

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Donald B. Hocker, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JOHN WILLIAM DOBBINS,

APPELLANT

APPELLATE CASE NO. 2013-002134

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JOHN WILLIAM DOBBINS, JR.,)
)
 DEFENDANT.)
 _____)

2012-GS-30-00208

TRANSCRIPT OF RECORD

 **ORIGINAL**

SEPTEMBER 9-11, 2013
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE; AND A JURY

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

ATTORNEY FOR PLAINTIFF:

RUSTON NEELY, ASSISTANT SOLICITOR
DALE SCOTT, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

RAUCH WISE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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TRIAL DAY 1-09/09/13

(Whereupon, the proceedings were commenced at 2:43 p.m.)

1 THE COURT: Ladies and gentlemen of the jury panel,
2 we're about to begin the trial in the case of the *State of*
3 *South Carolina against John William Dobbins, Jr.* Mr.
4 Dobbins, would you just please stand and turn around so the
5 jury panel can see you.

6 (Defendant Complied.)

7 THE COURT: He is represented by Rauch Wise of the
8 Greenwood Bar, and the solicitor prosecuting the case is
9 Ruston Neely, and with him is Dale Scott. And also, and I
10 think I previously introduced, Margaret Boykin to you with
11 the Solicitor's office. And I need to ask you several
12 questions, so please pay close attention to the questions
13 that I ask you.

14 Madame Clerk, would you please swear the jury in.

15 (Whereupon, the jury was duly sworn at 2:44 p.m.)

16 THE COURT: Thank you, Madame Clerk. Is anyone related
17 by blood or ever been related by marriage to the Defendant,
18 John Williams -- John William Dobbins, Jr.? If so, please
19 stand.

20 (Whereupon, a potential juror stood.)

21 THE COURT: Yes, sir. Your name and jury number,
22 please.

23 MR. ANDERSON: Joseph Anderson, 4.

24 THE COURT: Okay. And how are you related to Mr.
25 Dobbins?

1 MR. ANDERSON: My sister's husband's --

2 THE COURT: Could you speak up just a little bit,
3 please?

4 MR. ANDERSON: My sister's husband's dad.

5 THE COURT: Your sister's husband's father --

6 MR. ANDERSON: My brother-in-law.

7 THE COURT: -- is Mr. Dobbins?

8 MR. ANDERSON: Yes, sir.

9 THE COURT: What says the State concerning
10 disqualification for cause?

11 MR. NEELY: Your Honor, I would say it's a pretty close
12 relationship. Whenever you're dealing with any relations
13 that don't go but two or three ways apart that's kind of
14 close. Especially in a small county like Laurens.

15 THE COURT: Yeah. So your position --

16 MR. NEELY: I would ask for him to be excused for
17 cause.

18 THE COURT: All right. You would agree?

19 MR. WISE: I don't have a serious objection to it. I
20 don't think I could.

21 THE COURT: Okay, all right. You'll be excused from
22 the trial of this case. Just remain with the panel for
23 right now, because we'll have further instructions insofar
24 as additional business of the court. So if you'd just
25 remain with us, sir. Okay?

1 Does anyone have a close personal or social
2 relationship with the Defendant, John Williams Dobbins, Jr.?
3 If so, please stand.

4 (No response.)

5 THE COURT: I'm going to provide to you a list of
6 potential witnesses in this case, and the following are
7 potential witnesses. Sandy Ann Wyatt, Devin Hodges, Matthew
8 Veal, Marlon Higginbotham, Jaworski Shelton, Jason Nelson,
9 Robert Timmons, Howard Childs, Nick Moye, Gail Childs,
10 Selena Kindard, Doris Yarborough, Lawrence Zivkovich, that's
11 Z-i-v-k-o-v-i-c-h, and Patricia H. Crooks.

12 Is anyone related by blood or ever been related by
13 marriage to any of those potential witnesses whose names I
14 have just published, or does anyone have any close personal
15 or social relationship with any of these people. If so,
16 please stand.

17 (Whereupon, several potential jurors stood.)

18 THE COURT: Okay. We've got one raising their hand --
19 we've got two standing and one raising -- ma'am, you rose --
20 stand. Yes, sir. No, you stay up. I'm going to go to you
21 first. Your name and jury number.

22 MR. DEAN: Richard Dean, 39.

23 THE COURT: Okay.

24 MR. DEAN: I just know Jaworski Shelton.

25 THE COURT: Okay. The fact that you know that officer,

1 would that prevent you from being fair and impartial to both
2 the State and the Defense in this case?

3 MR. DEAN: No, sir.

4 THE COURT: Thank you, sir. Sit down.

5 (Juror Complies.)

6 THE COURT: Yes, ma'am. Your name and jury number.

7 MS. WYATT: Joy Wyatt, 139.

8 THE COURT: Yes, ma'am, Ms. Wyatt.

9 MS. WYATT: Sandy Ann Wyatt is related to me by
10 marriage.

11 THE COURT: Okay. How is the relationship by marriage?

12 MS. WYATT: She is my husband's cousin.

13 THE COURT: She is your husband's cousin?

14 MS. WYATT: Yes.

15 THE COURT: Okay. Position as to cause from the State.

16 MR. NEELY: Your Honor, if she could be fair and
17 impartial.

18 THE COURT: All right. Position as to cause from the
19 Defense?

20 MR. WISE: Depending on how close a cousin it is.

21 THE COURT: Is it first degree cousin?

22 MS. WYATT: Ms. Wyatt also has the same relationship.
23 So I . . .

24 THE COURT: Okay. We just need to figure out how close
25 the -- you know, the --

1 MS. WYATT: Her father -- her father is first cousins
2 with my husband's first cousin. So that would make --

3 THE COURT: Okay. First cousin, okay.

4 MS. WYATT: Sandy and he --

5 THE COURT: Okay. Would you just remain standing for
6 just a moment.

7 (Juror Complies.)

8 THE COURT: And ma'am, your name and jury number?

9 MS. WYATT: Dianne Wyatt, 148. Sandy Wyatt is my ex-
10 husband's cousin's daughter. I have not seen her in many
11 years. My ex-husband and I have been divorced for 20 years,
12 so --

13 THE COURT: Okay, all right.

14 MS. WYATT: -- I've been virtually little or no
15 connection with the family.

16 THE COURT: Okay. I'm going to ask you, ma'am, first.
17 The fact that you were related by marriage over 20 years
18 ago, would that prevent you from being fair and impartial to
19 both the State and the Defense in this case?

20 MS. WYATT: No, sir.

21 THE COURT: Okay. Thank you, ma'am. I'm going to go
22 ahead and ask this potential juror. The fact that you have
23 this relationship by marriage to one of the potential
24 witnesses in this State, would that prevent you from being
25 fair and impartial to both the State and the Defense in this

1 case?

2 MS. WYATT: No, sir.

3 THE COURT: Okay. Thank you, ma'am.

4 (Jurors take their seats.)

5 THE COURT: All right. As I've told you previously,
6 the attorneys on both sides, the attorneys in the
7 solicitor's office and the defense attorney, has any member
8 of the jury panel ever been represented by any of the
9 attorneys involved in this case? If so, please stand.

10 (Whereupon, a potential juror stood.)

11 THE COURT: Yes, ma'am. Just for the record purposes,
12 your name and jury number.

13 MS. WYATT: Joy Wyatt.

14 THE COURT: Okay. And who has represented you?

15 MS. WYATT: Mr. Wise.

16 THE COURT: Okay.

17 MS. WYATT: Not representing myself but representing my
18 son currently at this time.

19 THE COURT: Okay. Could you speak up just a little
20 bit, please.

21 MS. WYATT: Mr. Wise is representing my son at this
22 time.

23 THE COURT: Currently representing --

24 MS. WYATT: Right. Is currently representing him.

25 THE COURT: Okay, all right. Solicitor?

1 MR. NEELY: Your Honor, I think at this point we're
2 getting a little too close to this case.

3 THE COURT: Yeah.

4 MR. NEELY: So I would move that she be removed for
5 cause.

6 THE COURT: Okay, all right. I think the fact that you
7 currently are representing her son in a present action.
8 We're going to excuse you from the trial of this case,
9 ma'am. Please remain with us. As I stated to the gentlemen
10 earlier, we will have some other court business later on in
11 the week. Thank you, ma'am.

12 All right. Does anyone have any close personal
13 relationship or social relationship with any of the
14 attorneys in the case or is there a relationship by blood or
15 marriage or former marriage to any of the attorneys involved
16 in this case? If so, please stand.

17 (No response.)

18 THE COURT: All right. Ladies and gentleman of the
19 jury panel, presently there has been presented to me five
20 different indictments. I'm going to just -- I'm not going
21 to go through the facts of each indictment, and I'll explain
22 to you what an indictment is in just a moment. But I just
23 need to determine if anyone has any prior knowledge about
24 any of the issues or matters involved in this case.
25 Currently there are five indictments against the Defendant;

1 possession of a controlled substance, unlawful disposal of
2 methamphetamine waste, possession with intent to distribute
3 methamphetamines, possession of a controlled substance, and
4 manufacturing methamphetamines.

5 Now, indictments are not evidence in the case. They do
6 not bear on the guilt or innocence of a defendant. It is
7 just the mechanism in order to get the case to the trial.
8 This is the paperwork that's required to get the case to
9 where we are today. Nothing more.

10 So, with that being said, does any member of the jury
11 panel know anything about this case or formed or expressed
12 any opinion about any issue or matter involved in this case.
13 If so, please stand.

14 (No response.)

15 THE COURT: Is any member of the jury panel aware of
16 any bias or prejudice towards either the state or the
17 Defendant in this case?

18 (No response.)

19 THE COURT: Does any member of the jury panel have a
20 position or attitude concerning illegal drugs so that you
21 could not give the state and the Defendant a fair trial? If
22 so, please stand.

23 (No response.)

24 THE COURT: Does any member of the jury panel who has a
25 relative or relatives who are law enforcement personnel? If

1 so, please stand.

2 (Whereupon, a potential juror stood)

3 THE COURT: Yes, ma'am. Your name and jury number.

4 MS. HAMILTON: Dawn Hamilton.

5 THE COURT: Okay.

6 MS. HAMILTON: My husband is a captain in the Fountain
7 Inn Police Department.

8 THE COURT: A captain in what police department?

9 MS. HAMILTON: Fountain Inn.

10 THE COURT: Fountain Inn. The fact that your husband
11 is a captain with the Fountain Inn Police Department would
12 that prevent you from being fair and impartial to both the
13 state and the defense in this case?

14 MS. HAMILTON: No, sir.

15 THE COURT: You can sit down, ma'am. Thank you.

16 (Potential juror complied.)

17 THE COURT: Is there any member of the jury panel that
18 was a member of the grand jury which issued the indictments
19 in this case? If so, please stand.

20 (No response.)

21 THE COURT: All right. Is there any member of the jury
22 panel who is a member of, a contributor to any group which
23 has its primary concern the promotion of law enforcement or
24 victim's rights? And these groups would include but
25 certainly not limited to MADD, SADD or Citizens Against

1 Violent Crime. If so, please stand.

2 (No response.)

3 THE COURT: Does any member of the jury panel know of
4 any reason whatsoever why he or she should not serve as a
5 juror in this case, with particular emphasis being placed on
6 your ability to be fair and impartial to both the state and
7 the defense? And that's the key here. We want fair and
8 impartial jurors to both the state and the defense. Is
9 there any -- know of any reason? If so, please stand.

10 (No response.)

11 THE COURT: Any additional voir dire from the State?

12 MR. NEELY: Not from the State, Your Honor.

13 THE COURT: From the Defense?

14 MR. WISE: None from the Defense, Your Honor.

15 THE COURT: With that said, Madame Clerk, if you would
16 proceed with jury selection. If I could see the lawyers at
17 the bench, please.

18 (Whereupon, a sidebar was held in the presence of the
19 jury panel but out of the hearing of the jury panel.)

20 THE COURT: Now, let me explain to the jury panel, once
21 we're ready to start the process a name will be called out
22 and you'll be asked to come down to the front. Stand in
23 front of both the State and the Defense counsel tables, and
24 then it will be determined whether or not you'll be selected
25 on the jury or not. If you are not, don't take offense or

1 don't feel ashamed, or don't feel anything is my point if
2 you're not selected. There's a method that the lawyers
3 consider and look at in trying to pick a jury. So just
4 don't take offense to it if you are not selected. Okay?
5 Madame Clerk.

6 MADAME CLERK: Juror number 34, Heather B. Cribbs. What
7 says the State?

8 MR. NEELY: Please present Ms. Cribbs.

9 MADAME CLERK: What says the Defense?

10 MR. WISE: Swear the juror.

11 MADAME CLERK: Juror number 107, Brian L. Hase. What
12 says the State?

13 MR. NEELY: Please present Mr. Hase.

14 MADAME CLERK: What says the Defense?

15 MR. WISE: Excuse the juror from this trial.

16 MADAME CLERK: Juror number 18, Frank L. Bradley. What
17 says the State?

18 MR. NEELY: Please present Mr. Bradley.

19 MADAME CLERK: What says the Defense?

20 MR. WISE: Swear the juror.

21 MADAME CLERK: Juror number 69, Rosa M. Hill. What
22 says the State?

23 MR. NEELY: Please excuse Ms. Hill.

24 MADAME CLERK: Juror number 80, Benjamin C. Landford.
25 What says the State?

1 MR. NEELY: Please present Mr. Landford.

2 MADAME CLERK: What says the Defense?

3 MR. WISE: Swear Mr. Landford.

4 MADAME CLERK: Juror number 103, Sherry L. Norris.

5 What says the State?

6 MR. NEELY: Please excuse Ms. Norris.

7 MADAME CLERK: Juror number 104, Bradford S. O'Dell.

8 What says the State?

9 MR. NEELY: Please present Mr. O'Dell.

10 MADAME CLERK: What says the Defense?

11 MR. WISE: Excuse Mr. O'Dell from this trial.

12 MADAME CLERK: Juror number 30, Gary E. Charles.

13 MR. WISE: What was that number again?

14 MADAME CLERK: 30. What says the State?

15 MR. NEELY: Please present Mr. Charles.

16 MADAME CLERK: What says the Defense?

17 MR. WISE: Excuse the juror from this trial.

18 MADAME CLERK: Juror number 141, Edna M. Williams.

19 What says the State?

20 MR. NEELY: Please present Ms. Williams.

21 MADAME CLERK: What says the Defense?

22 MR. WISE: Swear the juror.

23 MADAME CLERK: Juror number 111, John R. Price. What

24 says the State?

25 MR. NEELY: Please excuse Mr. Price.

1 MADAME CLERK: Juror number 110, Cindy M. Price. What
2 says the State?
3 MR. NEELY: Please present Ms. Price.
4 MADAME CLERK: What says the Defense?
5 MR. WISE: Swear Ms. Price.
6 MADAME CLERK: Juror number 48, Anita S. Franklin.
7 What says the State?
8 MR. NEELY: Please present Ms. Franklin.
9 MADAME CLERK: What says the Defense?
10 MR. WISE: Swear Ms. Franklin.
11 MADAME CLERK: Juror number 84, Terry A. LeGrand. What
12 says the State?
13 MR. NEELY: Please present Mr. LeGrand.
14 MADAME CLERK: What says the Defense?
15 MR. WISE: Excuse Mr. LeGrand from this one.
16 MADAME CLERK: Juror number 150, Andy B. Young, III.
17 What says the State?
18 MR. NEELY: Please present Mr. Young.
19 MADAME CLERK: What says the Defense?
20 MR. WISE: Swear Mr. Young.
21 MADAME CLERK: Juror number 44, Caroline G. Fisher.
22 What says the State?
23 MR. NEELY: Please present Ms. Fisher.
24 MADAME CLERK: What says the Defense?
25 MR. WISE: Swear Ms. Fisher.

1 MADAME CLERK: Juror number 148, Diane L. Wyatt. What
2 says the State?
3 MR. NEELY: Please present Ms. Wyatt.
4 MADAME CLERK: What says the Defense?
5 MR. WISE: Swear Ms. Wyatt.
6 MADAME CLERK: Juror number 92, Jennifer L. Mann.
7 MR. NEELY: Madame Clerk, what was that number again?
8 MADAME CLERK: 92. What says the State?
9 MR. NEELY: Please present Ms. Mann.
10 MADAME CLERK: What says the Defense?
11 MR. WISE: Swear Ms. Mann.
12 MADAME CLERK: Juror number 140, David M. Welch. What
13 says the State?
14 MR. NEELY: Please present Mr. Welch.
15 MADAME CLERK: What says the Defense?
16 MR. WISE: Swear Mr. Welch.
17 MADAME CLERK: Juror number 8, Megan E. Ballentine.
18 What says the State?
19 MR. NEELY: Please present Ms. Ballentine.
20 MADAME CLERK: What says the Defense?
21 MR. WISE: Swear Ms. Ballentine.
22 THE COURT: One alternate.
23 MADAME CLERK: Juror number 33, Gary W. Coulter. What
24 says the State?
25 MR. NEELY: Please present Mr. Coulter.

1 MADAME CLERK: What says the Defense?

2 MR. WISE: Swear Mr. Colbert.

3 THE COURT: Okay. Ladies and gentlemen of the jury, at
4 this time I'm going to ask that Mr. Bolt take you back to
5 your jury room so you'll get familiar with where you're
6 going to spend a little bit of time this week, and we'll
7 bring you out in just a -- in just a little bit. So if
8 you'll go back to the jury room. Mr. Bolt.

9 (Whereupon, the jury exited the courtroom at 3:12 p.m.)

