberg said they found in
18 the bathroom, this is used to salt out the
19 methamphetamine to produce the powder. There's no reason
20 to have a soda bottle cut and taped with straws coming
21 out of it. And again, remember the cold pack? You can
22 see up here in the corner the one that's already been cut
23 and duct taped.

24 Again, you will have all these photos back there.
25 Go through them all but as the defense said

1 methamphetamine was being cooked at this house. And just
2 one thing to top it off. Remember the liquid that was
3 found? This is the exhibit that the SLED analyst
4 testified was positive for methamphetamine, and you heard
5 Detective Tanner, the expert in methamphetamine stated
6 the liquid form of meth cannot be processed by the body
7 so you can't use it or ingest it to get high. I submit
8 to you the only reason someone who has liquid meth in
9 their house or remnants of it is because they are cooking
10 methamphetamine and they didn't get finished salting it
11 off with that gas generator I showed you to produce the
12 powder.

13 The defense wants you to believe the defendant was
14 in the wrong place at the wrong time. Didn't know why he
15 was there. Well, he said he may have been there to
16 purchase methamphetamine. He told you the defendant had
17 the power and intent to control the methamphetamine that
18 was found. Remember the baggie that's in here? If you
19 can find it with the powder, .66 grams of
20 methamphetamine, he said that may be a reason he was over
21 there. That's possession.

22 But we know he wasn't there just the wrong place at
23 the wrong time. You heard testimony that Felix Kotowski,
24 the defendant is Michelle Vining's boyfriend. Now, how
25 did we get to that? Sergeant Thompson approached the

1 door, knocked with Detective Allen. Felix Kotowski comes
2 to the door. What does he say? He lies and says
3 Michelle Vining is not home. He says I'm here with my
4 girlfriend Lisa. Well, remember he yells to Lisa to come
5 downstairs. She finally comes out. Detective Thompson
6 is talking to her. She says, oh, no, no, no. You can't
7 search the house. My name is Lisa. Well, when she's
8 finally detained and asked to give her information or
9 else she's gonna be sitting in jail and won't get a bond
10 hearing, she finally tells law enforcement, oh, yeah, my
11 name is Michelle Vining. So put two and two together, he
12 says his girlfriend is Lisa, well Lisa is Michelle
13 Vining. So he's not just there for a quick in and out.
14 That's his girlfriend. He has a relationship with her.

15 This may seem subtle or just a little detailed but
16 if you look closely in this picture of the house, you can
17 see both defendants sitting on a little bench and she's
18 leaned up on him. She's trying to get comfort from him.
19 That shows what type of relationship they had. If he was
20 just there to stop by maybe just to pick up some
21 methamphetamine, why would she be leaning on him and
22 trying to be consoled? Because they had a relationship
23 and he was staying at that house.

24 Now, let's go into when Detective Thompson knocked
25 on the door again. He said he knocked. He stated he saw

1 people peering through the windows. Detective Allen
2 stated he saw people peering through the windows. There
3 is no disputing that. They weren't able to tell who was
4 moving around in the upstairs or downstairs. But
5 remember, Sergeant Thompson said there was about three to
6 five minutes and multiple knocks before the defendant
7 came downstairs. That's plenty of time for him, the
8 defendant to be in the bathroom dumping out this one pot.
9 Plenty of time. Wouldn't take more than a few seconds.

10 Remember that bottle is found in the bathroom right
11 in between the muriatic acid and liquid fire. Plain
12 view. Remember Detective Lundberg stated he hadn't moved
13 any of this. Hadn't touched it. This is where it was
14 sitting when he came through. That's the bottle that had
15 liquid meth in it. Plenty of time to dump it out. And
16 the defense wants you believe this odor came because the
17 odor was permeating throughout the house. If you
18 remember, Detective Allen and Detective Lundberg do the
19 protective sweep. They don't say as soon as they walk in
20 the house they are overwhelmed with the odor. They say
21 once they go upstairs, there's a door shut which ended up
22 being the bathroom. Once they opened the door, they are
23 greeted with that haze and that odor. So it wasn't
24 throughout the house yet. But once they opened that door
25 to see if anybody was still in there, then the odor

1 escapes and starts getting throughout the house. And the
2 defense is right. Just like detective - he told you
3 Detective Tanner told you you have to be in close
4 proximity to get that odor on you. So the defendant was
5 either in the bathroom burping the bottle before police
6 came, started to get that ammonia smell on him, then when
7 he looked out the window and saw those police, he went,
8 oh, no, I got to get rid of this. Dumps it down the
9 drain which causes the smoke to come out.

10 And both Detective Allen and Detective Lundberg
11 stated the only thing that would cause that gaseous haze
12 is if there was an active one pot that was dumped that
13 would give all that gas. The gas wouldn't come from some
14 old cook that happened three days ago, five days ago. It
15 would have had to been active that night.

16 Now, some other reasons to show the defendant wasn't
17 just there at the wrong place at the wrong time. If you
18 remember from the video Detective Lundberg comes in the
19 door and the defendant's license is sitting on some end
20 table. He picks it up and you kind of see it just real
21 briefly. I submit to you if you're just there for a
22 brief time, you're going to keep your wallet in your
23 pocket. You're not gonna take it out and throw it on
24 some end table and just leave it if you're just stopping
25 by. He planned on staying there. He was staying there.

1 He was involved with Michelle Vining who owned the house
2 cooking meth, helping her. He was involved.

3 Also, there was male clothing. That makes it
4 simple. A pair of pants. But there's other male
5 clothing. It could have been from anyone. But remember
6 Sergeant Thompson stated there were two cars in the
7 driveway that night. He recognized one to be Michelle
8 Vining's. There's only one other person in the house, I
9 would submit to you it was Felix Kotowski's. Well, if
10 you look his car keys are attached to the pants and the
11 photo with him sitting there he's wearing shorts because
12 he was sleeping there, staying there, hanging out there.
13 He had pants with his car keys laying around in the
14 bedroom because he hangs out there and cooks meth with
15 Michelle Vining, his girlfriend. He's hanging out there
16 cooking methamphetamine.

17 And lastly, the theory is, the State's theory, I
18 think we've proven it is what the defense said. Michelle
19 Vining was the purchaser of the pseudoephedrine. You
20 heard Sergeant Thompson state Michelle Vining attempted
21 to purchase 12 times from September to October. She was
22 blocked twice, and then went and purchased a lesser
23 amount. I don't know about you, but normal people don't
24 get blocked purchasing pseudoephedrine and then know that
25 they can go purchase a lesser amount unless they're

1 trying to cook methamphetamine that night. And the day
2 she got the pseudoephedrine was October 29th, a few hours
3 before Sergeant Thompson arrives at the house to do the
4 knock and talk. And as he stated, that's what he calls a
5 smurf. Meth cooks will have people smurf and go get
6 amounts of pseudoephedrine so they can bring it back so
7 they can cook the methamphetamine.

8 He stated people know that cook meth know they watch
9 those logs and are aware of it. I submit to you the
10 defendant knows that. Knew that at that point and he was
11 like, hey, Michelle, you're my girlfriend. Why don't you
12 go get pseudoephedrine and I'll cook us up some
13 methamphetamine. She brought it back to him at their
14 house on the 29th and they were cooking meth on the 29th,
15 30th when the police arrived.

16 Ladies and gentlemen, there is no doubt there was
17 methamphetamine being manufactured at the house. There
18 is no doubt there was finished product of methamphetamine
19 at the house. That the defense wants you believe that he
20 was there to possibly get, or I'll tell you, he was
21 there. He was cooking it. That was his meth that he
22 probably cooked. He had the power and intent to control
23 all those items in the house. He knew all those items
24 were in the house because they were in plain view and he
25 was the meth cook.

1 The Judge is going to tell you after she charges you
2 on the law that you have to return a unanimous verdict.
3 The word verdict comes from the Latin term verdicto which
4 means to speak the truth. Neither the defendant nor the
5 co-defendant spoke the truth to law enforcement that
6 night because they were trying to distance themselves
7 from what was going on in the house. That shows the
8 knowledge of what was going on. But y'all can speak the
9 truth here today by finding the defendant guilty of
10 manufacturing methamphetamine and possession.

11 THE COURT: Ladies and gentlemen of the jury, it's
12 now time for me to charge you on the law in this case.

13 The indictments in this case charge the defendant
14 with manufacturing methamphetamine and possession of less
15 than one gram of methamphetamine. I remind you that the
16 fact that the defendant was arrested, charged and
17 indicted in this case is not evidence in this case and
18 cannot be considered by you as evidence of guilt in this
19 case, nor does it create a presumption or inference of
20 guilt. These documents are simply the formal written
21 documents which contain the charges against the
22 defendant. They are the formal documents by which this
23 case is brought into court.

24 A defendant has a constitutional right to remain
25 silent and the assertion of this right must not be

1 considered by you in your deliberations.

2 The indictments in this case allege two different
3 offenses against the defendant. Again the charges are
4 manufacturing methamphetamine and possession of less than
5 one gram of methamphetamine. Each indictment charges a
6 separate and distinct offense. You must decide each
7 indictment separately on the evidence and the law
8 applicable to it uninfluenced by your decision as to any
9 other indictment. The defendant may be convicted or
10 acquitted on any or all of the offenses charged. You
11 will be asked to write a separate verdict of guilty or
12 not guilty for each indictment.

13 The defendant has pled not guilty to these
14 indictments and that plea puts the burden on the State to
15 prove the defendant guilty. A person charged with
16 committing a criminal offense in South Carolina is never
17 required to prove himself innocent. I charge you that it
18 is an important rule of the law that the defendant in a
19 criminal trial no matter what the seriousness of the
20 charge may be will always be presumed innocent of the
21 crime for which the indictment was issued unless guilt
22 has been proven by evidence satisfying you of that guilt
23 beyond a reasonable doubt. The presumption of innocence
24 does not end when you begin your deliberations but it
25 accompanies the defendant throughout the trial until you

1 reach a verdict of guilt based on evidence satisfying you
2 of that guilt beyond a reasonable doubt.

3 The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the defendant
5 which remains with the defendant until it has been
6 striped from the defendant by the evidence satisfying you
7 of the defendant's guilt beyond a reasonable doubt. The
8 presumption of innocence is not a mere legal theory. It
9 is not just a legal phrase. It is a substantial right to
10 which every defendant is entitled to unless you the jury
11 are satisfied from the evidence of the defendant's guilt
12 beyond a reasonable doubt.

13 What is a reasonable doubt in the law? A reasonable
14 doubt is the kind of doubt that would cause a reasonable
15 person to hesitate to act. The State has the burden of
16 proving the defendant guilty beyond a reasonable doubt.
17 Some of you may have served as jurors in civil cases
18 where you were told that it is only necessary to prove
19 that a fact is more likely true than not true such as by
20 the greater weight or the preponderance of the evidence.
21 In criminal cases the State's proof must be more powerful
22 than that. It must be beyond a reasonable doubt. Proof
23 beyond a reasonable doubt is proof that leaves you firmly
24 convinced of the defendant's guilt. There are very few
25 things in this world that we know with absolute certainty

1 and in criminal cases the law does not require proof that
2 overcomes every possible doubt. If based on your
3 consideration of the evidence you are firmly convinced
4 that the defendant is guilty of the crimes charged, you
5 must find the defendant guilty. If on the other hand you
6 think there is a real possibility that the defendant is
7 not guilty, you must give the defendant the benefit of
8 the doubt and find him not guilty.

9 I remind you that during this trial you and I have
10 certain duties to perform. As a trial Judge it's my
11 responsibility to preside over the trial of this case and
12 I also have the duty to rule on the admissibility of the
13 evidence during this trial. You are to consider only the
14 competent evidence before you. If there was any
15 testimony ordered stricken from the record in this case
16 during this trial, you must disregard that testimony.
17 You are to consider only the testimony which has been
18 presented from the witness stand, any exhibits which have
19 been made part of the record in this case and any
20 stipulations of counsel. I have the additional duty to
21 charge you the law applicable to this case. As a
22 presiding judge I'm the sole judge of the law in this
23 case and it's your duty as jurors to accept and apply the
24 law as I now state it to you. If you already have any
25 ideas to what the law is or what the law ought to be and

1 it does not agree with what I now tell you the law is,
2 you must abandon this idea because you are sworn to
3 accept the law and apply the law exactly as I state it to
4 you.

5 In every case tried in this court before a jury the
6 jury becomes the sole and exclusive judge of the facts in
7 the case. A trial judge cannot intimate, state, comment
8 on or make any statement to a trial jury about the facts
9 in the case. Since you the jury are the sole judge of
10 the facts in the case you are not to infer from what I
11 have said during the progress of this trial in ruling
12 upon the admissibility of evidence or otherwise or
13 anything that I say now during the course of this
14 instruction to you that I have any opinion about the
15 facts in this case. The law does not allow me to have an
16 opinion about the facts in this case. It's a matter
17 solely for you the jury to determine.

18 As jurors it is your duty to determine the effect,
19 value, weight and truth of the evidence presented during
20 the trial. There are two types of evidence which are
21 generally presented during a trial, direct evidence and
22 circumstantial evidence. Direct evidence is the
23 testimony of a person who claims to have actual knowledge
24 of a fact such as an eye witness. Circumstantial
25 evidence is proof of a chain of facts in circumstances

1 indicating the existence of a fact. The law makes
2 absolutely no distinction between the weight or value to
3 be given to direct or to circumstantial evidence, nor is
4 a greater degree of certainty required of circumstantial
5 evidence than of direct evidence. You should weigh all
6 of the evidence in this case. After weighing all of the
7 evidence, if you are not convinced of the guilt of the
8 defendant beyond a reasonable doubt, you must find the
9 defendant not guilty.

10 The State has a burden of proving the defendant
11 guilty beyond a reasonable doubt. This burden rests with
12 the State regardless of whether the State relies on
13 direct evidence, circumstantial evidence or a combination
14 of the two.

15 Necessarily you must determine the credibility of
16 witnesses who have testified in this case. Credibility
17 simply means believability. It becomes your duty as
18 jurors to analyze and to evaluate the evidence and
19 determine which evidence convinces you of its truth. In
20 determining the believability of witnesses who have
21 testified in this case, you may believe one witness over
22 several witnesses or several witnesses over one witness.
23 You may believe a part of the testimony of a witness and
24 reject the remaining part of the testimony of that same
25 witness. You may believe the testimony of a witness in

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1 its entirety or reject the testimony of a witness in its
2 entirety. You may consider whether any witness has
3 exhibited to you any interest, bias, prejudice or other
4 motive in this case. You may also consider the
5 appearance and the manner of a witness on the witness
6 stand.