10 THE COURT: Any objections or exceptions to jury
11 selection from the State?

12 MR. NEELY: None from the State, Your Honor.

13 THE COURT: Defense?

14 MR. WISE: None from the Defense, Your Honor.

15 THE COURT: Okay. Thank you very much. Members of the
16 jury panel, fortunately you were not selected for this jury,
17 but as I understand it we will have another jury trial
18 coming up later on in the week and so maybe you'll be lucky
19 enough to serve on that jury. What you will need to do,
20 there is a number that you have been provided -- as I
21 understand it, Madame Clerk, they have a number that you
22 will need to call in after 6:00 each evening. And what that
23 recording will do is tell you what to do for the next day.
24 I'm not exactly sure how long this case will take. I think
25 maybe it may go into Wednesday a little bit, so we might get

1 to see you Wednesday afternoon. But you just call that
2 number after 6:00 each evening. And so at this time you are
3 now excused and free to either go back to work or go home or
4 wherever else you need to be, and I hope you have a good
5 evening.

6 This juror is Mr. Foggie; is that correct? You need to
7 remain with me. Okay? Where is that juror?

8 MADAME CLERK: He's outside.

9 THE COURT: Oh, he's outside. Okay. Just keep him
10 with us, Mr. Byers. Okay?

11 (Whereupon, the remaining jury pool was dismissed at
12 3:16 p.m.)

13 THE COURT: So if you'll bring the jury back out and
14 then we'll cut them loose and then we'll deal with what we
15 need to deal with this afternoon.

16 (Whereupon, the jury entered the courtroom at 3:17
17 p.m.)

18 BAILIFF: All the jury is present, Your Honor.

19 THE COURT: Thank you, Mr. Bolt. Let the record
20 reflect that all jurors are present. What we're going to
21 do, I'm going to go ahead and release you for the afternoon.
22 We've got some work to do with the attorneys this afternoon
23 before we start the case, and to avoid having you just sit
24 back in the jury room for a period of time and then just
25 doing a little bit after that we just felt like it would be

1 better to go ahead and excuse you for the afternoon. You
2 will need to be back promptly at 9:00 in the morning back to
3 your jury room. When we bring you out we will go ahead and
4 select a foreperson of the jury.

5 Mr. Bradley, if you're not selected as the foreperson,
6 that seat that you're in, to make it a little bit easier for
7 you to get around, that will be your seat. Okay? Now, if
8 you were selected as the foreperson then this front seat
9 would be yours. Okay? And the alternative, the seat that
10 you're in will always be your seat. Okay? So what we just
11 don't know yet is who the foreperson is going to be. That
12 will be their seat, whoever it is. And we'll select that
13 person in the morning. So we're going to go ahead and
14 excuse you for the afternoon. I hope you have a great
15 evening and we'll see you promptly back here in the morning
16 at 9:00.

17 (Whereupon, the jury was excused at 3:22 p.m.)

18 THE COURT: Okay, Mr. Wise. You've indicated you've got
19 several things.

20 MR. WISE: First, the matter we discussed in chambers
21 before the jury selection. We mentioned in jury chambers
22 and I contend that Section 14-7-1110 is unconstitutional on
23 the grounds that it allows 10 jury strikes for people who
24 are convicted of perjury, breach of trust, grand larceny and
25 things like that, which carries substantial less time than

1 my client is facing on a manufacturing charge and there's
2 really no rhyme or reason for it and I think the statute
3 therefore violates the due process -- violates equal
4 protection rights of my client in that people who are
5 charged with potentially less serious offenses are given
6 more jury strikes than is Mr. Dobbins in this case.

7 THE COURT: Okay. And as we discussed in chambers, I
8 think you got a pretty good point there, but I believe it
9 would be a matter that the legislature would need to deal
10 with.

11 MR. WISE: And you haven't been promoted high enough
12 yet either.

13 THE COURT: Well, that's right. So I'm going to deny
14 your motion.

15 MR. WISE: Secondly, Your Honor, these are matters we
16 did discuss in chambers also. I would move to suppress all
17 evidence seized from the residence of my client in this case
18 on the ground that it was all obtained without a search
19 warrant when they entered the premises. I've handed up to
20 the court a couple of cases, and I've also given notice to
21 the solicitor. Particularly the Stegall case. *Stegall vs*
22 *United States* I think is squarely on point.

23 The holding of that case is and in that case the FBI
24 had an arrest warrant, which actually does not exist in
25 this case even. Had an arrest warrant for an individual.

1 They had reason to believe that individual was in the
2 residence of a third party. They went to that residence to
3 cease Mr. Lyons who was the individual they were looking
4 for. He was not there. But while in the apartment they
5 noticed some drugs belonging to Mr. Stegall and seized those
6 drugs and charged him with that. And they -- the U.S.
7 Supreme Court held in that case that if you're going to
8 where a third -- into a third person's residence, not the
9 individual person sought in the warrant, then you're going
10 to need a search warrant for that.

11 And the logic behind that as far as the court's
12 analysis is concerned is that an arrest warrant may be
13 sufficient to go into the residence of the person named in
14 the arrest warrant because that person is adequately
15 protected by the findings of a neutral and detached
16 magistrate for the arrest warrant by finding probable cause,
17 but that arrest warrant affords no protection to a third
18 party individual when they entered that house. So we
19 contend in this case is that they should have been required
20 to go into the residence -- excuse me. They should have
21 been required to get a search warrant if they believed that
22 -- I forgot the lady's name. I had it written down but I
23 don't -- yeah. Shayla Gaines was the individual they were
24 allegedly looking for. And if they believed Shayla Gaines
25 was in Mr. Dobbins' residence they were required to go get a

1 search warrant in order to search the residence for her and
2 they did not. And I think this is pretty well undisputed,
3 at least from the incident report I've read and all the
4 discovery I've received, there is no search warrant in this
5 case.

6 THE COURT: Okay. And it was your client's residence?

7 MR. WISE: My client's residence.

8 THE COURT: And what -- explain to me this female, how
9 she fits into this.

10 MR. WISE: Well, they knocked on the door saying they
11 were looking for Shayla Gaines, or Sheila Gaines -- well,
12 Shayla. Let me back up. I don't know if they said that
13 when they knocked on the door. In the incident report they
14 said they were going to this residence because they had
15 heard she may be there. She was wanted on an assault and
16 battery charge, magistrate's court offense. They went up to
17 the front door of Mr. Dobbins' house. Mr. Dobbins opened
18 the door, saw it was the police, started shutting the door,
19 and in the process of shutting the door they pushed it in
20 and then searched the apartment looking for Ms. Gaines who
21 was not there, and in the process seized some of the drugs
22 involved in this case.

23 THE COURT: Okay, all right. Solicitor, I'd be glad to
24 hear from you.

25 MR. SCOTT: Thank you, Your Honor. Since those are the

1 facts of the case -- I wasn't in chambers. I'm unaware of
2 how much Your Honor knows about the facts.

3 THE COURT: We really didn't get into really the facts
4 of the case at all. They just kind of gave me a heads up of
5 what the motions are going to be about and that was, you
6 know, pretty much it.

7 MR. SCOTT: Let me give a brief synopsis. We are
8 prepared to proffer a witness, but for the purpose of this
9 hearing. But occurs November 24th of 2011. What Mr. Wise
10 was speaking of was a Shayla Gaines. She had recently been
11 implicated in an assault and battery type crime within an
12 hour of this actual search, Your Honor. Deputy Hodges with
13 the Laurens County Sheriff's Department spoke with the
14 victim in that case. The victim, in describing what
15 occurred, the actual assault and battery. He also was able
16 to speak with him, observe some of his wounds that he
17 incurred. The victim told the officer where he would be
18 able to find this Shayla Gaines who they were now
19 investigating as the perpetrator of the assault and battery.
20 He told them that she was living at a camper at 102 Childs
21 Circle. That's in Waterloo, Your Honor. So what we have
22 here is a freshly committed assault and battery crime.

23 Officers respond to that location. The information
24 they have at this time is that she is a resident of this --
25 I understand to be a mobile home, like a camper type thing.

1 It's on wheels. Judge, they knocked on the door, announced
2 who they are. Mr. Dobbins answers the door. When they
3 asked him if Shayla Gaines was in the property he
4 immediately shuts the door in their face. Judge, at that
5 point they enter the residence and find the contraband at
6 issue in this particular case.

7 I neglected one point. While they were on the door,
8 they mention in that report, an overwhelming odor of
9 methamphetamine, or the odor that it produces in
10 manufacturing methamphetamine.

11 So what you have is an initial reason for them to go
12 there is to find this person who is wanted for this freshly
13 committed crime. While they're there these officers, in
14 what they know from their experience to be methamphetamine
15 type byproduct, they're able to detect that while standing
16 on the front porch.

17 Judge, this is an exigent circumstances type situation.
18 The law is pretty clear that -- this is warrantless. There
19 has not been a search warrant gained, nor an arrest warrant
20 gained at this time. At this point officers have only
21 spoken with this victim and they are looking for this Ms.
22 Shayla Gaines person. The plain view and exigent
23 circumstances constitute two of the exceptions to the
24 warrantless search and seizures under the Fourth.

25 Exigent circumstances, Your Honor, allows law

1 enforcement agents to conduct a warrantless search based
2 upon probable cause when there exists a compelling need for
3 official action and no time to secure a warrant. The
4 justifiable determination is based upon the totality of
5 circumstances and in view of the evidence available to law
6 enforcement at the time of the search there exists a
7 practical nontechnical probability that a crime is being
8 committed, or has been committed, and incriminating evidence
9 is involved.

10 Of course, here what you've got, you've got two things.
11 You're looking for the perpetrator of this assault and
12 battery. Everything -- all the information you have is that
13 she's in this mobile home. When you get to the doorstep you
14 notice this odor of, I guess, ether type smell. What they
15 know to be manufactured methamphetamine. And then you have
16 Mr. Dobbins shutting the door in the officer's face upon
17 mentioning this suspect's name. So, Your Honor, what's
18 going through the officer's mind right now is this woman's
19 in here. Alternative, or additionally, they have this new
20 evidence that methamphetamine is being manufactured inside.

21 The Supreme Court offers guidance in how to determine
22 the reasonableness of an action. That being the officers
23 entering the home without the warrant. *Scott v. U.S.*,
24 that's a U.S. Supreme Court case, 436 US 128. "Regardless
25 of the officer's state of mind as long as circumstances

1 viewed objectively justify the action."

2 Your Honor, again, all these things that they're
3 encountering as they get to the address at [REDACTED]
4 give them exigent circumstances to proceed into the
5 residence at that time.

6 The Fourth Amendment context the court is concerned
7 with, "determining whether a reasonable officer would have
8 moved to take action." That's *Whren v. U.S.*, W-h-r-e-n, *US*
9 *517 US 806* is the cite for that one. Schmerber has some
10 language I picked up. That's *384 US 757*. The court says,
11 "A fairly perceived need to act on the spot may justify
12 entry and search under the exigent circumstances exception."

13 THE COURT: Give me that cite again.

14 MR. SCOTT: Judge, that was *Schmerber v. California*,
15 *384 US 757*. The likelihood a suspect will immanently flee
16 is also a recognized exigency warranting such intrusion.
17 Protecting the safety of the police officers has also been
18 held an exigent circumstance. That's *Johnson v. U.S.*, *333*
19 *US 10*.

20 Again, Your Honor, this woman who has been implicated
21 in a crime of violence against another they had reason to
22 believe is in this home. And then the actions of Mr.
23 Dobbins, Your Honor, when mentioning her name. Shutting the
24 door. The safety concern of the manufacture of
25 methamphetamine. The warrantless search is justified under

1 the exigent circumstances doctrine to prevent a suspect from
2 fleeing. Again, that's *Minnesota v. Olson* with the same
3 language, 495 US 91, or where there's a risk of danger to
4 police or others inside or outside the dwelling.

5 Police may lawfully go to a person's home to interview
6 him. In doing so he can obviously go up to the door. A
7 police officer without a warrant is privileged to enter
8 private property to investigate a complaint or a report of
9 an ongoing crime.

10 Your Honor, we just believe that this is a warrantless
11 search that is covered under the exigent circumstances
12 exception. Again, just to reiterate, what you've got here
13 is this freshly committed crime. Not necessarily in hot
14 pursuit, but they're going to find the suspect who's
15 involved in this assault type crime. Everything they
16 understand is that she is living at this apartment. When
17 they knock on the door, when Mr. Dobbins answers, they
18 mention they're looking for this one subject and he slams
19 the door basically in their face. Judge, at that time it's
20 our position that they rightfully entered the home and that
21 was a legal warrantless search at that time.

22 Once inside -- and it hasn't been argued yet, but they
23 do a protective type sweep. Ultimately they don't locate
24 her, although one of the people inside does admit that she
25 had been there earlier. In plain view they find a lot of

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1 the things that are in question here today that the Defense
2 is looking to suppress through this motion.

3 Again, Your Honor, we have Deputy Devin Hodges and Nick
4 Moye here. These are the agents -- or the officers who went
5 to that location and did perform the search.

6 THE COURT: I think probably we need to take their
7 testimony. So let's do that before I hear any other
8 argument.

9 MR. SCOTT: State would call Deputy Devin Hodges.

10 THE COURT: Come around, please, sir.

11 DEVIN HODGES, having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Deputy Hodges, were you working with the Laurens
16 Sheriff's Department November 24th of 2011?

17 A Yes, sir.

18 Q Okay. Did you have -- did you have an opportunity to
19 respond to [REDACTED] in Waterloo?

20 A I did.

21 Q Do you know about what time that was?

22 A I believe we got there maybe 3:20 or 21.

23 Q Is that a.m.?

24 A Yes, sir. In the morning.

25 Q 3:21 in the morning. Well, let me back up. How did

DEVIN HODGES-IN CAMERA DIRECT EXAMINATION

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1 you -- how did you come to be at [REDACTED]

2 A We had a report of an assault call at another location
3 in Waterloo that involved Shayla Gaines and the victim. He
4 advised us that Shayla Gaines had assaulted him and that she
5 went back to her residence which was at [REDACTED]
6 And it being at that time of night we didn't have a judge
7 available and, you know, we just decided to go over there
8 any see if we could go ahead and solve this case and get it
9 done with.

10 Q All right. So where did the assault allegedly occur?

11 A [REDACTED]

12 Q How far away is that from [REDACTED]?

13 A It's probably two or three miles maybe.

14 Q All right. So after you spoke with the victim in that
15 case did he tell you what happened?

16 A Yeah. He said that she assaulted him and that she had
17 left and said she was going back to [REDACTED].

18 Q Okay. And he identified the person who had attacked
19 him as Shayla Gaines; is that correct?

20 A Yes, sir.

21 Q How long do you think that interview lasted with you
22 and this particular victim?

23 A We were probably on the scene 30 minutes maybe. I
24 can't be exactly sure. I don't recall how long that case
25 took.

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1 Q Okay. Did you have enough information from him you
2 felt comfortable going to speak with Shayla Gaines?

3 A Absolutely.

4 Q What were your intentions once you found Shayla Gaines?

5 A My intentions were to go ahead and affect an arrest and
6 place her in jail.

7 Q All right. Would that be a ticket offense?

8 A I would have gotten a warrant on that. But yes, she
9 could have done that on a blue ticket.

10 Q Okay. When you approached her you would have written
11 her a ticket and taken her in right there?

12 A I would have went ahead and took her in jail. Yes, sir.

13 Q Okay. So after speaking with the victim about 30
14 minutes you say you went to [REDACTED] and you say
15 it's about two miles away?

16 A Yes, sir.

17 Q Okay. So in your estimation, how much time had elapsed
18 between the call regarding the assault and you arriving at

19 [REDACTED]

20 A After we cleared from [REDACTED] we assembled a group
21 of deputies. It was probably an hour, give or take a few
22 minutes.

23 Q Okay. So you're at [REDACTED] within an hour of
24 receiving this complaint about the assault and battery?

25 A Yes, sir.

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1 Q All right. Tell us what happened when you got there.

2 A We arrived on the scene. I exited my patrol vehicle.

3 Other deputies got there as well. Deputy Moye went to the

4 rear of the camper just to make sure everything was secured

5 back there. Nick could immediately smell an odor that we

6 associated with methamphetamine labs.

7 Q How long have you been a deputy with Laurens County?

8 A Since January 4, 2010.

9 Q And how many -- January 2010. So you had just --

10 A Almost four years.

11 Q Okay. At the time of this incident just short of two

12 years with the county?

13 A Yes, sir.

14 Q About how many calls regarding meth labs have you

15 responded to?

16 A It's been a lot. I couldn't tell you an exact number,

17 but I've had my fair share of them.

18 Q Describe that odor you're talking about.

19 A It's a strong chemical smell. It smells a lot like

20 Coleman camp fuel mixed in with other chemicals. It burns

21 your nose. It takes your breath. You know, it's one in a

22 million.

23 Q What did you say, one in a million?

24 A I would say so. I mean, I can -- I can distinguish

25 that smell from any other smell.

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1 Q Okay. Is it fair to say once you get to [REDACTED]
2 [REDACTED] and smell that odor now you have two concerns and
3 that's finding Shayla Gaines --

4 A That's right. We were there looking for Ms. Gaines and
5 then we ran into another situation.

6 Q All right. Did you knock on the door?

7 A We did.

8 Q Who came to the door?

9 A Mr. Johnny Dobbins.

10 Q Okay. Did you tell him who you were?

11 A We did. We announced Sheriff's Office. He had come to
12 the door. As soon as we said we were looking for Ms. Gaines
13 he abruptly shut the door.

14 Q Did he say anything?

15 A No.

16 Q He just shut the door in your face?

17 A He just slammed the door in my face.

18 Q All right. What are your concerns now?

19 A Well, we think that Ms. Gaines is inside, possibly
20 trying to escape the residence somehow, or it could be a
21 number of factors. Officers safety, you know. We don't
22 know what he's going to do, you know.

23 Q Okay. And what did you do then?

24 A At that time we entered the residence looking for Ms.
25 Gaines because that was our primary concern. That's why we

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1 were there. After doing a sweep of the residence looking
2 for Ms. Gaines in plain view was some byproduct of a
3 methamphetamine lab on the counter, meth, as well as in the
4 bathroom. Sitting right there on top of the toilet was a
5 one pot that was still in the process of making
6 methamphetamine.

7 Q All right. Well, when you go in there you're not --
8 what are you looking for?

9 A We're looking for Shayla Gaines.

10 Q Okay. But you could see all this other stuff --

11 A Yes, sir.

12 Q -- while you're there?

13 A So we're dealing with two situations now.

14 Q Okay. You didn't find her there though, did you?

15 A No, sir. Unfortunately.

16 Q But all the information you had at that point was that
17 she was there?

18 A Absolutely. We had more than enough reason to believe
19 that she was there.

20 Q Okay. You said Mr. Dobbins answered the door. Who
21 else was in the house?

22 A Sandy Ann Wyatt. She was in the back room in bed.

23 Q Was she awake, asleep?

24 A She was asleep.

25 Q Did you wake her up?

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1 A We did.

2 Q Did you subsequently get a search warrant for [REDACTED]

3 [REDACTED]

4 A We did not.

5 Q All right. How were you able -- did you perform a
6 search of the residence?

7 A We did.

8 Q How were you able to do that?

9 A Well, after we had entered the residence and looked for
10 Ms. Gaines due to everything being in plain view and we just
11 kind of -- we just went ahead with it. Not only did we have
12 the stuff -- the bathroom stuff on the counter, you know,
13 not to mention Mr. Dobbins did sign the consent search
14 warrant.

15 Q He signed the consent to search?

16 A He did.

17 Q Okay. And then you performed the search?

18 A Yes, sir.

19 Q Okay. And the female and Mr. Dobbins were arrested?

20 A They were.

21 MR. SCOTT: Please answer any questions Mr. Wise may
22 have for you.

23 THE COURT: Mr. Wise.

24 CROSS EXAMINATION

25 BY MR. WISE:

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1 Q Deputy Hodges, how many officers were with you on this
2 trip?

3 A Initially there were Lieutenant Higginbotham and
4 myself, Corporal Moyer and Sergeant Timmons. And then
5 afterwards it was Lieutenant Shelton and Sergeant Veal.

6 Q What, seven people?

7 A Six people.

8 Q Six people. So when you got to Mr. Dobbins' residence
9 there were six officers with you?

10 A No. When we got there we had four.

11 Q Okay. When you first arrived there were four?

12 A Yes, sir.

13 Q All right. And the first place you went to was where
14 again?

15 A The front door of the camper.

16 Q No. That evening.

17 A Oh, I'm sorry. [REDACTED].

18 Q All right. [REDACTED].

19 A Yes, sir.

20 Q All right. And who was there?

21 A Bill Ardis.

22 Q All right. And he had gotten in a fight with his
23 girlfriend?

24 A Yes, sir.

25 Q Who was a live-in girlfriend?

DEVIN HODGES-IN CAMERA CROSS EXAMINATION

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- 1 A No. She did not live there.
- 2 Q Do you know where she lived?
- 3 A She lived at [REDACTED]
- 4 Q And what proof did you have she lived at [REDACTED]?
- 5 A Mr. Ardis' statement is -- he said that they did not
- 6 live together. He said that she lived at [REDACTED]
- 7 and I didn't have any reason to disbelieve that. I believed
- 8 everything he told me --
- 9 Q Did you have any -- did you have identification from
- 10 her?
- 11 A No.
- 12 Q Any address? Did you run an address check on her?
- 13 A No, sir. I didn't have any identification.
- 14 Q Did you subsequent arrest her?
- 15 A Eventually. After this case was over with.
- 16 Q Do you know what address she gave you then?
- 17 A Warrants --
- 18 Q Excuse me?
- 19 A I believe the warrant's division arrested her, I
- 20 believe.
- 21 Q All right. So you have four people over at Mr. Ardis's
- 22 house?
- 23 A Yes, sir.
- 24 Q All right. And did you know that was Mr. -- you knew
- 25 that was Mr. Dobbins' residence --

DEVIN HODGES-IN CAMERA CROSS EXAMINATION

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- 1 A Yes, sir. I'm very familiar.
- 2 Q Before you went there?
- 3 A Yes, sir.
- 4 Q You know Mr. Dobbins?
- 5 A Yes.
- 6 Q Or know him -- you know him personally?
- 7 A I know him professionally.
- 8 Q Okay. When you see him you recognize him?
- 9 A Yes, sir.
- 10 Q And when you were given that address you knew that was
- 11 Mr. Dobbins' address --
- 12 A Right.
- 13 Q -- and you knew he had been living there for some time?
- 14 A I knew -- I'm not sure how long he's been living there,
- 15 but yes.
- 16 Q But you knew that's where he lived?
- 17 A Yes.
- 18 Q All right. And did you know Sandy Wyatt lived there
- 19 with him?
- 20 A I knew that she was staying there. I didn't know she
- 21 lived there.
- 22 Q Okay. But you knew that particular camper belonged to
- 23 Mr. Dobbins?
- 24 A I did.
- 25 Q All right. Now, when Mr. Dobbins answered the door you

DEVIN HODGES-IN CAMERA CROSS EXAMINATION

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1 were in uniform?

2 A Yes, sir.

3 Q And when he immediately answered the door you
4 immediately said you were looking for Shayla Gaines?

5 A Yes, sir.

6 Q And he --

7 A And identified myself as the Sheriff's Office.

8 Q And you could see the uniform through the door when he
9 opened it?

10 A Once he opened the door he could.

11 Q Okay. And when he saw your uniform he shut the door?

12 A After we advised him we were looking for Ms. Gaines.

13 Q Correct. But you don't know whether it was
14 precipitated by who he was looking for or your uniform?

15 A Well, when he shut the door we assumed that --

16 Q Correct.

17 A -- Ms. Gaines was in the residence.

18 Q But you don't know if he shut the door because he
19 didn't want law enforcement in there or because he was
20 hiding Ms. Gaines?

21 A I don't know why he shut the door. We just assumed
22 that --

23 Q All right. And at that point you said that you were
24 unable to go get a warrant?

25 A Yes, sir.

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1 Q And you were unable to go get a warrant because you
2 didn't know of any magistrate that was up?

3 A That's right.

4 Q What is the policy of Laurens County on -- do you know
5 what the policy on Laurens County is for getting late night
6 warrants?

7 A You would have to contact a judge at his residence.

8 Q All right. So you would have to call a magistrate at
9 his residence to go get it --

10 A Yes.

11 Q -- is that correct?

12 A Yes, sir.

13 Q So there is a policy for getting one late at night,
14 correct?

15 A Yes, sir.

16 Q You just elected not to follow it?

17 A No, sir. We followed up on our investigation that we
18 were committed -- or that we were investigating with it
19 being freshly committed.

20 Q When Mr. Dobbins basically by shutting the door and
21 told you don't come in this house, you elected to disregard
22 his request and disregard --

23 A Due to the exigent circumstances and everything
24 surrounding that, that's why we made our decision the way we
25 did.

DEVIN HODGES-IN CAMERA CROSS EXAMINATION

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- 1 Q So you had four officers there?
- 2 A That's right.
- 3 Q All right. How many officers does it take to get a
- 4 search warrant?
- 5 A It takes one.
- 6 Q One. So how many cars were you in?
- 7 A Four.
- 8 Q Four. All right. So you would have had three officers
- 9 and three cars that could have remained at Mr. Dobbins'
- 10 residence?
- 11 A We could have.
- 12 Q And you could have gone and got a magistrate and gotten
- 13 a warrant?
- 14 A Sure.
- 15 Q And you could have done it properly?
- 16 A Sure.
- 17 Q Correct?
- 18 A Well, we could have got the search warrant, but I
- 19 believe that all the evidence we had and everything that we
- 20 had gathered previously that we had enough -- we had enough
- 21 reason to believe that she was in that residence.
- 22 Q I understand that. But isn't the determination of
- 23 whether or not you're able to go through the door of Mr.
- 24 Dobbins' house determined -- to be determined by a neutral
- 25 and detached magistrate?

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1 A Not all the time.

2 Q Not all the time?

3 A No, sir.

4 Q What about on this particular time?

5 A No, sir.

6 Q So are you telling me that -- and the reason your
7 inability to go get a warrant was?

8 A Was what?

9 Q What was your reason for your inability to go get a
10 warrant?

11 A Due to the crime being freshly committed. Due to the
12 presence of the odor we smelled when we got out of our
13 vehicles and went to the door. Due to Mr. Johnny Dobbins'
14 actions when we were requesting to speak with Ms. Gaines.
15 That made it to where we needed to do something right then.

16 Q Now, with three officers there if Ms. Gaines had come
17 out she would have been apprehended?

18 A Absolutely.

19 Q Correct? And with -- is that correct?

20 A Absolutely. If she was there and she would have gave
21 herself up.

22 Q If she had come out somebody -- if you had three
23 officers there you would have found her. She -- you would
24 have found her, correct?

25 A What are you -- I'm not understanding your question.

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1 Q If one officer went to get a warrant and three officers
2 stayed at the home, right, then under those circumstances if
3 she had decided to flee that residence you all would have
4 arrested her if she had been there?

5 A If she would have been there and there was three
6 officers on the scene she would have went to jail.

7 Q If she had --

8 A If she were --

9 Q If she tried to flee the residence.

10 A If she would have exited the residence. Yes, sir.

11 Q While you went to get a warrant?

12 A Absolutely.

13 Q Okay. Now, are you contending that any time you walk
14 up to -- near a residence and smell what you perceive to be
15 the odor of methamphetamine being made that you have the
16 right to enter that premises without a warrant?

17 A If there are other circumstances around them.

18 Q And the other circumstances around it would be what?

19 A Maybe tips from other people, previous dealings with
20 this residence.

21 Q So you're saying that any -- that if you have -- if you
22 go up to a residence and smell the odor of methamphetamine
23 being made and you have information that this person may
24 have been convicted of meth in the past --

25 A Uh-huh (affirmative.)

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1 Q -- do you contend that you're able to enter that
2 residence without a search warrant?

3 A According to exigent circumstances. Yes, sir.

4 Q And the exigent circumstances would be what?

5 A Knowing that methamphetamines were possibly being
6 produced.

7 Q And that's it? Okay. Is that it?

8 A Yes.

9 Q Okay. So anytime you have reason to believe that
10 methamphetamine is being manufactured you can enter that
11 residence without a search warrant?

12 A As long as there's other circumstances. As long as we
13 have other information.

14 Q Such as a person with a prior record?

15 A Prior record, information from other people.

16 Q Reliable or not reliable?

17 A Reliable.

18 Q Okay. In this particular case all you had was what you
19 perceived to be the smell of methamphetamine being made and
20 someone that you wanted on a assault and battery charge; is
21 that correct?

22 A Yes.

23 Q And this was a magistrate court offense?

24 A The assault and battery. Yes, sir.

25 Q And you did not have an arrest warrant?

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- 1 A Not at that time. No, sir.
- 2 Q And it did not occur in your presence?
- 3 A No, sir. It was freshly committed.
- 4 Q Well, an hour earlier.
- 5 A Freshly committed.
- 6 Q And she had left the scene, correct?
- 7 A It was freshly committed.
- 8 Q Well, how long is freshly committed?
- 9 A I would say within two hours.
- 10 Q Two hours. Okay. So anything two hours is not freshly
11 committed?
- 12 A Anything after two hours.
- 13 Q All right. And, of course, you didn't find her there
14 at all?
- 15 A No, sir. Unfortunately.
- 16 Q Didn't find any evidence she had even been there?
- 17 A Well, Ms. Wyatt did say that she had been there.
- 18 Q But other than that you didn't find any evidence?
- 19 A Other than that there wasn't anything, no.
- 20 Q All right. So your exigent circumstances here was the
21 fact that you smelled some methamphetamine and you thought
22 someone who committed a simple assault and battery was in
23 the residence?
- 24 A And the fact that Mr. Dobbins slammed the door in our
25 face when we mentioned Ms. Gaines' name.

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1 Q All right. Or slammed the door in your face because
2 you had a uniform on?

3 A Probably that was the reason.

4 Q Did you ask him?

5 A He didn't give us a chance. He slammed the door in my
6 face.

7 Q So it's your assumption that's why he did it?

8 A Yeah.

9 Q But it turned out she wasn't there, so there's not much
10 need to slam the door in your face because of her --

11 A But she had been.

12 Q -- because she's not there.

13 A But she had been there. So that proves that she was
14 there in the past --

15 Q There's no reason to slam the door in your face if you
16 mention someone's name who's not there, is it?

17 A Well, apparently he had other things going on.

18 Q But he could slam the door in your face because you're
19 law enforcement if he wanted to, couldn't he?

20 A He could.

21 Q Now, so your idea of exigent circumstances is if you
22 see something there at the scene of where you want to
23 search?

24 A Uh-huh (affirmative.)

25 Q Correct?

DEVIN HODGES-IN CAMERA EXAMINATION BY THE COURT

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- 1 A I'm sorry?
- 2 Q Your idea of exigent circumstances is if you see
- 3 something there at the scene where you want to search?
- 4 A No, sir. My definition of exigent circumstances is all
- 5 the things surrounding that.
- 6 Q It has nothing to do with your inability to go get a
- 7 warrant?
- 8 A No, sir.
- 9 Q Okay. Because you could have gone and gotten a
- 10 warrant?
- 11 A There's some things -- there's some things that have to
- 12 be handled right then.
- 13 Q But you could have gone and gotten a warrant on this
- 14 case?
- 15 A Well, we could have. Yes.
- 16 Q Okay. You admit that?
- 17 A Yeah, we could have.
- 18 Q Take you an hour or so maybe.
- 19 A Depends on the judge.
- 20 Q Is that correct?
- 21 A Depends on the judge.
- 22 Q Right. But roughly an hour?
- 23 A And the travel time. I don't know.
- 24 Q You don't know?
- 25 A I don't know.

DEVIN HODGES-IN CAMERA EXAMINATION BY THE COURT

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1 MR. WISE: Thank you.

2 THE COURT: Anything on redirect of this witness,
3 Solicitor?

4 MR. SCOTT: No, Your Honor.

5 EXAMINATION

6 BY THE COURT:

7 Q Officer, let me ask you one question. You mentioned
8 that at some point in time the Defendant signed a consent to
9 search?

10 A Yes, sir.

11 Q Were there any items of evidence obtained after the
12 consent to search was executed that was not obtained prior
13 to the consent being --

14 A Yes, sir. I have the --

15 Q Can you kind of separate that out for the court as far
16 as what was obtained prior to the consent and what was
17 obtained after the consent.

18 A Sure. Before the consent search was found -- or
19 signed, when we entered the residence in plain view on the
20 counter --

21 Q Right.

22 A -- was a white powder substance that did test positive
23 for methamphetamine.

24 Q Okay.

25 A And also in the bathroom was a plastic bottle that had

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1 different chemicals in it that was still in the process of
2 making this stuff. And after the consent to search was
3 signed by Mr. Dobbins other medications nobody had a
4 prescription for was found and some other drug
5 paraphernalia.

6 Q Okay. So before the consent you found a white
7 substance on the counter in the kitchen? Did you say
8 kitchen?

9 A Yes, sir.

10 Q Okay. Which was later tested to be methamphetamine.
11 And then you found a bottle in the bathroom that was in the
12 process of --

13 A Yes.

14 Q -- making?

15 A Yes, sir.

16 Q Okay. And then after you found some medications
17 without prescription those medications are used to make
18 methamphetamine?

19 A No, sir. These were controlled substances of
20 prescribed medication.

21 Q Prescribed medications?

22 A Yes, sir.

23 Q Okay. And then some drug paraphernalia?

24 A Yes, sir. There was a good bit of that.

25 Q Okay.

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1 THE COURT: Anything from the State in response to the
2 court's questions?

3 MR. SCOTT: No, Your Honor.

4 THE COURT: From the Defense?

5 MR. WISE: Just a couple.

6 THE COURT: Certainly.

7 RE-CROSS EXAMINATION

8 BY MR. WISE:

9 Q Now, how long after you went inside the residence was
10 Mr. Dobbins handcuffed?

11 A After we went into the residence he was handcuffed
12 immediately.

13 Q Okay. And you immediately saw some cocaine on --

14 A Not cocaine. White powder substance.

15 Q White powder substance, excuse me, you believed to be
16 meth?

17 A Absolutely.

18 Q All right. And at that point Mr. Dobbins, of course,
19 was not free to leave?

20 A That's right.

21 Q He was under arrest?

22 A He was.

23 Q Is that correct?

24 A Yes, sir.

25 Q And the consent, or alleged consent, to search was

DEVIN HODGES-IN CAMERA RECROSS EXAMINATION

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1 obtained after he had been placed under arrest after your
2 entry?

3 A Yes, sir.

4 Q All right. And had you been to Mr. Ardis's residence
5 before to check on Shayla Gaines?

6 A I've been -- I think I've been there once before that,
7 I think.

8 Q And you -- what was --

9 A In reference to him and Shayla.

10 Q Right.

11 MR. SCOTT: Your Honor, I would object. I think this
12 is outside the realm of questions based on Your Honor's
13 questions of the officer.