7 The rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or to conclusions. An
9 exception to this rule exists for witnesses that we call
10 expert witnesses. A witness who by education and
11 experience has become an expert in some art or science or
12 profession or calling may state an opinion as to a
13 relevant and material matter in which the witness claims
14 to be an expert and may also state the reasons for that
15 opinion. You should consider any expert opinion received
16 in evidence in this case and like any other evidence give
17 it the weight that you think it deserves. If you decide
18 that the opinion of an expert witness is not based on
19 sufficient education and experience or if you conclude
20 that the reasons given in support of the opinion are not
21 sound or that the opinion is outweighed by other
22 evidence, you may disregard the opinion entirely. An
23 expert witness' testimony is to be given no greater
24 weight than any other witness simply because the witness
25 is an expert. Further, you are not required to accept an

1 expert's opinion even though it's not contradicted.

2 I instruct you and emphasize that the fact that the
3 defendant did not testify is not a factor to be
4 considered by you in any way in your deliberations and
5 your consideration on the question of guilt or innocence
6 of the defendant. It must not be considered by you in
7 any manner whatsoever. A defendant has a constitutional
8 right to remain silent and the assertion of this right
9 must not be considered by you in your deliberations. I
10 repeat, under your oath you are to draw no conclusion
11 whatsoever from the fact that the defendant did not
12 testify. The fact that the defendant did not testify
13 should not even be discussed in the jury room. The
14 burden of proof as I stated to you is on the State and
15 the defendant is not required to prove his innocence.
16 The burden of proof remains on the State to prove guilt
17 beyond a reasonable doubt.

18 In order to establish criminal liability criminal
19 intent is required. For example, the mental state
20 required to be proven by the State for a particular crime
21 might be purpose, intent, knowledge, recklessness, or
22 criminal negligence. Criminal intent must be proven by
23 the State beyond a reasonable doubt. Criminal intent is
24 always a matter that must be determined by the jury from
25 the circumstances surrounding the situation. There is no

1 way to prove intent to a mathematical certainty. There
2 is no way medical science can dissect a person's brain
3 and determine what the person had in mind. The law says
4 that criminal intent may be inferred from the
5 circumstances shown to have existed. This is how you
6 make a determination of whether the element requiring
7 intent was present. It is not necessary to establish
8 intent by direct and positive evidence, but intent may be
9 established by inference in the same way as any other
10 fact, by taking into consideration the acts of the
11 parties and all of the facts and circumstances of the
12 case.

13 Criminal intent is a mental state, a conscious wrong
14 doing. It is up to you to determine what the defendant
15 intended to do based upon the circumstances shown to have
16 existed. Criminal intent can arise from action or a
17 failure to act. It may arise from negligence,
18 recklessness or an indifference to duty or to
19 consequences that is considered by the law to be the
20 equivalent of criminal intent. Mere presence at the
21 scene is not sufficient to prove someone guilty of a
22 crime. A defendant's presence where a crime is being
23 committed or the mere association with a person who
24 commits a crime does not make a defendant an accomplice
25 or an aider and abettor of the person committing the

1 crime. The burden is on the State to prove every element
2 of the crime charged. If you find after reviewing all of
3 the evidence that the State has proven the defendant was
4 only present at the scene of a crime and they have not
5 proved beyond a reasonable doubt any other participation
6 in the crime, then you must find the defendant not
7 guilty. The law is that proof of being at the scene of
8 the crime is not sufficient to find someone guilty.

9 If a crime is committed by two or more people who
10 are acting together in committing the crime, the act of
11 one is the act of all. A person who joins with another
12 to commit an unlawful act is criminally responsible for
13 everything done by the other person which happens as a
14 probable or natural consequences of the acts done in the
15 carrying out the common plan and purpose. For example,
16 two people can be guilty of killing another person when
17 only when of the two had a gun, there was only one bullet
18 and only one of the two fired the shot that caused the
19 death. If two or more people are together acting
20 together assisting each other in committing the offense,
21 the act of one is the act of all, or as it is sometimes
22 called the hand of one is the hand of all.

23 Prior knowledge that a crime is going to be
24 committed without more is not sufficient to make the
25 person guilty of that crime. Mere knowledge that another

1 person is going to commit a crime even if the defendant
2 is present when the crime is committed is not sufficient
3 to convict the defendant as a principal. Guilt as a
4 principal is shown by actual or constructive presence at
5 the scene as a result of a prior arrangement. Therefore,
6 a finding of prior arranged plan or common scheme is
7 necessary for a finding of guilt as a principal. The
8 State must prove beyond a reasonable doubt by competent
9 evidence the theory of the hand of one is the hand of
10 all. A principal in a crime is one who either actually
11 commits the crime or who is present aiding, abetting or
12 assisting in committing the crime. When a person doesn't
13 act in the presence of and with the assistance of
14 another, the act done is by both. Where two or more
15 acting with a common plan or intent are present at the
16 commission of a crime it does not matter who actually
17 commits the crime, all are guilty. The hand of one is
18 the hand of all. Presence at the commission of a crime
19 means to be sufficiently near to aid and abet and assist
20 in the commission of the crime. However, mere presence
21 at the scene of a crime is not sufficient so convict one
22 as a principal on the theory of aiding and abetting.

23 Intent is also a necessary element. For there to
24 have been a common design or intent to commit the crime
25 and the crime must have been committed pursuant thereto

1 with the person aiding and abetting by some overt act.
2 Intent means intending the result which actually occurs,
3 not accidentally or involuntarily. Intent may be shown
4 by acts or conduct of the defendant and other
5 circumstances from which you may naturally and reasonably
6 infer intent. The State must prove these elements beyond
7 a reasonable doubt.

8 A person who is present at the scene of the crime
9 and intentionally or through a common plan aided, abetted
10 or assisted in the commission of that crime through some
11 overt act is guilty as an accomplice. To be liable as an
12 accomplice the defendant must have knowledge of the
13 principal's criminal conduct. Mere presence at the scene
14 of the crime is not sufficient to establish guilt as an
15 accomplice. Intentionally means willfully intending the
16 result which actually occurs, not accidentally or
17 involuntarily.

18 A co-defendant's guilty plea must not be considered
19 as evidence of the defendant's guilt or innocence.

20 The defendant is charged with manufacturing
21 methamphetamine. The State must prove beyond a
22 reasonable doubt that the defendant manufactured,
23 distributed, dispensed, delivered, purchased or provided
24 financial assistance or otherwise aided, abetted,
25 attempted, or conspired to manufacture, distribute,

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1 dispense, deliver, purchase or possess with the intent to
2 distribute, dispense or deliver methamphetamine.

3 Possession of equipment or paraphernalia used in the
4 manufacturing of methamphetamine is prima facie evidence
5 of intent to manufacture. In order to be guilty as an
6 aider or abettor the participant must be chargeable with
7 the knowledge of the principal's criminal conduct.
8 Manufacture means to produce, prepare, convert, process,
9 plant, cultivate, grow or harvest a drug naturally or
10 chemically. Manufacturing includes any packaging or
11 repackaging of the drug or labeling or relabeling of the
12 drug's container.