14 THE COURT: Well, I'll allow it since we're -- we don't
15 have a jury in with us. Go ahead.

16 Q You'd been there before for what purpose?

17 A I can't recall. It's -- it's a bunch of stuff over
18 time.

19 Q Check on her for some stuff?

20 A I can't remember.

21 Q Do you ever recall a condition of her bond to be that
22 she's under house arrest?

23 A No. I don't recall that.

24 Q Okay. But you do remember going to Mr. Ardis's house -

25 -

1 A Yes, sir.

2 Q -- looking for her? Was she there at that time?

3 A Every time I've been there she was not there.

4 Q Okay. So you've been there more than two times?

5 A Well, he had some larceny of some stuff that wasn't
6 related to --

7 Q Had some what?

8 A Some larceny of some guns. Stuff that wasn't --

9 Q It wasn't related?

10 A Yeah, it wasn't related to this.

11 Q All right. But you had been there to check on her at
12 least one other time?

13 A I don't believe I have.

14 MR. WISE: All right. Thank you.

15 THE COURT: Thank you, Officer. You can step down.

16 Thank you for your testimony. Mr. Wise, any further
17 argument you would like to offer on this particular issue?

18 I assume, Solicitor, you were not planning to call any --
19 any other officers on this --

20 MR. SCOTT: No, Your Honor. I think we've covered
21 everything, Your Honor.

22 THE COURT: Okay. Thank you. Any further argument,
23 Mr. Wise?

24 MR. WISE: I would also like to hand up to the court, I
25 believe it's a Sixth Circuit case, let me get my copies, of

1 *U.S. versus Lopez Arrez*, and it deals with the issue of a
2 consent obtained after an illegal arrest, which I think is
3 analogous to this case because it was a consent obtained
4 after an illegal entry. What we would contend as under the
5 fruits of the poisonous tree doctrine, that once they
6 entered the premises illegally that anything that happens
7 after that, unless it's been some -- I guess you could
8 conjure up some circumstances where it would be okay, but
9 certainly not under these conditions where Mr. Dobbins was
10 not free to leave. They had been in his house for a period
11 of time, searched his residence, and then say to him, you
12 know, basically sign this consent. And I think under those
13 circumstances it's fruit of the poisonous tree doctrine, and
14 that's what the case at the Sixth Circuit basically holds.

15 THE COURT: All right. Thank you, Mr. Wise. Anything
16 further from the State on this particular motion?

17 MR. SCOTT: No, Your Honor. I think we agree that the
18 issue here is whether the entry was legal. If the entry is
19 legal then the arrest is legal, then the subsequent consent
20 is legal. So all we really need to concern ourselves with
21 is --

22 THE COURT: Right, with the entry.

23 MR. SCOTT: -- the initial intrusion.

24 THE COURT: Right.

25 MR. WISE: And I'd point out to the court that under --

1 and I do not have a copy of this case of *State versus*
2 *Abdullah*, which is South Carolina Court of Appeals case
3 found in 592 S.E.2d 344. They refer to exigent
4 circumstances as "only where from an objective standing a
5 compelling need for official action and no time to secure a
6 warrant exists." And that's a quote from the South Carolina
7 Court of Appeals. And obviously from the testimony in here
8 in this case there was time to secure a warrant, and there
9 was certainly no compelling need for official entry into Mr.
10 Dobbins' residence.

11 THE COURT: All right. Thank you very much, gentlemen.
12 I think there is one other -- correct, Mr. Wise, one other
13 motion that you have?

14 MR. WISE: I do, and it concerns the indictments, Your
15 Honor.

16 THE COURT: The indictment. That's right.

17 MR. WISE: And it has basically three parts to it. But
18 it only involves two of the indictments. It is the unlawful
19 disposal of methamphetamine waste and the manufacturing of
20 methamphetamine. Let me find my manufacturing statute.
21 Well, it actually applies to possession with intent to
22 distribute unlawful disposal methamphetamine waste and
23 manufacturing methamphetamine.

24 If you read the indictments, Your Honor, the problem I
25 have is twofold. They've charged a substantive crime in the

1 same indictment with the conspiracy, which obviously
2 requires two different elements of types of proof. Rules of
3 evidence are different for conspiracy than they are for
4 substantive crime. And we have no clue as to which one the
5 grand jury found in this case. The grand jury in this case
6 could have heard whatever testimony was there and said we
7 think there's a conspiracy. We'd be coming to this
8 courtroom and this jury could hear this evidence and say,
9 well, we don't think that's a conspiracy. We think that's a
10 crime of manufacturing methamphetamine. So that you have
11 the very distinct possibility of a grand jury indicting on
12 one theory, or one crime, and the Defendant being convicted
13 on something the grand jury didn't indict him for, as
14 far as the grand jury is concerned based on what they did.

15 The indictment in my opinion should have alleged
16 substantive offense of manufacturing methamphetamine or it
17 should have alleged a conspiracy. They could have done two
18 separate indictments if they thought they had proof to. And
19 therefore, I think it's improper.

20 Secondly, the indictment for conspiracy is not proper
21 on its face. For in that -- on the three charges. For in
22 the conspiracy charge they do not allege he conspired with
23 anybody. That's clearly a necessity for a conspiracy
24 because you cannot commit the crime of conspiracy by
25 yourself. They have not alleged in the indictment that he

1 conspired with anybody. So I think that failed on its face.

2 I would also take the position, Your Honor, that the
3 charge of manufacturing methamphetamine is invalid because
4 it is not alleged in the indictment that the -- if, in fact,
5 methamphetamine was being manufactured, that it was for
6 other than personal use. If you go back and look at the
7 definition of manufacturing found in 44-53-110 it defines
8 manufacturing as production, preparation, et cetera. And
9 then it says, "Except this term does not include the
10 preparation of compounding of controlled substance by an
11 individual for his own use." So the indictment I think has
12 to allege that it was for other than personal use, because
13 if this jury finds it's -- if the grand jury had some
14 information that it was for other than personal use they can
15 indict him for it. But under the indictment as written this
16 jury is not required to find that because I think -- I think
17 that's an essential element of the crime also. And granted
18 that's part of the definition of manufacturing. But we all
19 know that if you indict someone for murder and fail to
20 allege malice aforethought, while that's included in the
21 definition of murder it's fatal to an indictment. And it's
22 the same thing here where they contend he manufactured, they
23 have -- they have the burden of proof that it was for
24 something other than personal use. And to be manufacturing
25 I think the indictment should have alleged that also.

1 THE COURT: So are you suggesting, Mr. Wise, that
2 manufacturing for personal use is not illegal?

3 MR. WISE: No, sir. Not --

4 THE COURT: Maybe I missed the point.

5 MR. WISE: It's not manufacturing. It's possession of
6 methamphetamine. It may be an attempt to possess
7 methamphetamine. It may be -- I guess you're either
8 successfully manufactured it and got it and therefore it's
9 possession, or you tried to manufacture it to get it and
10 it's attempt to possess. So it's clearly an attempt to
11 possess or possession. But under the definition of
12 manufacturing it clearly, if it's for personal use, is not
13 manufacturing methamphetamine.

14 THE COURT: Thank you, Mr. Wise. Solicitor?

15 MR. NEELY: Your Honor, I guess I'll address those
16 points one at a time. As Your Honor well knows, in this
17 state indictment is a notice document. That's what it's
18 intended to do. It's intended to put the Defendant
19 officially on notice of the allegation that he'll be
20 answering at court in trial. There is a plethora of cases,
21 *State v. McIntire*, 221 S.C. 504, *State v. Smalls*, 336 S.C.
22 301, *State v. Guthrie*, 352 S.C. 103. There's a number of
23 cases that say the indictment has to be read so as to put
24 the Defendant on notice.

25 Furthermore, *State v. Gentry* says that the court is

1 supposed to look at the indictment with a practical eye
2 considering all the surrounding facts and circumstances.
3 That includes facts and circumstances that are outside the
4 indictment. In *State vs. Adams*, which is 277 S.C. 115, the
5 court in Adams was asked to find an indictment for a
6 burglary deficient because it did not state the crime the
7 defendant intended to commit inside the house. The court
8 considered the defendant's written confession with
9 validating the indictment. In this case the Defendant has
10 been on sufficient notice of the actual charge of
11 manufacturing. I've emailed Mr. Rauch Wise and -- with the
12 warrant number and indictment number that manufacturing
13 third is the charge that we'll be going forward on. So Mr.
14 Rauch Wise and his Defendant presumably would also be on
15 notice that manufacturing is the charge we're going forward
16 on.

17 Furthermore, it is the common practice in the state of
18 South Carolina to allege the statutory language of the
19 statute that you are going on in the indictment. I believe
20 that is probably the safest way to make an indictment is to
21 include the entire language of the statute of the law that's
22 been violated, or the common law that's been violated.

23 Your Honor, simply put, he is sufficiently on notice of
24 these crimes that have been committed. Whenever he spoke of
25 the manufacturing and personal use I would contend that he

1 didn't finish reading that definition because it includes
2 production as -- the definition of manufacture includes the
3 manufacture -- I'm sorry. Excuse me, Your Honor. It
4 includes packaging or repackaging of a substance or labeling
5 or relabeling of its container. I think that pretty clearly
6 indicates that this is a pharmaceutical use they're talking
7 about. I have some doubts whether -- I believe the jury
8 would also have doubts as to whether Mr. Dobbins was
9 labeling or relabeling the container of methamphetamine.
10 And as Your Honor knows, methamphetamine and salts and other
11 methamphetamine byproducts are actually used medicinally.
12 Adderall is one such product. This is obviously not the
13 manufacturing of Adderall or anything like Adderall. And we
14 would contend that it's not for personal use and that the
15 statute doesn't contemplate that whenever it's talking about
16 manufacturing. That it contemplates the making of
17 methamphetamine product for use by himself or others.

18 THE COURT: Thanks, Solicitor. Anything in reply to
19 that argument?

20 MR. WISE: Just briefly. If this is a notice document,
21 fine. Let's have some notice of what we're charged with.
22 You can't have notice of the fact that you violated some
23 drug law either by way of conspiracy or by way of
24 substantive offense. I need to know -- I'm entitled to know
25 which one it is. Not -- not either/or. You know, they had

1 every opportunity to do an indictment that did that. If you
2 also go look at *State versus Gunn*, I believe I've handed up
3 a copy of that to the case, too -- to the court, also.
4 *State versus Gunn* has an indictment that to me is clearer
5 than the one in this case. And yet in that case the court
6 said, "It is questionable whether this indictment on its
7 face sufficiently appraised appellants with the charges
8 against them." They go on to affirm the -- not quash the
9 indictment in that case because it's a state grand jury case
10 and the defense lawyers had access to everything that was
11 said to the grand jury so that the defense lawyers knew the
12 basis for the grand jury's decision by reading the
13 transcript of those testimonies. We don't have that here.
14 The only thing we have is the face of the indictment.

15 I would also point out to the court that under the Code
16 Section 44-53-110 the portion he was referring to about
17 pharmacist is the second portion of that after the word
18 "or". It first says, "Except this term does not include the
19 preparation or compounding of a controlled substance by an
20 individual --" it doesn't say pharmacist, "-- by an
21 individual for his own use." And then it says "or the
22 preparation compound packaging," which basically redoes what
23 it says before, so they're talking about something different
24 there, "of a controlled substance by a practitioner as an
25 incident to administering pharmaceuticals." So it has two

1 separate entities or two separate individuals that are
2 excluded from manufacturing. One are the pharmacists, which
3 is has to be obviously, and the other one is an individual
4 for his own use, and that's what Mr. Dobbins would fall into
5 in this category. So granted he's not a pharmacist. I
6 would concede that. But that doesn't change the clear
7 meaning of this statute before the word "or" where it says
8 an individual, and that is referring to a non-pharmacist, or
9 a non-registered person, or someone who's not licensed to
10 deal in drugs otherwise. So to be an accurate definition of
11 manufacturing in the indictment I think they have to allege
12 that it was other than for personal use and they haven't
13 done it.

14 THE COURT: Okay. Thank you very much. I'm going to
15 take the second and third motions under advisement and I'll
16 work on that this afternoon and this evening and announce my
17 decision in the morning.

18 So we'll be at recess until 9 o'clock in the morning.
19 Everybody have a good evening.

20 TRIAL DAY 2.- 09/10/2013

21 BAILIFF: Let's all rise. Court come to order, please.

22 THE COURT: Thank you very much. Have a seat.
23 Gentlemen, we're on the record today in the case of *State*
24 *versus John William Dobbins, Jr.* We need to deal with the
25 Defense motions that were made and argued yesterday. The

1 first motion I denied on the record yesterday; your motion
2 concerning the number of strikes.

3 MR. WISE: Correct. Can I supplement that with one
4 thing I meant to put on the record yesterday?

5 THE COURT: Sure. Sure.

6 MR. WISE: In looking back at my strike list, juror
7 number -- let's see. 141, 110 and 150 I would have struck
8 had I had 10 strikes, but I did not strike those primarily
9 because juror 59 is married to a law enforcement officer. I
10 had used four strikes and obviously had to save one strike
11 for the woman who was married to a law enforcement officer.
12 So while I only used four strikes, there were three people
13 that had I been able to have the full 10 strikes I would
14 have struck in addition to the ones I did strike. And still
15 had another strike left to strike the --

16 THE COURT: Right.

17 MR. WISE: -- wife of the law enforcement officer.

18 THE COURT: I understand. Thank you very much.
19 Concerning the motion to quash the indictment, I'm going to
20 deny that motion. Let me find my notes here. We reviewed
21 several -- when I say we, my law clerk and I reviewed
22 several cases. *State versus Means*, *State versus McIntire*.
23 Of course, we reviewed all the -- you handed up, I think,
24 two cases on the indictment issue. We reviewed those two
25 cases. *State versus Shoemaker*, *Carter versus State*, *State*

1 *versus Gonzalès*. And based upon those cases it appears that
2 the indictment is sufficient. For the most part these cases
3 follow the principal that if adequate notice is given, if
4 they -- if the indictment mimics the statute upon which the
5 charge is based, then as a general rule the indictment would
6 not be considered defective. And in addition, I know, Mr.
7 Wise, you had some concern about the definition of
8 manufacture that it was not stated in the indictment that it
9 was not for the personal use of the Defendant. I don't
10 think that -- I mean, that certainly is a valid point, but I
11 don't think it's necessary that each term in the indictment,
12 which is basically quoting the statute, has to be defined.
13 Certainly that would be an element of proof, but I don't
14 think that's necessary to prevent the indictment from being
15 fatally defective. So in any event, the motion to quash the
16 indictment is denied.

17 Concerning the suppression of evidence on the issue of
18 the search and seizure, that is also denied. The court does
19 find exigent circumstances existing to justify the initial
20 entry into the residence. We looked at the Abdullah case
21 and tried to -- even though that certainly some of the facts
22 are different from the Abdullah case and this current case
23 there were some similarities and we kind of looked at both
24 and compared, and that was helpful in the court determining
25 that the officer was justified in making the initial entry.

1 The Schmerber case was also important in the court's
2 decision. And also want to mention -- and this idea that
3 I'm in just a second going to mention to you is -- standing
4 alone I don't think this would necessarily do it. But
5 there's a case *California versus Carney* that equated in some
6 situations a mobile home to that of an automobile. And, of
7 course, as we all know, the automobile, the -- certainly the
8 standard often times is lessened because of the fact that
9 the automobile is capable of being moved, and this
10 *California versus Carney* equated that with a mobile home.
11 We'll we're dealing with a camper, and so that has the
12 potential of being moved. So the way I looked at it, again,
13 this standing alone I don't think would do it, but coupled
14 with everything else it would appear to me that if they went
15 to get a warrant and it was decided by the Defendant or
16 anyone else in the camper that they wanted to move the
17 camper I don't think the police would have the authority,
18 necessarily, to prevent that. So that was just kind of
19 additional feature. Again, I emphasis standing alone, no, I
20 don't think that would do it. But I think as an additional
21 feature on this argument of exigent circumstances. So
22 taking everything in consideration, the fact that
23 methamphetamine was smelled at the time they reached the
24 camper, the uncooperativeness of the Defendant, which was
25 also found in the Abdullah case, I believe that the search

1 was proper and I'll deny the suppression motion.

2 Anything further we need to take up before we bring out
3 the jury, swear them in, get a foreperson appointed and
4 start the case from the State?

5 MR. SCOTT: None from the State, Your Honor.

6 THE COURT: How about from the Defense?

7 MR. WISE: None from the Defense.

8 THE COURT: Okay. Thank you very much. Do we have
9 that last juror?

10 BAILIFF: Your Honor, he hasn't shown up yet. Let me
11 go check again.

12 THE COURT: All right. We'll be at ease for just a
13 moment. Off the record.

14 (Off the Record)

15 THE COURT: Okay. Gentlemen, it appears that juror
16 Caroline Fisher, juror number 44, she was the short petite
17 female, is not present. My thinking is we should go ahead
18 and just move the alternate over into her spot and so we can
19 get started with this trial. Any objections to that from
20 the State?

21 MR. SCOTT: I'm assuming, Your Honor, that we made
22 calls to her home or the --

23 THE COURT: Well, we have not. We just determined who
24 it was. Your inclined, so we don't lose our alternate yet,
25 go ahead and try to track her down?

1 THE STATE: Yes, sir. If we could at least just make
2 that one call and see if we can --

3 THE COURT: Any thoughts from the Defense?

4 MR. WISE: A few minutes would be fine.

5 THE COURT: Excuse me?

6 MR. WISE: I think a few minutes is not going to make
7 much difference one way or the other.

8 THE COURT: All right. Madame Clerk, if maybe we can
9 try and find out how we can get a hold of her. All right.
10 We'll be at east once again.

11 (Off the Record)

12 THE COURT: We had one phone number. We did leave a
13 message, so my thinking now is let's go ahead and put the
14 alternate in her place. Any objections?

15 MR. SCOTT: No. There's no point in making those other
16 jurors who were here on time wait.

17 MR. WISE: It's been right at 30 minutes, so yes.

18 MR. SCOTT: Judge, the only thing -- I don't know if you
19 would be inclined to do this or do it later. These pictures
20 we could go ahead and -- we should've done this a little
21 while ago. Get these pre-marked just for efficiency sake.
22 The BEST kit here that is contained within this one bag,
23 probably what we need to do is cut it open and separate all
24 the different drug items into various exhibits. Probably
25 with Mr. Wise's supervision we would open this outer bag and

1 then just kind of label each one to be moved in piecemeal
2 and not as one individual piece of evidence.

3 THE COURT: Do you think you would not be ready for that
4 until say after our morning break and do it over break.

5 MR. SCOTT: I'm sure we can do that.

6 THE COURT: Anything that you might need to deal with
7 before our morning break I'll give you a few minutes to go
8 ahead and pre-mark whatever you need to do before we bring
9 the jury out if you need to do that.

10 MR. SCOTT: Okay. That will be good.

11 (PAUSE)

12 THE COURT: Solicitor, are you going to have anything
13 pre-marked or are we ready to get the jury?

14 MR. SCOTT: I'm sorry, Judge. I misunderstood. I was
15 going to wait until the break. Let me go ahead and get
16 these marked.

17 (Whereupon, color photographs were pre-marked as
18 State's Exhibits numbers 1-20 for identification.)

19 THE COURT: Bring them out.

20 (Whereupon, the jury enters the courtroom at 9:30 a.m.)

21 BAILIFF: All the jurors are present, Your Honor.

22 THE COURT: Thank you, Mr. Bolt. Good morning. We --
23 as you know, one of your fellow jurors is missing. We don't
24 know where she is. We tried to contact her and were
25 unsuccessful with that, so we don't want to wait any longer.

1 We need to get started with this trial. So Mr. Coulter, you
2 are officially now on the jury of 12. You're no longer an
3 alternate. Okay? And Diane Wyatt, I'm going to appoint you
4 as foreperson of this jury. So the next time you come out
5 to take your seat, that will be your seat on the front.

6 Okay?

7 Madame Clerk, would you swear the jury in, please.

8 (Whereupon, the jury was duly sworn at 9:34 a.m.)

9 THE COURT: Madame Forelady and ladies and gentlemen of
10 the jury, we are about to try the case of the *State of South*
11 *Carolina versus John William Dobbins, Jr.* And before we
12 begin this trial I want to tell you that this trial probably
13 will be different from what you might expect. Many people
14 do not have the chance to attend actual court sessions as
15 you are doing now and may think from watching television or
16 movies or reading books that trials are always full of high
17 drama, intense action and riveting circumstances. While all
18 of these things may be true at times, this trial is not for
19 entertainment. It is a fundamental part of our democracy, a
20 search for the truth and an effort to make sure that justice
21 is done between the parties before the court. Searching for
22 the truth and making sure that justice is done is often
23 slow, deliberate and repetitive. The opposite of what you
24 may have seen on television or in movies or have read in
25 books. The courtroom is a place of honor dedicated to the

1 protection and preservation of citizens' rights through what
2 many have called the greatest justice system ever created.
3 The attorneys appear before you are advocates for the
4 parties they represent, but first and foremost they are
5 officers of the court, sworn to uphold the integrity and
6 fairness of our judicial system and to help you in the
7 search for the truth. You should expect them to be
8 professional, competent and ethical in the representation of
9 their client's interests, and you are also expected to be
10 professional, reasonable and ethical. I want to thank you
11 for accepting the important responsibility of jury service
12 and your contribution today to our justice system. It's
13 been said many times that serving on a jury is the second
14 highest civic responsibility that we all have. Second only
15 to serving in the military for our country.

16 What I will now say is intended to serve as an
17 introduction to the trial of this case. These remarks are
18 not a charge on the law in this case. I will instruct you
19 on the law applicable to this case at the end of the trial
20 before you retire to consider your verdict. This is merely
21 an explanation of the procedure that we will follow in the
22 trial of this case so that you may better understand what
23 may be happening. And let me tell you now you're not
24 permitted to take any notes during the trial of this case.

25 Now, the Defendant is charged by five indictments, and

1 I mentioned this to you yesterday when you were seated in
2 the entire jury panel, and charged with five separate
3 offenses that I named to you yesterday. The elements of
4 which will be explained to you later on the case. And as I
5 told you yesterday and I want to tell you again and
6 emphasize, that indictments are not evidence. They're not
7 any indication of guilt or innocence of the Defendant.
8 They're only -- it's just the mechanism that we use to get
9 this case before this court and you the jury. Now, the
10 Defendant has pled not guilty to these five indictments and
11 the State therefore has the burden of proving each of the
12 elements of the indictments beyond a reasonable doubt, and
13 it'll be your duty, Madame Forelady and ladies and gentlemen
14 of the jury, to decide whether the State has met that
15 burden. Your purpose as jurors is to find and determine the
16 facts. You are the sole judges of the facts. If at any
17 time during this trial I make any comment regarding the
18 facts you must disregard it. You are to determine the facts
19 from the testimony you hear and the other evidence
20 introduced in court. It is up to you to determine the
21 inferences which you feel may properly be drawn from the
22 evidence. It is especially important that you perform your
23 duty of determining the facts diligently and
24 conscientiously, because ordinarily there is no way to
25 correct an erroneous determination of the facts by a jury.

1 On the other hand and with equal emphasis, the same law that
2 makes you the judges of the facts makes me the judge of the
3 law. The law as given by the court is the only law you may
4 consider. You just except and follow it even though you may
5 disagree with it. I cannot tell you what the facts are and
6 you cannot disagree with me about what the law is or what
7 you think it should be. Your job is to take the law as I
8 give it to you and apply it to the facts as you find them
9 from the testimony of the witnesses and any other evidence
10 that may be introduced. After doing that you will render
11 your verdict. A verdict under the solemn oath that you just
12 took as jurors.

13 Until I tell you that you may begin to deliberate you
14 must not discuss this case with anyone including your fellow
15 jurors, friends, family members, anyone involved in the
16 case. The attorneys and parties in this case have been
17 advised that they are not to talk to you at all. So if you
18 see anyone involved in the case and they do not even say
19 hello, they're not being unfriendly, they're just following
20 my instructions. During your deliberations you may only
21 discuss the case in the jury room with your fellow jurors
22 because they have seen and heard the same evidence that you
23 have. However, you must not discuss the case with anyone
24 else until you have returned a verdict and the case is at an
25 end. I remind you that, and I will continue to remind you

1 that during the course of this case.

2 You must decide this case based solely on the evidence
3 presented here in this courtroom. This means that during
4 the trial you must not conduct any independent research
5 about this case, the facts of the case, the evidence
6 presented in the case or the people or organizations
7 involved in any way in this case. Please do not try to find
8 out information from any source outside of this courtroom.
9 In other words, you must not look at dictionaries or
10 reference materials or search the Internet, and the list
11 goes on and on. You may not use any computers or cell
12 phones or any other forms of technology or communication.
13 And during this trial do not read, listen to or watch any
14 news reports about the case if there are any. This includes
15 anything that may be in the newspapers or on the Internet,
16 radio or television if there are any. You must not consider
17 anything you may have read or heard about the case outside
18 the courtroom whether before or during the trial.
19 Information on television, radio, the Internet, et cetera,
20 may be wrong or may be incomplete. And our judicial system
21 is important that you are not influence by anything or
22 anyone outside of this courtroom. If you become aware of
23 another juror's violations of these instructions please
24 inform the court immediately.

25 Madame Forelady and ladies and gentlemen of the jury,

1 it's important that you keep an open mind and not decide any
2 issue in this case until all the evidence has been
3 presented, the parties have made their closing arguments and
4 I have instructed you on the law in this case. It is your
5 solemn responsibility to determine the guilt or innocence of
6 the Defendant and your verdict must be based solely on the
7 evidence as it is presented to you in this trial and on the
8 laws I instruct you during and at the close of the trial.

9 In just a moment the solicitor will make what is called
10 an opening statement in which the solicitor will explain to
11 you the issues in this case, or at least what the solicitor
12 thinks the issues are in the case. The attorney for the
13 Defendant may also make an opening statement, although he is
14 not required to do so. What the attorneys tell you during
15 their opening statements are not evidence in this case. It
16 is only their contention as to what the issues are. The
17 evidence in this case will be presented to you by the
18 testimony of sworn witnesses and from this witness stand and
19 any exhibits or documents that may be introduced into
20 evidence. From time to time during this trial you may hear
21 one of the lawyers say, Your Honor, I believe we have a
22 question of law or matter of law to discuss with you or,
23 Your Honor, may be approach the bench, or sometimes I might
24 find it necessary to excuse you from the courtroom for a
25 short period of time so that the attorneys and I can discuss

1 a matter of law outside your presence. The reason for this
2 is because you're the judges of the facts in this case and
3 sometimes when I'm discussing matters of law with the
4 attorneys it may be necessary for me to make some comment as
5 to the facts in connection with ruling whether or not a
6 particular law applies. I'm not supposed to tell you what I
7 think the facts are, so I will excuse you from the courtroom
8 while these discussions take place so that in no way will
9 you be influenced by anything that I might say or do in
10 connection with the facts. In determining what the true
11 facts are in this case you must decide whether or not the
12 testimony of the witnesses is believable. It will be my
13 responsibility to rule as a matter of law as to whether
14 certain testimony is admissible at all or not. Once the
15 testimony is admitted, whether or not you believe it is
16 solely, solely for you to determine. In deciding whether to
17 believe a witness you have the right to consider the
18 interest of any witness, the bias of any witness, the
19 prejudice of any witness, the opportunity for the witness to
20 have seen the matters and things about which the witness may
21 testify and the way the witness acts on the witness stand.
22 You have a right to consider anything that is in the record
23 that will help you evaluate the testimony of the witnesses.
24 That means that it is your duty to pay close attention to
25 these witnesses, to observe the witnesses, to listen to the

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1 witnesses, and to pay close attention to the attorneys and
2 to the court. Don't let your thoughts wander but give
3 strict attention to the testimony in this case so that at
4 the end of all the testimony, after arguments of counsel and
5 charge on the law by the court you will then be in a
6 position to determine what the true facts are and to apply
7 the law to those facts and thus render a verdict.

8 Now, Madame Forelady, it is your added duty to preside
9 in the jury room and be the jury's spokesperson here in
10 court. It will also be your duty to write the verdict. But
11 I will give you further instructions about that at the
12 conclusion of the case.

13 Now, at this time I'm going to ask the State are there
14 any objections or exceptions to what I've just preliminarily
15 told the jury. From the State?

16 MR. SCOTT: None from the State, Your Honor.

17 THE COURT: The Defense?

18 MR. WISE: None from the Defense.

19 THE COURT: Now, at this time opening arguments will be
20 given. I want to tell you that we have excellent, excellent
21 attorneys for both sides in this case. Please pay very
22 close attention to their opening arguments. From the State.

23 OPENING STATEMENT

24 BY MR. SCOTT: Thank you, Your Honor. May it please
25 the court. Good morning. This case you all are here to

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1 hear today is about poison and it's about what's ended up
2 being a very, very unlucky day for Mr. Johnny Dobbins.
3 That's the Defendant sitting over here beside his lawyer and
4 he's charged with a number of crimes that all stem from
5 November 24th, 2011. That's the unlucky day I'm talking
6 about. Let me explain what I mean by that.

7 In Waterloo here in Laurens County there was a woman
8 named Shayla Gaines. Okay? Assaults her boyfriend at the
9 time. They get into some kind of fight. Has almost nothing
10 to do with this case, but let me tell you what happens. The
11 victim in that case called the Sheriff's Department. When
12 the Sheriff's Department arrives to speak with the victim
13 about this assault they say, well, where's Ms. Shayla
14 Gaines. The victim says she's gone. She left after she
15 roughed me up. They say, well, where is she. Well, she's
16 living at [REDACTED] in Waterloo, about two miles
17 down the road from where they were. What's law enforcement
18 going to do? They go after Ms. Shayla Gaines, the person
19 who just beat this fellow up. They need to question her.
20 They need to make an arrest. So they go to 102 Childs
21 Circle, about two miles away I think is what you're going to
22 hear the deputies say the distance is. [REDACTED]
23 happens to be a mobile home. It's a camper type pull
24 behind. At the time Johnny Dobbins was living in this
25 camper. You're going to hear from his landlord how he was

OPENING ARGUMENT-MR. SCOTT

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1 renting this camper out and that was his home.

2 The information law enforcement had was this Shayla
3 Gaines person was there, too. Okay? So that's the only
4 reason they were there. This is where his luck just kind
5 of, you know, runs out. But for this Shayla Gaines running
6 to that house law enforcement wouldn't have gone there. But
7 what happens when they get there? There just an
8 overwhelming smell of methamphetamine being produced. And
9 these officers are going to be here today to describe that
10 smell. It's one of these odors that you -- it's very
11 distinguished. Very distinguishable. The problem with
12 these things, when you smell it once you won't forget it.
13 As they get to the doorstep of this camper this is what
14 they're hit with. Okay. So they knock on the door because
15 now there's two things they're investigating. They're
16 trying to find Ms. Shayla Gaines, but also is somebody
17 cooking meth in this camper.

18 It's about 3:21 a.m., ladies and gentlemen, so it's the
19 middle of the night, early morning hours of November 24th.
20 Knock on the door and Johnny Dobbins comes to the door.
21 Okay? Law enforcement officer Devin Hodges who's sitting
22 right here, he's going to testify to you that he asked Mr.
23 Dobbins is Shayla Gaines here. Immediately upon hearing
24 that name Mr. Dobbins slammed the door in their face. Okay?
25 What's an officer going to do? They're going to go in after

OPENING ARGUMENT-MR. SCOTT

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1 him. What's he doing? Is he hiding somebody? By the way,
2 what's that meth smell?

3 They go inside the house looking for Ms. Shayla Gaines.
4 She's not there. So the information they have is she was
5 going to be there. She wasn't. But Mr. Dobbins was with a
6 meth lab.

7 Again, this is all going to be explained to you later,
8 but I don't know how many of you are familiar with meth labs
9 and meth production. It's the poison I was talking about.
10 Pretty much meth has done to the rural south what crack in
11 the '80s did to urban areas. Just complete destruction of
12 peoples' lives.

13 MR. WISE: Your Honor, I would object to that comment
14 of any problems with drugs. I think it takes the jury's
15 attention away from the facts of this case.

16 THE COURT: Well, this is opening and I've instructed
17 the jury that the opening arguments are not evidence. It's
18 just a statement of position. You may proceed.

19 MR. SCOTT: Again, meth is poison. Led to complete
20 destruction of peoples' lives. And that's why this case is
21 important. I want you to hear that. I want you to hear
22 that this meth is poison. What else do you call something
23 that's made up of lye, Coleman fuel, liquid Drain-O,
24 ammonium nitrate. You mix all this together it's highly
25 combustibile. People put it in their bodies. It leads to

OPENING ARGUMENT-MR. SCOTT

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1 them -- all throughout this man's camper is methamphetamine
2 byproduct and an active lab. These officers who were there
3 are going to talk to you about that. They're going to tell
4 you everything they found in there. Okay?

5 Six baggies -- or six containers containing
6 methamphetamine throughout the camper. The active one pot
7 cook lab and -- we're going to have officers explain that to
8 you. But essentially it's a chemical reaction. You take
9 various ingredients you find in the shed, maybe under your
10 sink, the kitchen sink, but put together there's a chemical
11 reaction that forms this methamphetamine these people take
12 and get high on. Various other prescription drugs found
13 throughout the camper.

14 Now, from all these drugs and this lab Mr. Dobbins is
15 charged with possession with intent to distribute
16 methamphetamine, because there was various amounts of meth
17 found in various locations. There were digital scales in
18 order to weigh out the meth. There were -- there was a one
19 pot cook lab going in the bathroom I was telling you about.
20 He's also charged with manufacturing meth because of that
21 and charged with unlawful disposal of methamphetamine waste.
22 Again, the stuff is highly combustible. It contaminates the
23 ground water, so we've made disposing of it illegal as well.
24 He's charged with that. They found it in his trash can in
25 the bathroom. This one pot cook method. Various

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1 prescription drugs were found that he had no prescription
2 for or was not supposed to possess. He's charged with
3 unlawful possession of prescription drugs as well.

4 I was introduced earlier. My name is Dale Scott. I'm
5 a prosecutor here in the Eighth Circuit. That's Newberry,
6 Laurens, Greenwood and Abbeville County. I represent the
7 State along with Mr. Neely here. Specifically today I'm
8 representing Laurens County and involved in picking you guys
9 to be our 12 jurors. We were able to identify we think, the
10 Defense thinks, a group of people who are going to be fair
11 to both sides. I'm not asking you to make any decisions
12 based on emotion or anything like that. Your decision is
13 going to have to come from evidence we produce. Okay? The
14 burden is on us. We fully accept that. In every criminal
15 case across the U.S. the burden is on the prosecution to
16 make their case and make it beyond a reasonable doubt.
17 We're going to put witnesses up here who were there that day
18 and who saw this dope, saw Mr. Dobbins. We're going to see
19 what they got from the camper. Pictures and actual physical
20 evidence, the dope. And you're going to have to make a
21 common sense decision. It's going to be in your hands at
22 the end of this trial and we're just going to rely on you
23 guys' common sense and your rational logical thinking,
24 because when you pick a jury what you guys represent is kind
25 of a collective consciousness of this county. Everybody

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1 here would be a resident of Laurens County. If Laurens
2 County was a living, breathing, thinking being you would be
3 its consciousness. What does Laurens County think is right
4 and what do they think is wrong. So at the end of this
5 thing we're going to give it to you and we're going to ask
6 you to find him guilty and our burden again is going to be
7 reasonable doubt. You're going to be hearing that quite a
8 few times.

9 Let me explain just briefly what reasonable doubt is.
10 The judge is going to instruct you the burden is on the
11 State to prove their case beyond a reasonable doubt.
12 Dobbins doesn't have to prove anything. We do. We accept
13 that. We have to prove to you this case in such a way that
14 you are firmly convinced that he is guilty of these crimes
15 he's charged with. Now, he's -- they're going to say, well,
16 if you have any doubt you've got to cut him loose. You've
17 got to find him not guilty, and that's incorrect. The judge
18 will tell you there are almost -- there's almost nothing in
19 this world that you can know with one hundred percent
20 certainty and have no doubt about, and beyond a reasonable
21 doubt doesn't require that. You can have some doubt
22 absolutely. A question here, a question there, but it's got
23 to be reasonable. Okay? I think the key word and thing
24 that's easiest to understand is I'm firmly convinced of it,
25 and if you're firmly convinced that Mr. Dobbins is guilty

OPENING ARGUMENT-MR. WISE

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1 then you should find him guilty.