13 The defendant is charged with possession of less
14 than one gram of methamphetamine. To prove possession
15 the State must prove beyond a reasonable doubt that the
16 defendant had both the power and intent to control the
17 disposition or use of the methamphetamine. The
18 possession may be actual or constructive. Actual
19 possession means that the methamphetamine was in the
20 actual physical custody of the defendant. Constructive
21 possession means that the defendant had dominion and
22 control or the right to exercise dominion or control over
23 either the methamphetamine itself or the property on
24 which the methamphetamine was found. Mere presence at
25 the scene where the drugs were found is not enough to

1 prove possession. The defendant's knowledge and
2 possession may be inferred when a substance is found on a
3 property under the defendant's control.

4 Acts, declarations or conduct of the defendant may
5 create an inference if the accused knew of the existence
6 of the contraband. However, the inferences on each
7 charge are simply evidentiary facts to be taken into
8 consideration by you along with the other evidence in the
9 case and to be given the weight that you decide it should
10 have. Two or more persons may have joint possession of
11 the drug.

12 Ladies and gentlemen, there are several possible
13 verdicts that you may find in this case. Mr. Foreman,
14 you will have the verdict form with you in the jury room
15 along with the indictments in this case. The verdict
16 form is rather self explanatory. It states as to the
17 charge of manufacturing methamphetamine, it gives you the
18 indictment number, we the jury unanimously find the
19 defendant and you circle the appropriate verdict, either
20 not guilty or guilty. The same goes with the second
21 charge. As to the charge of possession of less than one
22 gram of methamphetamine we the jury unanimously find the
23 defendant, and you circle the appropriate verdict, sign
24 your name. Your verdict must be a unanimous one. You
25 will also have the indictments back in the jury room with

1 you and on the front of each indictment there is a
2 section that says verdict. If you will indicate what
3 your verdict is and sign it as the foreperson and date
4 it.

5 For the very last time I'm going to ask you to
6 return to your jury room but again don't begin your
7 deliberations until we bring you the verdict form along
8 with the exhibits that are properly introduced in the
9 trial, and just to make sure I didn't forget to instruct
10 you on anything. We will be with you in just one moment.

11 (Whereupon, the jury entered the jury room at 11:30
12 a.m.)

13 THE COURT: Any exceptions or objections to the
14 charge on the law from the State or from the defense?

15 MR. WARD: Nothing from the State, Your Honor.

16 MR. FALK: No, Your Honor.

17 THE COURT: All right. If y'all will get together
18 and make sure we have all the exhibits to go back.

19 MR. WARD: If we can put on the record what the item
20 number from the video is.

21 THE COURT: I have that as 65, the DVD.

22 MS. MIMS: Yes, ma'am.

23 MR. FALK: So are we gonna be able to play the video
24 for them?

25 MR. WARD: Just for the record for whatever reason,

1 the item number on the disk, that would be the video is
2 PA300376. That's the only item admitted from the disk.

3 THE COURT: Okay. Is everything else good?

4 MR. WARD: Yes.

5 MS. MIMS: Yes, ma'am.

6 MR. WARD: Yes.

7 THE COURT: All right.

8 (Whereupon, the exhibits and indictments were sent
9 into the jury room and the jury began their deliberations
10 at 11:35 a.m.)

11 BAILIFF: All rise.

12 THE COURT: Thank you. Please have a seat. I
13 understand we have a verdict. Is everyone ready for the
14 jury?

15 MR. WARD: Yes, Your Honor.

16 MR. FALK: Yes, Your Honor.

17 THE COURT: All right. Let's have our jury please.

18 (Whereupon, the jury returned to the courtroom at
19 12:10 p.m.)

20 THE COURT: Welcome back, ladies and gentlemen.

21 Mr. Foreman, has the jury reached a verdict?

22 FOREMAN: Yes.

23 THE COURT: Will you please hand it to the bailiff.

24 (Whereupon, Foreman hands verdict to bailiff,
25 bailiff hands verdict to the Court.)

VERDICT

346

1 THE COURT: Madam Clerk, if you would please publish
2 the verdict.

3 THE CLERK: In the matter of State of South
4 Carolina, County of Dorchester. The State versus Felix
5 Kotowski. As to the charge of manufacturing
6 methamphetamine, indictment number 2014-GS-18-1529, we
7 the jury unanimously find the defendant guilty. As to
8 the charge of possession of less than one gram of
9 methamphetamine, indictment number 2014-GS-18-1530, we
10 the jury unanimously find the defendant guilty. Signed
11 by foreperson Charles Ferguson. December 9th, 2515.

12 THE COURT: Poll the jury.

13 THE CLERK: Yes, ma'am. As I call your name and
14 number, if you will please stand.

15 Juror number 67, David Forsyth. Was this your
16 verdict in the jury room?

17 DAVID FORSYTH: Yes, it was.

18 THE CLERK: Is it still your verdict?

19 DAVID FORSYTH: Yes, it is.

20 THE CLERK: Thank you. Number 40, Buster Canaday.
21 Was this your verdict in the jury room?

22 BUSTER CANADAY: Yes.

23 THE CLERK: Is this still your verdict?

24 BUSTER CANADAY: Yes.

25 THE CLERK: Thank you. Number 9, Donna Autry. Was

1 THE COURT: Thank you. Ladies and gentlemen of the
2 jury, I'm going to ask you to return to your jury room
3 one last time. I'll be in there momentarily to release
4 you.

5 (Whereupon, the jury returned to the jury room at
6 12:16 p.m.)

7 THE COURT: Anything further before I release the
8 jury?

9 MR. WARD: Nothing, Your Honor.

10 MR. FALK: No, Your Honor.

11 THE COURT: Solicitor, will you please prepare the
12 sentencing sheets.

13 MR. WARD: Yes, ma'am.

14 THE COURT: I'll be right back.

15 (Short recess.)

16 BAILIFF: All rise.

17 THE COURT: Thank you everyone. You may have a
18 seat. All right, Mr. Falk, I'll be happy to hear from
19 you if you have anything you would like to present to the
20 Court.

21 MR. FALK: I have an argument I would like to make
22 regarding sentencing.

23 THE COURT: Yes, sir.

24 MR. FALK: Your Honor, I don't think this should be
25 a trial tax. I mean, my client has no criminal record.

1 This is his first offense. He certainly could have
2 gotten out of this case earlier, but I think you can get
3 a sense from my client's disposition that he just still
4 asserts that he did not do it; that it, you know, it
5 happened. It wasn't him. It happened at the house. He
6 was at his girlfriend's house. He had a relationship
7 with her. I'm sure that they shared some crack cocaine,
8 but my client -- I mean, the reason why we didn't try to
9 accept any other kind of offers which you assume would
10 come along in these cases is because my client just
11 constantly asserted I did not do it. I did not do it. I
12 think that he is parol eligible. I mean, I think we can
13 get a suspended sentence in this case. I think he would
14 be a good candidate. He's always maintained employment.
15 There may be some changes with his employment now that he
16 has got this record, but I have talked to his sister who
17 reconfirmed that he still will have his job. He won't
18 lose his job. He's always remained employed. He has
19 family in this community. He may need some type of drug
20 counseling which may be an appropriate remedy but we are
21 hoping that the Court does not pursue an active sentence
22 in this case because again this is a first time offender
23 who just absolutely wanted to assert -- I mean, he wasn't
24 rolling the dice just to see what the jury would say. He
25 wanted me to prove that he was not guilty because he was

1 convinced he was not guilty and I think we can't
2 necessarily penalize him just because he had us go to
3 trial.