2 I'm going to sit down now and we're going to produce
3 our evidence and we're going to count on you to be attentive
4 and give us a fair shot and give Mr. Dobbins a fair shot.
5 But at the end of this trial we're going to ask you to find
6 him guilty of these charges he's been indicted with. Thank
7 you.

8 THE COURT: Thank you, Solicitor. Mr. Wise?

9 OPENING STATEMENT

10 BY MR. WISE: Madame Forelady and ladies and gentlemen
11 of the jury, I'm going to do a comment I've probably never
12 done in forty years of practicing law. I got up this
13 morning and got ready to come over here and I thought I had
14 plenty of time and so I was kind of just taking it easy
15 around the house, and I get over here almost to the
16 courthouse in Laurens this morning and I discovered for the
17 first time that I forgot to put a belt on. All right. It's
18 out. It's open. I'm not self-conscious about it anymore.
19 I don't worry about it anymore. Now, let's get straight on
20 this case and what it's about.

21 A friend of mine who is a judge said quite correctly
22 that the purpose of a trial is just one purpose, and that is
23 to determine can the State prove the case. And that's it.
24 Can the State prove the case beyond any and all reasonable
25 doubt. And that should be your focus in this case. Not

OPENING ARGUMENT-MR. WISE

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1 does he have to produce anything. He doesn't. Can the
2 State prove the case. The many things he said in the
3 indictments, and those indictments are not -- they're the
4 means by which we get to court. The means by which they
5 tell you what you're charged with and that's it. That's the
6 only real purpose they serve. But what I want you to know
7 about this case is listen to the judge's charge and listen
8 to what the burden of the State is. The burden on the State
9 is not just to prove was there methamphetamine being made in
10 that camper or that trailer. That's not the burden. The
11 burden on the State isn't to prove was there some
12 methamphetamine. That is their burden for proving of the
13 charge of possession of methamphetamine. But the burden on
14 the State is to prove that methamphetamine was being made
15 for other than personal use. In other words, for
16 distribution. For selling. That's why we call it
17 manufacturing meth. That's what the burden on the State is.
18 We also have a charge of possession with intent and the
19 burden on the State isn't to prove the possession of a
20 certain amount of methamphetamine. The burden on the State
21 again is to prove that there was an intent to sell and
22 distribute that methamphetamine. That's what the burden on
23 the State is. That's the burden they have to prove beyond
24 any and all reasonable doubt. And if they don't meet that
25 standard by clearly -- by proof beyond a reasonable doubt,

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1 then the verdict -- the proper verdict is either a lesser
2 charge or not guilty. You have two people in that trailer.
3 They have to prove who possessed these drugs. They have to
4 prove they were possessed, as I said, with intent to
5 distribute. They have to prove they were possessed or
6 manufactured for the purpose of distribution, and that's
7 what you have to look at. And this is going to be a
8 circumstantial evidence case, and circumstantial evidence
9 cases or any kind -- you know, it may look good, but does it
10 meet the standard of proof beyond a reasonable doubt. And I
11 think when you get to the conclusion of this case and you
12 look at all the evidence in this case you'll say that they
13 haven't met that proof beyond any and all reasonable doubt.
14 Thank you.

15 THE COURT: Thank you, Mr. Wise. Is the State ready?

16 MR. NEELY: Yes, sir.

17 THE COURT: Call your first witness.

18 MR. NEELY: The State would call Devin Hodges.

19 DEVIN HODGES, having been first
20 duly sworn, testified as follows:

21 THE COURT: Have a seat.

22 DIRECT EXAMINATION

23 BY MR. NEELY:

24 Q Officer, if you would state your full name for the
25 record.

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- 1 A Devin B. Hodges.
- 2 Q Officer Hodges, who do you work for?
- 3 A Laurens County Sheriff's Office.
- 4 Q How long have you worked there?
- 5 A Since January 4th, 2010.
- 6 Q So were you working there the night of November 24th --
- 7 A I was.
- 8 Q -- 2011?
- 9 A Yes, sir.
- 10 Q And did you end up at [REDACTED] that night?
- 11 A I did.
- 12 Q How did you end up there?
- 13 A We had received a call from [REDACTED] which is in
- 14 Waterloo --
- 15 MR. WISE: I'm would object, Your Honor, to hearsay.
- 16 THE COURT: Just as a result of the call what did you
- 17 do. You can't quote what the -- the details of the call.
- 18 THE WITNESS: Yes, sir.
- 19 A During the course of the previous call we ended up at
- 20 [REDACTED] to follow up on an investigation in order
- 21 to locate Shayla Gaines who we intended to affect an arrest
- 22 on. During this time we ran into some other situation.
- 23 Q All right. So when you arrived at [REDACTED]
- 24 you were looking for Ms. Gaines?
- 25 A Yes, sir.

DEVIN HODGES-DIRECT EXAMINATION

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1 Q And what happened when you walked up to the door?

2 A When we were walking up to his camper we noticed an
3 overwhelming smell of what we knew from previous experience
4 to be somebody manufacturing methamphetamine.

5 Q Officer Hodges, if you would, try to describe that
6 smell for the jury. I know most members of the jury have
7 probably never smelled anything like that.

8 A Well, it's kind of a mix of Coleman fuel, if you've
9 ever smelled that, mixed with some other very strong
10 chemicals. It burns your nose. It takes your breath,
11 depending on what stage it's in, and it's very unpleasant.
12 Once you smell it you will never forget it.

13 Q Is there any kind of smell that you would equate with
14 it?

15 A It's similar to a very strong urine smell and -- but it
16 kind of goes above and beyond that. It just -- that's my --
17 the best way to explain it, in my opinion.

18 Q Is it fair to say it's very noticeable?

19 A Yes, sir. Absolutely.

20 Q Very unpleasant?

21 A Absolutely.

22 Q So when you walked in the door you noticed a smell?

23 A Yes, sir.

24 Q Did you knock on the door?

25 A We did.

DEVIN HODGES-DIRECT EXAMINATION

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- 1 Q And what happened?
- 2 A We knocked several times. At this point Mr. Johnny
3 Dobbins come to the door. We advised him we were there to
4 locate Ms. Shayla Gaines, and as soon as said that he
5 slammed the door in our face.
- 6 Q So Mr. Dobbins -- is Mr. Dobbins in the courtroom?
- 7 A Yes, sir. He's sitting right over there.
- 8 Q So he slammed the door in your face. What did you do
9 them?
- 10 A Well, at that point we figured that Ms. Gaines was in
11 there, maybe he was trying to hide her, so we made entry
12 into the camper.
- 13 Q And when you opened the door did the smell get worse?
- 14 A It did. It was increasingly more powerful the further
15 we got into his camper while we were looking for Ms. Gaines.
- 16 Q Did you search for Ms. Gaines in the camper?
- 17 A We did.
- 18 Q Did you find her?
- 19 A We did not.
- 20 Q Who did you find in the camper?
- 21 A Well, we found Mr. Johnny Dobbins and his co-defendant,
22 Sandy Ann Wyatt.
- 23 Q. And Ms. Wyatt, where was she?
- 24 A She was in the far back in the bedroom of the camper
25 asleep.

DEVIN HODGES-DIRECT EXAMINATION

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1 Q She was asleep?

2 A She was.

3 Q Did you wake her up?

4 A We did.

5 Q Whenever you entered looking for Ms. Gaines did you
6 find anything else in the camper?

7 A We did. In plain view sitting on the counter there
8 were multiple items, a byproduct of methamphetamine, some
9 scales, a white powdery residue. There was a little
10 methamphetamine on the counter. And while we were looking
11 for Ms. Gaines, in the bathroom sitting on the toilet was a
12 plastic bottle that's commonly used for manufacturing. You
13 could tell that it was still in the process of making this
14 stuff.

15 Q How could you tell?

16 A Through previous experience. It was smoking. It had
17 the black lithium in it. And from our experience that's
18 what -- that's what it is.

19 Q So when you say a byproduct of meth, that's just the
20 meth itself?

21 A That's the meth itself. Yes, sir.

22 Q And that was open and out in the counter?

23 A Yes, sir.

24 Q Did you find more meth?

25 A We did. It was all through the camper.

DEVIN HODGES-DIRECT EXAMINATION

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- 1 Q Now, whenever you made this initial sweep for Ms.
2 Gaines and noticed all these things did you get Mr. Dobbins
3 to do anything?
- 4 A Well, after we went into the camper and realized that
5 she wasn't there we then went back out and asked Mr. Dobbins
6 to sign a consent to search form at that time, and which he
7 did sign.
- 8 Q So he signed a consent to search form?
- 9 A Yes, sir.
- 10 Q And this was after you'd been there looking for Ms.
11 Gaines?
- 12 A Yes, sir.
- 13 Q And noticed all this stuff just sitting out there?
- 14 A Yes, sir.
- 15 Q Did you see him sign that form?
- 16 A I did not. Corporal Moyer did.
- 17 Q So when you went in looking for Ms. Gaines -- when you
18 went in first you were looking for Ms. Gaines?
- 19 A Yes, sir.
- 20 Q And after he signed the consent, what were you looking
21 for?
- 22 A Well, after he signed the consent to search form and we
23 had already knew that there was stuff out in the open that
24 he was dealing with, illegal narcotics, then we went in and
25 searched further to see if there's anything else that we

DEVIN HODGES-DIRECT EXAMINATION

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1 could associate with what he had out on the counter in the
2 bathroom.

3 Q So you're looking for something that was more than just
4 the stuff that was in plain view?

5 A Yes, sir. Yes, sir.

6 Q I'm going to show you some pictures. I'm just going to
7 ask you to look at these pictures real quick. Do you
8 recognize these?

9 A Yes, sir.

10 Q And what are those pictures of?

11 A This is a picture of his camper. The front with the
12 door. It's a picture of the camera that he had that was
13 hooked to the side of his camper. The camera itself was
14 contained in a birdhouse so he could see us from the camera
15 as we approached his house. Of course, this is a picture of
16 the TV itself that it was hooked to.

17 Q So he had a security camera basically outside his
18 camper?

19 A He did.

20 THE COURT: Officer Hodges, could you sit a little
21 close to that microphone, please, sir. If you can squeeze
22 in there.

23 THE WITNESS: Yeah.

24 THE COURT: Thank you. Appreciate it.

25 A So in this picture there's a mirror containing a white

DEVIN HODGES-DIRECT EXAMINATION

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1 powdery substance that we could recognize, as well as the
2 batteries and a plastic bottle. In this picture we have a
3 dryer that's used for drying it up pseudoephedrine pills as
4 well as a scale and some other narcotics and other
5 prescription pills. That was a bottle that they didn't have
6 -- or shouldn't have had. In this picture we have another
7 plastic bottle with a tube coming out which we know from
8 previous experience is what they use to manufacture
9 methamphetamine with. As well as this picture we have a
10 Coleman camp fuel can kind of shoved up underneath the
11 kitchen sink. And this was the bottle itself that was still
12 in the process of making methamphetamine in the bathroom
13 that we went into. In this picture we have a bottle of
14 hydrogen peroxide and apparently some regular plastic
15 gloves. As well as an ashtray with a pipe commonly used to
16 ingest methamphetamine. We have a small baggy that
17 contained a white powdery substance that was also inside the
18 camper. As well as he had a large amount of cash on him.
19 Mr. Dobbins did. In this picture we just had some more of
20 the narcotics as well as the bag and everything that was
21 located as well as cash. This picture has some of the
22 tubing they used to shove down in the cap of of the bottle
23 in order for it to get out and adjust that. In this picture
24 we have a heat source that often is commonly used to heat it
25 up so you get everything going, as well as the same thing in

DEVIN HODGES-DIRECT EXAMINATION

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1 this picture. In this picture we have a bottle of lye as
2 well as this one they use in manufacturing. In this picture
3 we have a scale, a flashlight, as well as more narcotics.

4 Q Do all these pictures truly and accurately represent
5 inside that camper that night?

6 A Absolutely.

7 Q And the outside of that camper?

8 A Yes, sir.

9 MR. NEELY: Your Honor, at this time I'd like to
10 introduce these pictures as evidence as State's Exhibits 1
11 through 20.

12 THE COURT: Okay. What says the Defense?

13 MR. WISE: No objection.

14 THE COURT: All right. Without objection will be
15 marked as State's Exhibits 1 through 20 into evidence.

16 (Whereupon, State's Exhibits 1-20 were entered into
17 evidence.)

18 MR. NEELY: And after that's entered into evidence, I'd
19 just like to, if I can, Your Honor, publish some pictures to
20 the jury.

21 THE COURT: Certainly.

22 Q Where was this picture taken from?

23 A Inside the camper.

24 Q Inside the camper?

25 A Yes, sir.

DEVIN HODGES-DIRECT EXAMINATION

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- 1 Q Where in the camper?
- 2 A I believe that was in the livingroom.
- 3 Q And what is that white powdery substance on?
- 4 A A mirror.
- 5 Q Is there any reason for that?
- 6 A Well, normally they use that to separate it out so they
- 7 can adjust it. It's a smooth surface.
- 8 Q They can adjust it?
- 9 A Well --
- 10 Q What do you mean by adjust it?
- 11 THE COURT: Officer Hodges, we're going to have to --
- 12 the court reporter is having a hard time understanding you,
- 13 or hearing you rather. If you could help, Mr. Bolt. We
- 14 need to -- there you go. That might help.
- 15 Q And when you're referring to a one pot is this what
- 16 you're referring to?
- 17 A Yes, sir.
- 18 Q And when you refer to a lab is this what you're
- 19 referring to?
- 20 A Yes, sir.
- 21 Q This is a lab?
- 22 A Yes, sir.
- 23 Q Just a couple of things I forgot to clear up earlier
- 24 on, so we need to step back. [REDACTED] that is in
- 25 Laurens County?

DEVIN HODGES-CROSS-EXAMINATION

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1 A It is.

2 Q And that's in Waterloo?

3 A Yes, sir.

4 Q And when you were going there to arrest Ms. Shayla
5 Gaines, what was she going to be arrested for?

6 A She was going to be arrested for assault third.

7 Q Assault third?

8 A Yes, sir.

9 Q And the victim of that assault, where is he?

10 A He was -- he was at his residence that night, but he is
11 now deceased.

12 MR. NEELY: That's all I have. Please answer any
13 questions Mr. Wise has for you.

14 THE COURT: Okay. Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. WISE:

17 Q This Exhibit 9, this bottle that was found, have you
18 still got that bottle?

19 A No, sir. I never took possession of that bottle.

20 Q Do you know if it went to SLED for analysis or not?

21 A It did.

22 Q All right. And then you -- you said you found some
23 baggies with some residue of methamphetamine in them?

24 A We found some baggies that had white powdery substance
25 and it field tested positive for methamphetamine.

DEVIN HODGES-CROSS-EXAMINATION

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1 Q Did you send those -- I mean, did you personally send
2 those to SLED or somebody else?

3 A No, sir. I didn't send any of those to SLED.

4 Q Okay. And you found some baggie with, I believe, just
5 looked like a residue in them?

6 A I believe there may have been one.

7 Q May have what?

8 A I believe there may have been one or two, I think. I
9 know that most of them were -- had quite a bit of substance
10 in them.

11 Q All right. There may have been one or two with just a
12 residue in it? Is that what you're saying?

13 A Maybe.

14 Q All right. Where it indicates there had been something
15 in it earlier that tested positive for methamphetamine,
16 correct?

17 A Yes, sir.

18 Q Okay. And you found, in Exhibit 4, that's what field
19 tested positive for methamphetamine. That wasn't in a bag.

20 A It did. But, yes, sir, this was laying out on the --

21 Q Laying outside?

22 A Right.

23 Q Right. In preparation for use, or do you know?

24 A I don't know.

25 Q Okay. And the pipe is also something that's commonly

DEVIN HODGES-REDIRECT EXAMINATION

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1 used to smoke methamphetamine? You can smoke it?

2 A It is.

3 Q Is that correct?

4 A Yes, sir.

5 Q Do you know anything about making methamphetamine?

6 A No, sir. I'm not an expert on that.

7 Q So you don't know how much of ingredients go in?

8 A No, sir. I don't.

9 Q Did you find any other paraphernalia for using meth
10 other than that pipe, or do you remember?

11 A I'm not sure.

12 MR. WISE: Thank you.

13 THE COURT: Any redirect?

14 MR. NEELY: Just limited, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. NEELY:

17 Q You didn't gather up any of these drugs and materials?

18 A No, sir. I didn't touch anything.

19 Q That's not what you do?

20 A That's right. We're -- we're a preliminary type thing.
21 We go in and make sure the scene is secure. After we see --
22 we see that we have products that need special attention
23 then we call narcotics people.

24 Q And would you say that meth needs special attention?

25 A Absolutely.

NICK MOYE-DIRECT EXAMINATION

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1 Q Is it a dangerous circumstance?

2 A Yes. It's very dangerous.

3 Q So that's when you call somebody else to help --

4 A That's right. That's right.

5 MR. NEELY: Thank you, Your Honor.

6 THE COURT: Any recross?

7 MR. WISE: None.

8 THE COURT: You can step down, sir. Thank you for your
9 testimony.

10 OFFICER HODGES: Yes, sir.

11 THE COURT: Solicitor, how long do you think your next
12 witness will take? Trying to determine about our morning
13 break.

14 MR. NEELY: Your Honor, we can call a witness that's a
15 very short witness.

16 THE COURT: Okay, all right. Let's call one more and
17 then take a break after that. Call your next witness.

18 MR. NEELY: The State would call Officer Nick Moyer.

19 THE COURT: Come around, please, sir.

20 NICK MOYE, having been first duly
21 sworn, testified as follows:

22 THE COURT: Your witness.

23 DIRECT EXAMINATION

24 BY MR. NEELY:

25 Q Officer Moyer, could you introduce yourself.

NICK MOYE-DIRECT EXAMINATION

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1 A My name is Nick Moye with the Laurens County Sheriff's
2 Office.