4 THE COURT: Solicitor? Anything further, Mr. Falk?
5 I'm sorry.

6 MR. FALK: No, Your Honor.

7 MR. WARD: As the defense said, he is correct.
8 There is no prior record. But as Your Honor is well
9 aware from working in this county methamphetamine is
10 almost you can call it epidemic in this county. Just the
11 danger he put that community in. As you heard it's a
12 golf course community. Houses nearby. With the amount
13 of dangerous chemicals that they had in the house and the
14 cooking process, the danger he put the community in we
15 would ask for an active sentence.

16 MR. FALK: Just one more point. I think there was
17 ample evidence that it might have been a meth house and a
18 lot of cooking going on, all the dangerous chemicals that
19 were in there, but there were several other people in and
20 out of that house so I mean I don't think we can assume
21 that because of the quantity of the stuff in there that
22 it was all - that my client was responsible for. I mean,
23 I think it was a meth house. It was under the radar for
24 quite some time as a meth house.

25 THE COURT: Thank you, Mr. Falk. Well, I can

1 certainly assure you that in no way is your client
2 penalized by exercising his right to a trial. I
3 certainly don't take that into consideration but I do
4 take into consideration the evidence that was presented
5 and frankly I respect the jury's verdict. I think the
6 jury considered the evidence that was presented. Whether
7 or not people had come and gone into that house certainly
8 there is evidence of that, however, during the pretrial
9 phase of this case your client testified that he had
10 spent quite a bit of time there and that was the reason
11 for his expectation for privacy in the home when arguing
12 regarding the search and seizure issue and I believed
13 him. I think he spend a good deal amount of time in that
14 home and he testified to that effect. I don't think
15 there's any way he can be in that house and not know and
16 be there like he testified as he did under oath that he
17 spend weekends there that that was not an active meth lab
18 and he obviously participated in it.

19 Methamphetamine as the Solicitor stated is a huge
20 problem in our community and not just because of the
21 health effects that it has on those who use it but those
22 all around it. The explosion potential that could
23 potentially kill and injure others in the neighborhood is
24 very great and it's something that this Court takes very
25 serious so I don't think it's appropriate for a

1 probationary sentence.

2 On indictment 2014-GS-18-1529 for manufacturing
3 methamphetamine you're hereby committed to the State
4 Department of Corrections for a period of seven years.
5 The Court will recommend an ATU unit so you can get the
6 drug treatment and that's concurrent to 2014-GS-18-1530,
7 you're hereby committed to the State Department of
8 Corrections for a period of three years.

9 Anything further, Solicitor?

10 MR. WARD: Nothing from the State, Your Honor.

11 MR. FALK: Nothing at this time from the defense,
12 Your Honor.

13 THE COURT: Solicitor, did you have any other
14 matters for the Court this week?

15 MR. WARD: Not for today. Tomorrow we have a full
16 list of pleas and bonds.

17 THE COURT: And probation on Friday?

18 MR. WARD: I believe so.

19 THE COURT: All right. We will be at ease then.

20 END OF PROCEEDINGS AT 1:00 p.m.

21

22

23

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
State of South Carolina)
Plaintiff)
vs.)
Felix Kotowski)
Defendant,)
_____)

COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-GS-10-1529, 1530
MOTION FOR NEW TRIAL

2015 DEC 18 PM 4:49
RECORDED
CLERK OF COURT
DORCHESTER COUNTY

To: The Honorable Maite Murphy PO Box 802 St. George SC 29477, Kyle Ward, Esq.
Dorchester County Solicitor, 140 N Main Street Suite 102, Summerville SC 29483

Defendant by counsel moves this Court for a New Trial in the above action. As grounds for this action Defendant states:

- I. The trial court erred in allowing the state to introduce evidence gained after a "knock and talk" investigation conducted at 111 Marsh Pointe Road in Summerville SC; and,
- II. The trial court erred in overruling defense counsel's timely objection to the State's introduction of evidence gained from the National Precursor Log Exchange (NPLeX). See Note (1)

PROCEDURAL HISTORY

1. Defendant was indicted for manufacturing methamphetamine and possession of less than one gram of methamphetamine under the above indictments.
2. On December 9, 2015 a Dorchester County Jury returned a guilty verdict on both charges; and defendant received a seven year active sentence.
3. Prior to the commencement of the trial, Defendant moved to suppress the results of a "knock and talk" investigation conducted by the Dorchester County Sheriff's office. Michele Vining (Vining) and the Defendant were arrested as a direct result of this "knock and talk".

4. At the pre-trial suppression hearing Thompson testified that his reasonable suspicion to conduct the "knock and talk" investigation was premised upon: 1) a tipster's report of a third-party conversation regarding purchases of methamphetamine from the Marsh Pointe Drive address; 2) an NPLeX report he generated describing pseudoephedrine (PSE) purchases by individuals living at the Marsh Pointe Drive address; 3) the observation of a car, belonging to the son of an individual with a methamphetamine manufacturing conviction, that was parked at the Marsh Pointe address. Thompson received the tip and observed the car in June 2014; he conducted the knock and talk on October 29, 2014.
5. During the State's case-in-chief, Thompson testified about PSE purchases made by Vining and Defendant. In his testimony, Thompson provided information as to the specific date, location and quantity of each PSE purchase.
6. On cross examination, Thompson testified that he had no firsthand knowledge of these PSE purchases and his testimony was based solely upon the NPLeX report he generated. Thompson testified further that he had no knowledge of how Appriss's software worked; the accuracy of the data; how the data was compiled; and or how the data was converted into a report form.
7. The State provided no witness from Appriss to testify that the report from which Thompson testified: 1) was an authentic NPLeX report; 2) the manner in which the report was prepared; and or 3) the source of the information described.
8. Defense counsel objected to Thompson's testimony regarding Vining's and defendant's PSE purchases as hearsay. Additionally defense counsel objected

that testimony regarding defendant's PSE purchases violated his Sixth Amendment rights under the Confrontation Clause; and that under Rule 403 SCRE the probative value of his PSE purchases was outweighed by its danger of unfair prejudice.

LEGAL ARGUMENT

A. Reasonable Suspicion to support the knock and talk.

In *State v. Counts*, 413 S.C. 153, (2015) the South Carolina Supreme Court held that an individual's right of privacy under S.C. Const. art I § 10 provides a greater protection against a knock and talk intrusion than would be otherwise protected under the Fourth Amendment. In *Counts* the defendant sought to suppress evidence found as a direct consequence of a "knock and talk". In citing *Florida v. Jardines*, 133 S.Ct. 1409 (2013) the South Carolina Supreme Court noted that under the Fourth Amendment a police officer needs no prior justification in order to conduct a knock and talk. However in *Counts* the South Carolina Supreme Court held that under S.C. Const. art I § 10, a police officer must first have reasonable suspicion of illegal activity before conducting a "knock and talk".

Defense counsel contends that Thompson relied exclusively on the NPLeX report before conducting the knock and talk as the other information Thompson had was either unreliable and or stale. Thompson had no information regarding the accuracy of the information contained in the NPLeX report. Therefore by not corroborating the NPLeX report with other reliable information of illegal activity,

Thompson did not have the sufficient reasonable suspicion before he conducted the "knock and talk", and the resulting seizure of the evidence was unlawful.