3 Q How long have you been working there, Officer Moye?

4 A A little over five years. I started back in 2008.

5 Q Were you working there November 24th, 2011?

6 A I was.

7 Q Did you end up at [REDACTED] that night?

8 A I did.

9 Q You heard Officer Hodges' testimony. Is that how it
10 happened?

11 A Yes, sir.

12 Q Did you -- excuse me. Did you take the consent to
13 search form? Did you sign the consent to search form that
14 night?

15 A I did. I did when Mr. Dobbins -- after the deputy made
16 entry into the residence, and at that point Mr. Dobbins was
17 detained due to the items that were seen. And instead of
18 obtaining a search warrant we also use this form right here
19 which the homeowner gives us the written consent to search
20 their property.

21 Q Is that your signature right there?

22 A It is.

23 Q And is that Johnny Dobbins' signature right there?

24 A That is.

25 Q And just point a clarification. It says location [REDACTED]

NICK MOYE-CROSS-EXAMINATION

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- 1 [REDACTED], Waterloo, South Carolina 29384 under
2 location, and then down here it says [REDACTED].
3 Is that just a scrivener's error?
4 A Could have been.
5 Q But it's [REDACTED]
6 A Yes, sir. It's [REDACTED]
7 Q You just got it put down wrong in the second part?
8 Does that matter for the consent to search? Did he consent?
9 A He did give me consent in writing and verbally that
10 night.
11 MR. NEELY: Your Honor, at this point I'd like to
12 introduce this as State's Exhibit Number 21.
13 MR. WISE: Let me see it one second.
14 THE COURT: Any objection?
15 MR. WISE: No objection.
16 THE COURT: All right. Without objection it'll be
17 entered into evidence as State's Number 21.
18 (Whereupon, State's Exhibit 21 was entered into
19 evidence.)
20 Q And just going kind of back over some of Deputy Hodges'
21 testimony. When he opened the door, was there a smell?
22 A I could smell the odor, but I was not at the door when
23 all of the events unfolded.
24 Q Okay. So you came in after?
25 A Yes, sir.

NICK MOYE-CROSS-EXAMINATION

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1 Q How long after?

2 A Once they said that the door was slammed in their face
3 I immediately -- which I was in the back of the trailer, but
4 I began to look for a possible escape route for the suspect
5 that we were looking for.

6 Q And that suspect was?

7 A Shayla Gaines.

8 MR. NEELY: Thank you, Officer. Please answer any
9 questions Mr. Wise has for you.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. WISE:

13 Q So how many officers showed up to arrest Shayla Gaines?

14 A Initially four.

15 Q Four of you. And how many cars?

16 A There were four cars.

17 Q Four cars. And this was for a simple assault and
18 battery?

19 A Yes, sir.

20 Q To be tried in magistrate's court?

21 A At the time it was not my case. I was just there
22 assisting Deputy Hodges.

23 Q Okay. And Mr. Dobbins, you asked him to sign that form
24 and he signed it?

25 A Yes, sir.

MARLON HIGGINBOTHAM-DIRECT EXAMINATION

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1 Q Okay. And you didn't seize any evidence or take any
2 evidence?

3 A No, sir. I did not.

4 MR. WISE: Okay. Thank you.

5 THE COURT: Any redirect?

6 MR. NEELY: None from the State, Your Honor.

7 THE COURT: You can step down, sir. Thank you for your
8 testimony. All right. Ladies and gentlemen, we're going to
9 take about a 15 minute morning break. I would remind you
10 and caution you not to discuss this case among yourselves,
11 and we'll see you back in about 15 minutes.

12 (Whereupon, the court took a brief recess from 10:21
13 a.m. to 10:50 a.m.)

14 THE COURT: Solicitor, are we ready to start back?

15 MR. NEELY: Yes, sir, Your Honor.

16 THE COURT: The Defense ready?

17 MR. WISE: Ready.

18 THE COURT: Okay. Let me just mention something to
19 you. I need to be out of here for lunch no later than
20 12:15, so let's just kind of -- I mean, if we -- if we
21 adjourn for lunch earlier than that, that's fine. But it
22 can't be later than 12:15 today. Okay?

23 MR. NEELY: Yes, sir.

24 THE COURT: All right. Bring the jury in, please.

25 (Whereupon, the jury entered the courtroom at 10:53 a.m.)

MARLON HIGGINBOTHAM-DIRECT EXAMINATION

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1 THE COURT: Okay. Let the record reflect that the jury
2 is back in. And, Madame Forelady, you're sitting in the
3 right seat. And the jury has indicated they need for all
4 the lawyers to speak up a little bit. So with that said,
5 the State ready? Call your next witness.

6 MR. NEELY: Thank you, Your Honor. The State would
7 call Officer Marlon Higginbotham.

8 THE COURT: Okay. Come around, sir.

9 MARLON HIGGINBOTHAM, having been
10 first duly sworn, testified as follows:

11 THE COURT: Officer, state and spell for the court
12 reporter your last name, please.

13 THE WITNESS: Higginbotham, H-I-G-G-I-N-B-O-T-H-A-M.

14 THE COURT: All right. You may proceed, Solicitor.

15 MR. NEELY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. NEELY:

18 Q Officer Higginbotham, where are you employed?

19 A Laurens County Sheriff's Office.

20 Q How long have you been employed there?

21 A Fourteen years.

22 Q Were you employed there on November 24th, 2011?

23 A Yes.

24 THE COURT: Sit up a little closer to the microphone,
25 please, sir.

MARLON HIGGINBOTHAM-DIRECT EXAMINATION

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1 THE WITNESS: Is that better?

2 THE COURT: Yeah, that's good.

3 Q Did you have occasion to end up at [REDACTED] in
4 Waterloo that night?

5 A I did.

6 Q And how did you end up there?

7 A I had spoke to one of the deputies, Deputy Hodges,
8 about a case that he was working in reference to an
9 assault. He advised me that the suspect resided at [REDACTED]

10 [REDACTED] --

11 MR. WISE: Objection, Your Honor. That would be
12 hearsay.

13 THE COURT: Okay. Well, I think that witness has
14 already testified and it's just kind of going back over what
15 he covered under on direct. So I'll overrule the objection.
16 You know, if you get beyond something that he did not
17 testify to then certainly Mr. Wise has the right to renew
18 his objection and we'll deal with it at that time.

19 MR. NEELY: Certainly, Your Honor.

20 A He advised me he was searching for a suspect, Shayla
21 Gaines. She resided at [REDACTED] He wanted
22 some assistance in trying to apprehend her.

23 Q So did you go to [REDACTED]

24 A Yes, we did.

25 Q And did you go up to the door with Deputy Hodges?

MARLON HIGGINBOTHAM-DIRECT EXAMINATION

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- 1 A I did.
- 2 Q And what happened then?
- 3 A Knocked on the door. Mr. Dobbins responded to the
- 4 door. Deputy Hodges advised that we were looking for
- 5 Shayla Gaines. Upon his observance of the officers out
- 6 there, slammed the door shut. At which time exigent
- 7 circumstances arise to us thinking that she might be in
- 8 there trying to conceal herself or he might be trying
- 9 to conceal her. For everybody's safety we made entry.
- 10 Q After you made entry -- what was the first thing you
- 11 remember about making entry?
- 12 A As I went toward the back of the home I could see a bag
- 13 of white powdery substance on the stove to the right.
- 14 As I went back to the back of the residence there was
- 15 an individual laying back on the bed.
- 16 Q And was there anything with this individual?
- 17 A Yeah. There was a pipe laying next to her.
- 18 Q All right. And who would --
- 19 A A pipe commonly used to smoke methamphetamine.
- 20 Q Who was that individual again?
- 21 A Sandy Wyatt.
- 22 Q Sandy Wyatt. So there was a pipe by her head?
- 23 A Correct.
- 24 Q And was there other -- where was the methamphetamine
- 25 located throughout the trailer?

MARLON HIGGINBOTHAM-DIRECT EXAMINATION

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- 1 A Methamphetamine was located several different places in
2 plan view. On the counter there was a baggy that appeared
3 to be methamphetamine. It was a white powder substance.
4 Also on a small -- I believe it was table in the livingroom,
5 like an end table, there was a mirror with a line of a white
6 powdery substance believed to be methamphetamine.
- 7 Q So it would be fair to say that there was
8 methamphetamine all over the trailer?
- 9 A Several areas of the trailer.
- 10 Q How big was the trailer?
- 11 A It was a camper.
- 12 Q Camper.
- 13 A I would say the camper was maybe 26, 28 foot.
- 14 Q So in reference to this courtroom about how big?
- 15 A Probably from here to that wall.
- 16 Q How many bathrooms were in that camper?
- 17 A Just one.
- 18 Q Just one. And is that one bathroom where you found the
19 lab?
- 20 A Correct. Exiting from the back bedroom where Ms. Wyatt
21 was, it could be seen right there on the toilet lid.
- 22 Q So there was a meth pipe with Ms. Wyatt?
- 23 A Correct.
- 24 Q And there was another meth pipe, I believe, next to an
25 ashtray; is that correct? I have a picture for you.

MARLON HIGGINBOTHAM-DIRECT EXAMINATION

108

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

2 THE COURT: Certainly.

3 Q Is that the kind of pipe you're talking about?

4 A Correct.

5 Q In your experience that's a pipe commonly used to smoke
6 meth?

7 A Yes.

8 Q Did you find anything else that was associated with the
9 meth when you were in the camper?

10 A There were several items in plain view, which through
11 my experience advised -- I advised the other officers that
12 there was an active lab at that house due to the plastic
13 bottle in the bathroom. Several other items of contraband
14 were seized throughout the residence. As to what exactly
15 they were up to this point in time I can't recall.

16 Q Do you recognize that item right there?

17 A Yes.

18 Q What is that item?

19 A It's a scale.

20 Q Do you recognize this?

21 A Cash.

22 Q Do you remember how much cash it was?

23 A It was a little over \$2,000.

24 Q You say it's over \$2,000 in cash, correct?

25 A Yes.

MARLON HIGGINBOTHAM-CROSS-EXAMINATION

109

1 Q The scales?

2 A Yes.

3 Q And meth all over the trailer?

4 A Correct.

5 Q And an ongoing lab in the one bathroom?

6 A Correct.

7 Q So what did you charge Mr. Dobbins with --

8 MR. WISE: Objection, Your Honor, what he's charged
9 with. That's just not relevant.

10 THE COURT: Right. Right.

11 MR. WISE: I mean, the indictments are the indictments.

12 THE COURT: Right.

13 MR. WISE: That would be an opinion from this officer
14 to which he's not entitled to give.

15 THE COURT: Right. I sustain the objection.

16 MR. NEELY: Nothing further from this witness, Your
17 Honor. Please answer any questions Mr. Wise has for you.

18 THE COURT: Any cross examination?

19 MR. WISE: Yes.

20 CROSS EXAMINATION

21 BY MR. WISE:

22 Q Did you seize the little scale in that picture?

23 A I believe the scales were possibly seized. I didn't do
24 collection of all the evidence.

25 Q Did you collect any of the evidence?

MARLON HIGGINBOTHAM-CROSS-EXAMINATION

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- 1 A No, I did not.
- 2 Q All right. So what you're saying is you saw
- 3 methamphetamine out -- or what allegedly was methamphetamine
- 4 out in State's Exhibit 4 on a mirror?
- 5 A Correct.
- 6 Q And that was -- where was that mirror found?
- 7 A I believe that was in the livingroom area.
- 8 Q All right. And then you found State's Exhibit 11,
- 9 which is this -- that little pipe. Is that one pipe or two
- 10 pipes in that picture?
- 11 A I did not find that pipe myself.
- 12 Q Did you see it?
- 13 A I can't recall at this point in time if I had saw that
- 14 pipe or not.
- 15 Q Okay. But you said there was one pipe in the bedroom
- 16 where Ms. Wyatt was?
- 17 A Correct.
- 18 Q Is that correct?
- 19 A Yes.
- 20 Q All right. Did you seize this bottle found in State's
- 21 Exhibit 9?
- 22 A I did not personally.
- 23 Q Okay. Well, what -- what did you seize?
- 24 A I did not take anything from the residence.
- 25 Q You didn't take anything?

MARLON HIGGINBOTHAM-RE-DIRECT EXAMINATION

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1 A No, sir. The techs are the ones that collect all the
2 evidence.

3 Q All right. So you found some -- some meth -- or you
4 saw some methamphetamine on a mirror ready for use
5 basically?

6 A Correct.

7 Q And then you found -- or did you see a little baggy
8 somewhere?

9 A There was a baggy on the counter.

10 Q On the counter where?

11 A On the kitchen counter.

12 Q On the kitchen counter.

13 A I guess you'd call it the kitchen area.

14 Q Okay. And did you see some empty baggies, too?

15 A I can't recall at this time.

16 MR. WISE: All right. Thank you.

17 THE COURT: Any redirect?

18 MR. NEELY: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. NEELY:

21 Q In your experience as an officer -- is it 14 years?

22 A Yes, sir.

23 Q Would you consider this a small meth lab or --

24 MR. WISE: Objection, Your Honor. I don't think that
25 he's qualified to answer that.

MARLON HIGGINBOTHAM-RE-DIRECT EXAMINATION

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1 THE COURT: Well, I think based upon his experience in
2 dealing with -- you may want to lay a little foundation as
3 far as what kind of experience he has related to meth labs,
4 and assuming foundation is laid I'll overrule the objection.

5 MR. NEELY: Thank you, Your Honor.

6 Q How many meth labs have you see in your 14 years as an
7 officer?

8 A I can't say exactly. I would say approximately close
9 to 100.

10 Q A hundred. Is meth a common problem in Laurens County?

11 A Very common.

12 Q A problem you deal with often?

13 A Very often.

14 Q Too often. So you -- how many -- you make entry into
15 you say hundreds estimate?

16 A Pardon me?

17 Q An estimate of hundreds of meth labs you've been in?

18 A I would say in the ballpark of a hundred.

19 Q Ballpark of a hundred. And when you go in these meth
20 labs do you ever retrieve anything?

21 A At times I have.

22 Q At times. But normally you call a meth lab cleanup
23 agent, correct?

24 A Correct. If it's -- if we run into chemicals that we
25 are not qualified to remove from the lab then techs are

MARLON HIGGINBOTHAM-RECROSS-EXAMINATION

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1 called. They are professional. They've been trained to
2 remove all different types of chemicals.

3 Q And in this case you had those chemicals?

4 A Correct.

5 Q So you're not qualified to remove them?

6 A Correct.

7 Q So who did you call?

8 A We called a meth tech, which would have been Sergeant
9 Veal and Lieutenant Sheldon.

10 Q So in your experience with about 100 meth labs. Would
11 you consider this a small meth lab or a larger meth lab?

12 MR. WISE: Same objection, Your Honor. There's no
13 basis.

14 THE COURT: Okay. So noted. I'll overrule the
15 objection. You may answer the question.

16 A I would consider it an average lab as to what we're
17 used to finding.

18 Q This is what you would consider like an average meth
19 lab?

20 A A production lab.

21 Q Production lab.

22 MR. NEELY: Thank you. That's all.

23 THE COURT: All right. Anything in re-cross?

24 RE-CROSS EXAMINATION

25 BY MR. WISE:

MARLON HIGGINBOTHAM-RECROSS-EXAMINATION

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- 1 Q Have you seen the analysis from those bottles?
- 2 A I have not.
- 3 Q So you don't know what was in those bottles?
- 4 A I do not.
- 5 Q Okay. So you don't know if there was any residue of
- 6 meth lab in those bottles or not, do you?
- 7 A I could not tell you at this point in time.
- 8 Q So all you're basing your opinion on is the fact that
- 9 you saw some little bit of meth in the trailer -- or the
- 10 camper?
- 11 A I wouldn't say a little bit of meth. A would say
- 12 enough meth for an intent to distribute.
- 13 Q You saw a little bit of meth in the trailer. You can
- 14 distribute anything, can't you?
- 15 A According to our law --
- 16 Q You can distribute anything, can't you?
- 17 A You sure can.
- 18 Q All right. Now, and there was a bottle in the trash
- 19 can; isn't that correct? Did you see that one?
- 20 A I believe I did.
- 21 Q That's in Exhibit 7, right? And you've not seen the
- 22 SLED report from that either, have you?
- 23 A I have not.
- 24 Q So you don't know what's in it, do you?
- 25 A No, sir.

MATTHEW VEAL-DIRECT EXAMINATION

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1 Q And without a SLED report you can guess, but you really
2 don't know, do you?

3 A I know it's commonly used in the manufacturing of
4 methamphetamine.

5 Q I understand. They may be commonly used, but without a
6 SLED report as to what's in that bottle, you're guessing?

7 A True.

8 MR. WISE: Okay. Thank you.

9 THE COURT: Anything further from this witness?

10 MR. NEELY: Not from the State, Your Honor.

11 THE COURT: Okay. Thank you for your testimony,
12 Officer. You can step down. Call your next witness.

13 MR. SCOTT: Your Honor, the State calls Matt Veal.

14 THE COURT: Come around, sir.

15 MR. SCOTT: We're going to set this screen up really
16 quick while --

17 THE COURT: Sure.

18 MATTHEW VEAL, having been first
19 duly sworn, testified as follows:

20 THE COURT: Can everyone on the jury see the screen
21 okay?

22 MR. SCOTT: Angle it.

23 THE COURT: Can you do that, Solicitor, just a little
24 bit? But make sure the witness can see it, too. Can the
25 witness see it?

MATTHEW VEAL-DIRECT EXAMINATION

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1 THE WITNESS: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. SCOTT:

4 Q Mr. Veal, have you stated your name yet?

5 A No, sir.

6 Q State your full name for the record.

7 A Matthew Veal, Sergeant of Laurens County Sheriff's
8 Office.

9 Q All right. How long have you been with the Sheriff's
10 Department?

11 A Seven years.

12 Q You are now a -- your rank is sergeant over at the
13 Sheriff's Department?

14 A Yes, sir. Sergeant, Narcotics Division.

15 Q Okay. What are your duties as sergeant of the
16 Narcotics Division?

17 A I conduct narcotics investigations. Also I am lab
18 certified through -- through the federal government as a lab
19 tech to dismantle and make and -- identify and dismantle a
20 meth lab.