B. Thompson's NPLeX testimony was inadmissible hearsay.

Thompson's testimony regarding the PSE purchases was hearsay. Rule 802 SCRE provides that hearsay testimony is inadmissible unless it falls under one of the exceptions to the hearsay rules. The report that Thompson obtained from the NPLeX data base was not admissible hearsay under Rule 803(6) SCRE. In order for the state to offer evidence contained in an NPLeX report as a business record, it must first have provided testimony from a custodian at Appriss who could testify as to manner in which Appriss obtains, compiles, and stores the NPLeX information. As Thompson had no information regarding the Appriss software and data base, its accuracy, data collection technique, etc., he did not qualify under Rule 803(6) SCRE as a qualified witness to substitute in place of Appriss's records custodian.

Counsel has found no South Carolina decisions addressing the admissibility of NPLeX evidence. Counsel has found cases from other jurisdictions that specifically address this issue. In arguing that Thompson's testimony from the NPLeX was inadmissible, Defense counsel called the court's attention to *State v. Burgdorf*, 861 N.W. 2d 273 (Iowa Ct of App 2014). The facts in *Burgdorf* are similar to the case at bar. In *Burgdorf* the prosecution sought to introduce NPLeX exhibits through the investigating law enforcement agent. The Iowa court held NPLeX evidence was inadmissible because the prosecution offered no testimony to authenticate or lay a foundation for the NPLeX records, and did not offer testimony certifying that the NPLeX records were what they purported to be. Defense counsel also cited *Embrey v. State*, 989 N.E. 2d 1260 (Indiana Court of Appeals 2013). In *Embrey* the

Indiana Court admitted the NPLeX records. However, *Embrey* differs from the case at bar because the records were introduced along with a Business Records Affidavit from Appriss' records custodian.

In Mr. Kotowski's trial the Solicitor cited *State v. Cady*, 425 S.W.3d 234, (Missouri Court of Appeals 2014) in support of the admissibility of Thompson's NPLeX testimony. However Missouri enacted a statute providing that: *Logs of transactions required to be kept and maintained by this section and section 195.417 shall create a rebuttable presumption that the person whose name appears in the logs is the person whose transactions are recorded in the logs.* Mo. Rev. Stat. § 195.017. Counsel knows of no similar provision under South Carolina's PSE statute found at S.C. Code Ann. § 44-53-398. Therefore this court should not be persuaded by the Missouri court's decision in *Cady*.

C. Confrontation Clause Violation

The NPLeX evidence was testimonial hearsay. In South Carolina the NPLeX data provided by Appriss is used by law enforcement to track the purchases of precursors used in the manufacture of methamphetamine. Thompson testified that once he received the anonymous tip regarding methamphetamine sales at the North Pointe address. He went to the NPLeX system to compile a report of all PSE purchases made by individuals from that address. As his investigation progressed he compiled additional reports specifically describing defendant's PSE purchases dating back to 2009. Thompson had no firsthand knowledge of defendant's PSE purchases and his testimony was based solely upon the report he prepared from the NPLeX data. Since Thompson's report was prepared for the purpose of his investigation and the prosecution against defendant, the PSE information compiled in the report was

testimonial. Defendant had no opportunity to cross examine or otherwise confront the source of the NPLeX data. Therefore the admission of Thompson's testimony regarding defendant's PSE purchases violated defendant's Sixth Amendment Rights.

See Crawford v. Washington, 541 US. 36 (2004).

CONCLUSION

For the reasons set forth above, this Court should grant Defendant a new trial on the above Indictments.

1. NPLeX is a service provided by Appriss which is a third party private contractor. On its web page Appriss defines NPLeX as a real-time electronic logging system used by pharmacies and law enforcement to track sales of over the counter cold and allergy medications containing precursors to the illegal drug methamphetamine. (see <http://www.appriss.com/nplex.html>).

Respectfully Submitted,



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CERTIFICATE OF SERVICE

Undersigned certifies that he mailed a copy of the Motion for New Trial to the individuals and addresses identified above this December 18, 2015.



James Falk

December 18, 2015
Charleston, SC

2015 DEC 18 PM 4:49
CLERK OF COURT
BERKELEY COUNTY
IN-RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

THE STATE OF SOUTH CAROLINA

-Versus-

FELIX KOTOWSKI,

Defendant,

IN THE COURT OF GENERAL SESSIONS FOR THE
FIRST JUDICIAL CIRCUIT
INDICTMENT NO: 2014-GS-18-1529; 2014-GS-
18-1530

STATE'S RESPONSE TO DEFENDANT'S
MOTION FOR NEW TRIAL

2016 JAN 22 AM 8:55
CLERK OF COURT
DORCHESTER COUNTY
FILED-PROCEED

TO: THE HONORABLE MAITE MURPHY

NOWCOMES THE STATE, by and through Assistant Solicitor Kyle Ward, and states the following as State's Response to Defendant's Motion for New Trial:

PROCEDURAL HISTORY

1. The above case was called for trial on December 7, 2015. The defense made a motion to suppress evidence seized as a result of a "knock and talk" conducted at the residence. The defense made a second motion to not allow testimony from Sgt. Frank Thompson regarding pseudoephedrine purchase logs (NPLeX). The State presented witnesses and after hearing arguments from both parties, Judge Murphy denied both motions. After reviewing the defense's motion for a new trial the defense has presented the court with the same case law and argument as in the pre-trial motion. Therefore, without any new argument the State prays upon this court to deny the defense's motion for a new trial.

LEGAL ARGUMENT

- A. **The complaint, identification of the car known to be involved in manufacturing methamphetamine, and multiple pseudo purchases give rise to reasonable suspicion necessary to conduct the "Knock and Talk."**
2. The defense relied upon *State v. Counts*, 413 S.C. 153 (2015), during the pre-trial motion and again relies on it for this motion. The South Carolina Supreme Court held in *Counts* there must be a reasonable suspicion of illegal activity in order to conduct a "knock and talk". *Counts*, 413 S.C. at 174. The State called Sergeant Frank Thompson from the Dorchester Metro Narcotics Unit. Sgt. Thompson was the lead investigator in this case.

3. Sgt. Thompson testified that he received an anonymous complaint about possible drug activity at 111 Marsh Pointe Drive in June 13, 2014. From that complaint he began an investigation into possible methamphetamine activity at the residence. Sgt. Thompson was able to gather names that belong to the address by running the address through NPLeX. He found multiple names for the address, the most important being the home owner Michelle Vining. Sgt. Thompson then conducted surveillance on the house multiple times to see if he could observe traffic coming in and out of the house. He testified he did not witness much traffic to the house. He did observe a couple of cars in the driveway and took the license plate information. One of the vehicles came back to the son of Michael Cherry. Michael Cherry is a convicted methamphetamine cook and Sgt. Thompson testified he was familiar with him because he was the one who arrested him.

4. From that point, Sgt. Thompson testified he placed Michelle Vining on alert through NPLeX to notify him if she purchased any pseudoephedrine. On October 29, 2014, Sgt. Thompson was alerted to Ms. Vining attempting to purchase pseudoephedrine twice, but she was blocked due to exceeding the legal 30-day limit. Sgt. Thompson received another alert minutes later that Ms. Vining was able to purchase a lesser amount of pseudoephedrine at another pharmacy. Because of these purchases, as well as seven prior pseudo purchases stemming from September 3, 2014, up until the incident date, Sgt. Thompson testified that he felt there was a possibility of methamphetamine being manufactured at the residence. He decided to conduct a "knock and talk" the following day.

5. In *Counts*, the South Carolina Supreme Court held that "law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence and conducting the 'knock and talk' investigative technique." *Counts*, 413 S.C. at 174. Here, defense argues that the NPLeX logs are not enough reasonable suspicion to allow Sgt. Thompson to conduct the knock and talk. In 2010, South Carolina passed Act 242, which controls the sale and purchase of precursors for manufacturing methamphetamine. *See* Health – Law Enforcement, 2010 S.C. Laws Act 242 (S.B. 1137). It was enumerated in the SC Code. S.C. Code Ann. § 44-53-398. That statute sets out that every retailer which sells products containing ephedrine must record and transmit in real time the information to SLED who will keep the information and send it to

APPRISS. See S.C. Code Ann. § 44-53-398. At pre-trial, this Court held that both statutes, S.C. Code Ann. §§ 23-3-1200, 44-53-398, lend the NPLEx logs an indicia of trustworthiness.

6. The State argues that this law was passed in order to combat the sale of methamphetamine precursors and can be used by law enforcement for investigative purposes. Sgt. Thompson testified to his extensive experience in methamphetamine investigation and that he had recently taught a webinar on how to use the NPLEx logs. The two blocked purchases on October 29, 2014, along with the purchase allowed on October 29, 2014, lend to reasonable suspicion by an experienced law enforcement officer that Ms. Vining was purchasing pseudo in order to manufacture methamphetamine. Sgt. Thompson also was aware of the seven prior purchases in preceding weeks. That alone would give rise to reasonable suspicion of methamphetamine activity at 111 Marsh Pointe Road to conduct a knock and talk.

7. Further, the defense argues the other information law enforcement gathered during its investigation had gone stale because it was about four months after the initial complaint that the knock and talk was conducted. If law enforcement must have reasonable suspicion to conduct a knock and talk then an investigation is going to be necessary. The State argues that once the initial complaint was received there was a continued investigation until the incident date. Sgt. Thompson was attempting to gather as much information possible to conduct a thorough investigation. He was able to identify a car belonging to family member known to be involved in methamphetamine and continued to see pseudo purchases by the home owner Ms. Vining. If there must be reasonable suspicion to conduct a knock and talk, and the defense can then argue the length of the investigation makes the information too stale to give rise to reasonable suspicion, then how can law enforcement gather the information necessary to withhold a motion to suppress? It is necessary after the *Counts* ruling to allow law enforcement to conduct an ongoing investigation. In this case, Sgt. Thompson continued to watch NPLEx on Ms. Vining and driving by the house to conduct surveillance in order to either disprove the initial complaint or prove there was credibility to the initial complaint.

8. Thus, from the testimony of Sgt. Thompson and the use of NPLEx, an anonymous complaint about methamphetamine activity, and identifying a car belonging to a family member known to Sgt. Thompson as being involved in methamphetamine, there was reasonable suspicion to conduct a knock and talk.

B. Sgt. Thompson's NPLeX testimony was not being admitted as a business record, but as investigative information used to build his case.

9. The defense argues Sgt. Thompson testimony regarding pseudo purchases by Michelle Vining and the defendant was inadmissible hearsay. Sgt. Thompson was aware of the law in place and what information pharmacies must record when someone purchases a product containing ephedrine. He testified he taught a webinar about how NPLeX can be used and the information one can gather from it. He testified he uses NPLeX in his investigations into manufacturing methamphetamine and how he has to log onto a website with a username and password in order to find information on NPLeX.

10. The State had Sgt. Thompson testify to what he used in his investigation to gather information to conduct a knock and talk. He used NPLeX to see if the homeowner Michelle Vining was a regular purchaser of pseudoephedrine. At trial the state did not introduce actual documents of her purchases, but rather had Sgt. Thompson testify to what he found on NPLeX when he ran her name through the system. The State was not admitting this information as a business record but as investigative information Sgt. Thompson routinely uses when building a case.

11. The defense cites *State v. Burgdorf*, 861 N.W.2d 273 (Iowa Ct. App. 2014), in their argument. In that case the State admitted in evidence actual documents showing each purchase of pseudoephedrine. *Burgdorf*, 861 N.W.2d at 275 - 77. They used law enforcement to do so and did not have a person from the business to authenticate those records. *Id.* at 275 - 77. *Burgdorf*, is different as the defendant was being charged with conspiracy to manufacture methamphetamine and as the court held the State's best evidence was the NPLeX logs without little else to show the conspiracy. *Id.*

12. Here, the records are purchases from the co-defendant Michelle Vining. There were over 40 photos admitted into evidence and multiple items sent to SLED for drug analysis that came back positive for methamphetamine that were used to show the Defendant's guilt of manufacturing methamphetamine. The defendant was found at the house when law enforcement conducted the knock and talk, and law enforcement testified that the Defendant wreaked of chemicals they knew to be from manufacturing methamphetamine.

13. The State cited *State v. Cady*, 425 S.W.3d 234 (Mo. Ct. App. 2014), in our argument to allow Sgt. Thompson to testify to NPLeX logs. The Court in *Cady*, noted their law in regards to

maintaining records of pseudoephedrine purchases “*create a rebuttable presumption that the person whose name appears in the logs is the person whose transactions are recorded in the logs.*” 425 S.W.3d at 244. South Carolina does not have a similar provision in title 44, chapter 53, section 398 of the code, but our law is essentially the same. The statute sets out how records must be recorded by retailers selling products containing pseudoephedrine. *See* S.C. Code Ann. § 44-53-398. It also sets out criminal penalties if a retailer fails to record the information correctly. *See* S.C. Code Ann. § 44-53-398. Secondly, title 23, chapter 3, section 1200 of the code, “Electronic Monitoring System” sets out how SLED will maintain all records transmitted by retailers and store the records until it can be transmitted to NPLeX system.

14. The State argues given there is a codified law stating how retailers must record information when selling ephedrine products, criminal penalties for failing to do so and that SLED must maintain these records, there is an inherent credibility to the information gathered by law enforcement when they use NPLeX. Therefore, provided that Sgt. Thompson testified on how the records must be maintained and he was able to log onto NPLeX and gather the information, there is proper foundation to admit the records he found on NPLeX.

C. NPLeX logs do not violate the Confrontation Clause because they are not testimonial in nature.

15. The State again uses *Cady*, 425 S.W.3d 234, in our argument. In *Cady*, the court found NPLeX records not to be testimonial in nature. *Id.* at 246. *Crawford v. Washington*, 541 U.S. 36 (2004), set out three formulations to see if a statement is testimonial in nature, one being “statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *See Cady*, 425 S.W.3d at 245 (quoting *State v. March*, 216 S.W.3d 663, 666 (Mo. banc 2007)). In *Cady*, the court held:

Using the examples of “testimonial” in *Crawford* and the “primary purpose” test outlined in *Davis*, it is clear that the NPLeX records at issue in this case are not “testimonial” for purposes of the Confrontation Clause. As Trooper Rutledge testified, “The intent of [the NPLeX] program is to prevent people from purchasing pseudoephedrine to manufacture methamphetamine[,]” not, as Defendant argues, to be used at a later criminal prosecution. This is evidenced by the statutory requirement that pharmacies enter the information identifying the purchaser into the database at the point of sale, thus enabling the pharmacist to instantly discern whether the purchaser has reached his or her daily or monthly limit of permitted pseudoephedrine purchases, *see* section 195.417, subsections 2

and 3, and block any excess purchases. Section 195.017.13; 19 C.S.R. 30-1.074. The real-time compilation of pseudoephedrine purchases likewise does not fall under any of the three examples of testimonial statements identified in *Crawford*, which focus on statements and documents prepared specifically for use in a criminal prosecution.

Cady, 425 S.W.3d at 246.

16. As stated before, South Carolina's law essentially establishes the same laws and regulations as Missouri in regards to recording and maintaining pseudoephedrine purchases. *See* S.C. Code Ann. § 44-53-398. Therefore, the State argues NPLEx is not testimonial in nature because it was created to prevent purchases to manufacture methamphetamine not to be used in a criminal prosecution.

17. Second, Sgt. Thompson testified to the Defendant's two pseudoephedrine purchases from months prior to the incident. The defense questioned Sgt. Thompson on these purchases and the State presented over 40 photos and items sent to SLED for drug analysis to the jury to show the defendant was manufacturing methamphetamine. The defendant's two purchases even without those the State presented plenty of evidence for a jury to find him guilty.

CONCLUSION

For the above stated reasons, the State respectfully requests that this Honorable Court deny defense's motion for a new trial.

The State of South Carolina
Office of Solicitor, First Judicial Circuit
David M. Pascoe, Solicitor

Date: January 20, 2016

By:



Kyle Ward, SC BAR No.: 101005
Assistant Solicitor
(843) 871-2640
140 N. Main St
Suite 102
Summerville, SC 29483

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

THE STATE OF SOUTH CAROLINA

-Versus-

PELIX KOTOWSKI,

Defendant.

IN THE COURT OF GENERAL SESSIONS FOR THE
FIRST JUDICIAL CIRCUIT
INDICTMENT NO: 2014-GS-18-1529; 2014-GS-
18-1530

ORDER

2016 MAR 30 PM 1:57
CLERK OF COURT
DORCHESTER COUNTY

TO: ASSISTANT SOLICITOR, KYLE WARD
DEFENSE COUNSEL, JIM FALK

The Defense made a timely motion for a New Trial based upon pre-trial rulings of the Honorable Maité Murphy. The Defense argued all evidence should have been suppressed due to an invalid "knock and talk" and the introduction of NPLeX logs were improper.

The Defense provided a written brief and the State provided a brief in opposition to Judge Maité Murphy. Upon review and consideration of defense counsel's Motion for a New Trial, the filed brief in support of the Motion, and the State's filed brief in opposition, the Court respectfully denies this Motion without oral arguments pursuant to its authority under Rule 29(a) of the South Carolina Rules of Criminal Procedure.

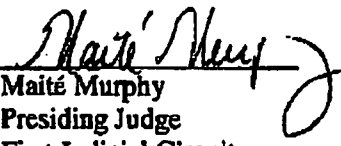
"Law enforcement must have reasonable suspicion of illegal activity before approaching the targeted residence and conducting the 'knock and talk' investigative technique." State v. Counts, 413 S.C. 153, 174, 776 S.E.2d 59 (2015). At the pre-trial suppression hearing, Sgt. Thompson, the lead investigator on the case, testified that he had received an anonymous complaint about possible drug activity at the residence. Based upon that information, Sgt. Thompson ran the address through NPLeX and was able to recover names belonging to the address. Surveillance on the residence was conducted, and Sgt. Thompson testified that although

there was not much traffic traveling to the residence, he did observe a couple of vehicles located in the driveway. License plate checks on those vehicles were conducted, and it was discovered that one of the vehicles belonged to the son of a convicted methamphetamine cook. Sgt. Thompson then testified that Michelle Vining, owner of the residence, was placed on alert through NPLeX so that he could be notified of any pseudoephedrine purchases she made. On October 29, 2014, Sgt. Thompson received an alert that Ms. Vining had attempted to purchase pseudoephedrine twice, but the purchases had been blocked due to the thirty (30) day limit. Shortly thereafter, he was alerted that Ms. Vining had purchased a lesser amount of pseudoephedrine at another pharmacy location. Sgt. Thompson testified that it was discovered Ms. Vining had made seven (7) prior pseudoephedrine purchases from September 3, 2014. Based upon that information, Sgt. Thompson conducted a "knock and talk" the following day.

The Court finds that there was evidence of reasonable suspicion of illegal activity; therefore, the evidence resulting from the "knock and talk" investigation was properly admitted. As to the introduction of evidence gained from NPLeX, the Court finds that the NPLeX records were admissible pursuant to SC Code Ann. Section 44-53-398 and SC Code Ann. Section 23-3-1200.

THEREFORE IT IS ORDERED that the Defense's Motion for a New Trial is respectfully denied.

IT IS SO ORDERED.


Maité Murphy
Presiding Judge
First Judicial Circuit

CLERK OF COURT
ROCHESTER COUNTY

2016 MAR 30 PM 1:57

RECORDED

This 28 day of March, 2016
St. George, South Carolina

WITNESSES

F Thompson

Dorchester County Sheriff
14-011744

ARREST WARRANT NUMBER
2014A1810301056

Arrested: October 31, 2014

ACTION OF GRAND JURY

TRUE

Damon L. Kelly
Foreperson of Grand Jury
Date: March 12, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS181529

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

March 16, 2015 TERM

THE STATE
vs.

Felix Walter Kotowski III

Indictment for

Manufacturing Methamphetamine

SC Code: 44-53-375

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.

RECORDED
MAR 12 PM 1:23
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

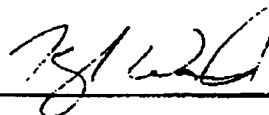
INDICTMENT
2014GS181529

As a Court of General Sessions, convened on March 12, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

MANUFACTURING METHAMPHETAMINE

That in Dorchester County, South Carolina, on or about October 30, 2014, the Defendant, Felix Walter Kotowski III, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to do the same or possess with intent to distribute, dispense, or deliver a quantity of Methamphetamine. This offense being a violation of Section 44-53-375 of the South Carolina Code of Laws, as amended

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



Kyle Ward, Solicitor

WITNESSES

F Thompson

Dorchester County Sheriff
14-011744

ARREST WARRANT NUMBER
2014A1810301057

Arrested: October 31, 2014

ACTION OF GRAND JURY

TRUE BILL

Dominic J. Kelly
Foreperson of Grand Jury
Date: March 12, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS181530

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

March 16, 2015 TERM

THE STATE
vs.

Felix Walter Kotowski III

Indictment for

Possession of Less than one Gram of
Methamphetamine

SC Code: 44-53-375(A)

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.

RECEIVED
MAR 12 PM 1:23
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

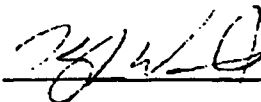
INDICTMENT
2014GS181530

As a Court of General Sessions, convened on March 12, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

POSSESSION OF LESS THAN ONE GRAM OF METHAMPHETAMINE

That in Dorchester County, South Carolina, on or about October 30, 2014, the Defendant, Felix Walter Kotowski III, did unlawfully possess or attempt to possess a quantity of Methamphetamine ,in violation of Section 44-53-375, of the South Carolina Code of Laws, as amended.

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



Kyle Ward, Solicitor

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JUL 06 2017

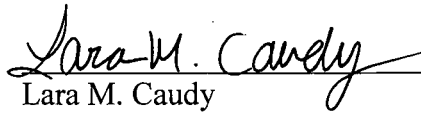
315

SC Court of Appeals

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."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 6th day of July, 2017.