21 Q Okay. You have to have special training in order to be
22 a lab tech for the Sheriff's Department?

23 A Yes, sir. In 2010 I went to a class in Meridian
24 Mississippi for clandestine lab awareness. Also in 2010 I
25 obtained a 52 hour certification in clan lab and weapons of

MATTHEW VEAL-DIRECT EXAMINATION

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1 mass destruction, which basically helps you identify and --
2 identify what labs are, different types of labs, and how to
3 properly dismantle those labs.

4 Q Okay. Is this like an ongoing training kind of thing?

5 A Yes, sir. We obtain recertification every year. 2011,
6 2012, and 2013 I obtained my recertification.

7 Q How many people over at the Sheriff's Department are
8 lab tech certified?

9 A There's five total; myself, Lieutenant Sheldon, Major
10 Hudson, Lieutenant Sharpton and Captain Coates.

11 Q Why can't anyone just go clean up a meth lab?

12 A Because of the hazards of the unknowns. One of the
13 ingredients of lithium is highly combustible. It's water
14 reactive. If water contacts it, it explodes. You have to
15 be able to identify it and properly handle it and dispose of
16 it properly.

17 Q You've been in narcotics all seven years?

18 A Four years. I've been in narcotics four years.
19 Sheriff's Office seven years.

20 Q All right. In those four years how many meth labs have
21 you responded to?

22 A 2010 I responded to roughly 120 labs. 2011
23 approximately 95 labs. 2012 approximately 93 labs. And so
24 far this year 45 labs. What we deem meth labs.

25 Q Over 300 --

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1 A Yes, sir.

2 Q -- labs you responded to. About how many have you
3 broken down as a lab tech?

4 A I can say that close to 200 I've been a part of and
5 helped dismantle and actually had to contact the other
6 folks, as in SLED, to come in and take away the chemicals
7 from these labs.

8 MR. SCOTT: Your Honor, I think at this time we're
9 going to offer Sergeant Veal as an expert in the
10 identification of clandestine meth labs.

11 THE COURT: Okay. Any examination of this witness, Mr.
12 Wise, concerning qualifications?

13 MR. WISE: Just a couple.

14 VOIR DIRE

15 BY MR. WISE:

16 Q How many times have you testified in court in this?

17 A This will be my third time.

18 Q Your third time?

19 A Yes, sir.

20 MR. WISE: I don't have an objection.

21 THE COURT: Okay. Do you have any -- no objection to
22 him being qualified --

23 MR. WISE: No.

24 THE COURT: -- as an expert? Okay. So qualified.

25 MR. SCOTT: Thank you, Your Honor.

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1 RESUMED DIRECT EXAMINATION

2 BY MR. SCOTT

3 Q November 24th, 2011.

4 A Yes, sir.

5 Q Were you on duty 3:21 a.m.

6 A I was one of the on-call investigators for the
7 clandestine lab team. Myself and Lieutenant Shelton was the
8 on-call.

9 Q All right. Did you receive a call to respond to 102
10 Childs Circle in Waterloo?

11 A Yes, sir. I did.

12 Q Okay. And did you respond?

13 A I did, along with Lieutenant Shelton.

14 Q What did you do when you got there?

15 A Found Lieutenant Higginbotham. He advised what he had
16 had and where some items were located in the residence. I
17 made sure that they obtained the consent to search warrant.
18 If we needed a search warrant I would obtain that.

19 Q Let me stop you real -- I'm sorry. Sorry to interrupt.

20 A That's all right.

21 Q Had anything been collected at this time?

22 A No, sir. What we tell our officers is that if they
23 locate anything that is possibly hazardous that they need to
24 stop and immediately get out of the residence, call us. I
25 send the lab techs, and we would be the ones to photograph

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1 and then remove those items.

2 Q What do you mean hazardous?

3 A As -- what they call a one pot is the ingredients mixed
4 together in that one pot. The lithium strips, the solvent
5 from the Coleman fuel, which is also flammable. If you mix
6 the lithium and you put water with it, it ignites -- it
7 makes a fire. And once that Coleman fuel ignited it could
8 be a bomb, so to speak. And we don't want our officers
9 picking that stuff up as in possibly adding water to it or -
10 - or making another chemical reaction to make that stuff
11 explode. So myself and Lieutenant Shelton, any other --
12 other officers, we're -- we're trained properly as to handle
13 that stuff and making sure it doesn't. Is disposed of.

14 Q What kind of safety precautions do you take before you
15 enter a building with these combustible type materials
16 you're describing?

17 A We use what we call a SCBA, a self-contained breathing
18 apparatus, or a respirator, due to the fact that chemicals
19 give off a smell. We also wear gloves. We just take proper
20 -- when you pick the items up you don't want to shake them.
21 You take the proper procedure in sitting them as far away
22 from anything and make sure that they're not contaminated or
23 anything. As far as they won't cause another chemical
24 reaction to keep -- keep producing the stuff.

25 Q Do you wear one of the HAZMAT suits or --

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1 A I do. It's a -- it's a -- I'm not sure of the name
2 brand of it, but it's a suit that -- it's not breathable.
3 It doesn't let any kind of chemicals in. It's kind of a
4 water proof suit that we wear.

5 Q Have you ever seen one of these one pot labs explode or
6 ignite?

7 A I have. Several cases where individuals have been
8 burned severely due to these one pots blowing up.

9 Q You mentioned the smell, and your suit that you wear
10 for protection, as well as your respirator. What are the
11 dangers of those fumes or the smell you're describing?

12 A Tests have been conducted that they cause cancer. Over
13 long exposure to those chemicals causes cancer. And
14 actually officers in California, some of the instructors
15 that instructed us, advised us that they had cancer from
16 being exposed to this stuff over a long period of time.

17 Q Okay. When you arrived on the scene I guess you
18 weren't wearing your suit, were you?

19 A No, sir.

20 Q Could you smell any of the odors?

21 A Immediately I smelled it.

22 Q All right. Was that something you recognize?

23 A Oh yes, sir.

24 Q Well, describe it for us.

25 A The smell is a -- is a strong urine smell. It's -- I'd

1 say if you had a -- I think one time I heard someone say
2 they -- like a litter box that hasn't been cleaned in a
3 while inside of like a paint shop is basically what it would
4 smell like. I mean, it's just an ungodly smell.

5 Q Like ammonia?

6 A Yes, sir.

7 Q All right. So you put your suit on, smell that odor,
8 and you're advised, I guess, of what you've responded to,
9 put your HAZMAT suit on and then you go inside the camper?

10 A Yes, sir.

11 Q This is -- what we have on the display is State's
12 Number 1. Do you recognize that?

13 A Yes, sir. That's the trailer that we entered and was
14 at [REDACTED]

15 Q Okay. Did you take that picture?

16 A Yes, sir. I did.

17 Q Was that one of your duties as, I guess -- I don't
18 know. Is that your duty as a lab tech or just --

19 A That's just -- being a narcotics investigator we take
20 photos of the outside of the residence and everything. And
21 all the evidence collected we make sure where it was
22 originally found.

23 Q Okay. So you're documenting --

24 A Documenting.

25 Q -- items you see?

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- 1 A Yes, sir.
- 2 Q And this is before they're moved?
- 3 A Yes, sir.
- 4 Q Okay. So tell me what happens when you go inside.
- 5 A Once we take this picture here we start -- I start
- 6 talking to Deputy Hodges and Lieutenant Higginbotham.
- 7 They're advising me where a possible one pot was in the
- 8 bathroom. They advised that there was some narcotics on the
- 9 counter kind of in the kitchen area. There was just -- they
- 10 said there was like baggies laying all over the place. And
- 11 we just -- I started at -- in front of the front door and
- 12 started taking pictures once we went in.
- 13 Q All right. In no order, this is State's Number 6.
- 14 What are we looking at in this picture?
- 15 A What we're seeing here is the tall black thing with the
- 16 clear -- with the white residue in it. That's a coffee
- 17 grinder. What they use that for is the ephedrine that they
- 18 buy from Walgreens or Rite Aid, they take those pills and
- 19 they put it in a coffee grinder. And what that does is it -
- 20 - it speeds up the process and to get the ephedrine out of
- 21 the -- out of the Sudafed. There are scales here. That's
- 22 used to weigh -- to get exactly the correct amount of the --
- 23 if they was to possibly distribute it. And over here is
- 24 just some pill bottles of unknown -- in this orange to the
- 25 right here was -- I believe it's an unknown pill. I believe

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1 we later identified it. I'm not sure exactly what it is
2 now.

3 Q Okay. Well, let me show you State's Number 33, State's
4 Number 32, State's Number 31, State's Number 34. Do you
5 recognize those?

6 A Yes, sir. Those are the bottles --

7 MR. WISE: Your Honor, that would be subject to my
8 previous position concerning those items.

9 THE COURT: Concerning pretrial matters?

10 MR. WISE: Right.

11 THE COURT: Okay.

12 MR. WISE: Thank you.

13 THE COURT: Certainly. So noted, Mr. Wise.

14 Q Those are items you seized?

15 A Yes, sir.

16 Q And is this how they appeared November 24th, 2011 when
17 you seized them?

18 A Yes, sir.

19 MR. SCOTT: The State offers State's 33 and 34 for
20 admission into evidence.

21 THE COURT: Okay. Mr. Wise?

22 MR. WISE: Again, subject to my position.

23 THE COURT: Sure. So admitted as State's 33 and 34
24 into evidence.

25 (Whereupon, State's Exhibits Number 33 and 34 were

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- 1 admitted into evidence.)
- 2 Q Okay. Let me show you State's 28, 29 and 30.
- 3 A Yes, sir.
- 4 Q What are those?
- 5 A Those are some of the -- what we believe was controlled
6 substances found inside -- found inside the residence in
7 those pill bottles.
- 8 Q You collected all these things?
- 9 A Yes, sir.
- 10 Q What did you do after you collected them?
- 11 A What we do is when we collect them we seal them into
12 evidence bags. Once we seal those into evidence bags we
13 take them back and conduct -- fill out what we call a BEST
14 kit. That is sealed and sent to SLED for analysis.
- 15 Q You don't take it to SLED. Where do you take it?
- 16 A I give it to -- what we do is we give it to our
17 evidence custodian, Deputy Jason Nelson. It's handed to him
18 by me, and then he puts it in -- keeps it in his possession
19 until he takes it to SLED.
- 20 Q Evidence bag -- let me show you State's Number 22.
- 21 A Yes, sir. That's the BEST kit that we -- when we seal
22 it the green glue top there is a -- when we fold it down,
23 and that's my signature on the bag there where I signed and
24 sealed it on that date.
- 25 Q Is this the actual BEST kit you used for the narcotics

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1 seized out of [REDACTED]

2 A It is.

3 MR. SCOTT: Okay. The State offers Number 22 for
4 admission into evidence as well.

5 THE COURT: Okay. Mr. Wise?

6 MR. WISE: Again, subject to my previous objection.

7 THE COURT: Sure. Sure.

8 Q Tell me about the evidence bag -- BEST kit, evidence
9 bag. I think that's -- is that what you called it?

10 A It's called a BEST kit.

11 Q Okay. Tell me about some of the features on that bag.

12 A What we have to do is we write our agency, which is
13 Laurens County Sheriff's Office, the date that we seal it.

14 I print my name and I sign it. And what we do there is we
15 take everything that we located that needs analysis we place
16 inside this bag with another sheet of the detailed item
17 list, and it is sealed and stuck into a manilla envelope
18 just like this one here. And, like I said, it's given to
19 Jason Nelson.

20 Q Okay. Tell me about the seal on the evidence bag.

21 A The seal here is once it's -- it has like a plastic
22 that you pull off this green glue here. Once you fold it
23 over it's -- you can't tamper with it. Once it's sealed,
24 it's sealed. Only the folks at SLED can open it. And they
25 open it by cutting at the bottom.

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- 1 Q All right. Anybody can open it, right?
- 2 A Yeah. Anybody can open it, but --
- 3 Q But it's tamper evident? Is that what it is?
- 4 A Yes, sir. It's tamper resistant.
- 5 Q You can't really open it and reseal it without --
- 6 A You can't open it and reseal it, no, without it
- 7 tearing.
- 8 Q Why do we have all these safety measures? Why do we
- 9 have the BEST kit?
- 10 A The BEST kit is for chain of custody and it's for -- so
- 11 that the items that we seized are the actual items that are
- 12 tested at SLED.
- 13 Q Okay. So you're the first part of this chain of
- 14 custody you're describing, right?
- 15 A Yes, sir.
- 16 Q Because you collect all this stuff and you put it in
- 17 that BEST kit, right?
- 18 A Yes, sir. I did.
- 19 Q I'm going to go over a few items we got photos of here
- 20 again. This is Number 15. What is relevant about this
- 21 picture?
- 22 A I'm sorry. I can't see that. It's a little blurry.
- 23 I'm sorry. What that there is a -- here in the -- in the
- 24 blue cardboard light thing is plastic tubing which is used
- 25 in the later process of what they call gassing off in

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1 another 20 ounce bottle. They take and drill a hole in the
2 top and they use that tube to help the gas escape from --
3 from that.

4 Q Is this what you're talking about?

5 A Yes, sir.

6 Q It's a plastic tube you're describing?

7 A Yes, sir.

8 Q All right. I'm going to skip a little bit. This is
9 State's Number 7. What is that?

10 A That's the trash can found inside the residence, and
11 what is showing there is, if you can see the blue top -- top
12 there, that is what we call an HCL generator. It's a
13 hydrochloric gas generator. And you can see the tubing
14 coming out of the top of that -- that. Yes, sir. Out of
15 the top of that bottle there.

16 Q Is that -- is that consistent with the tubing you see
17 in State's Number 15?

18 A Yes, sir.

19 Q Tell us again, what is gassing off. Tell us what that
20 is.

21 A Once the process of a one pot, the meth is in a liquid
22 state. They need it to get back in a powder state. And
23 what they'll do is they'll take salt and some type of
24 sulfuric acid and mix it together. And when you mix that
25 stuff together it goes off a gas. And they only need the

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1 gas off of that salt and that sulfuric acid. So what they
2 do is they stuck a tube through it and they stick it down
3 into the liquid -- the liquid meth, I guess you would say.
4 And what it does is it turns it back into a powder form, and
5 they need that -- that hydrochloric gas off of that -- off
6 of that -- what we call a generator.

7 Q Okay. This is all chemical reaction to --

8 A It's a chemical reaction to the change that -- the
9 compound of ephedrine into methamphetamine.

10 Q And you're saying as part of this chemical reaction,
11 this -- what you're calling an HCL generator? Is that --

12 A Yes, sir.

13 Q -- what you called it? This is something that -- tools
14 you need in order to perform this reaction; is that correct?

15 A Yes, sir.

16 Q All right. State's Number 9. What is that?

17 A That's what we call a one pot located on the toilet. I
18 took this picture. What you have here is a 20-ounce bottle.
19 If you can see in the bottom there you can see like the kind
20 of pinkest tint. What that is is from like your filler from
21 your ephedrine. The pills. It contains lye. It contains
22 ammonia nitrate, which is kind of like fertilizer, or cold
23 pack. You ever busted a cold pack? The little black ball
24 in there is what you -- is your lithium strips. That's the
25 most highly flammable. You also have the liquid in there

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1 which is your solvent which is Toluene or Coleman fuel. And
2 all that is put in this bottle here along with the ephedrine
3 and it causes that chemical reaction to convert ephedrine
4 into methamphetamine.

5 Q Lithium is in there?

6 A Yes, sir. Lithium.

7 Q Where do you get lithium from?

8 A You get it from a lithium battery. They cut open
9 batteries. They take the lithium strip out of the battery.

10 Q Let me show you State's Number 5. What is that?

11 A That is a container with -- I'm not sure how many
12 batteries in it, but it had lithium batteries in that
13 container.

14 Q You're saying lithium is another component used to
15 manufacturer methamphetamine? ^

16 A The lithium strip out of it. Yes, sir, it is. That's
17 the common -- that is the common thing that they get the
18 lithium out of is the lithium battery.

19 Q Well, let me ask you this. Without asking you to set
20 up a lab in here, how are these two bottles -- do they work
21 in conjunction somehow in setting up a lab?

22 A Yes, sir. The first one is your one pot here. You put
23 all your chemicals such as your -- your pseudoephedrine,
24 your lye, your lithium, your ammonia nitrate, your ephedrine
25 in this bottle. And after it conducts it's chemical reaction

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- 1 you would take what they call the top layer off of it and
2 you would put it in some type of other container. Then you
3 would take your other 20-ounce bottle with your tube coming
4 out of it. Your HCL generator. And you would take that --
5 the end of that tube and stick it down into that liquid
6 state and it would conduct another chemical reaction into
7 turning it back into a powdered form.
- 8 Q State's Number 16. Why is that relevant?
- 9 A There's propane -- heated propane, kind of like a
10 torch, there on your far left. They use heat sometimes to
11 help dry -- what they call dry out the dope. Just depending
12 on what type of source. I've seen hair dryers, propane
13 cylinders with the torch on top of it. It just helps to put
14 it back into a drier state, a more powdery state, versus a
15 paste.
- 16 Q Okay. So that's what you said. It's a liquid at one
17 point and then it's straining it out and you get a powder?
18 A wet pasty powder?
- 19 A Like a paste type deal, and then they kind of dry it
20 out and it turns into a more powdery form.
- 21 Q Okay. So they need a heat source of some kind to --
- 22 A Yes, sir.
- 23 Q -- dry it out?
- 24 A Yes, sir.
- 25 Q And they administer it -- I guess somebody who's using

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1 meth, they want it in powder form; is that right?

2 A Yes, sir. They want to bag it in powder form.

3 Q Tell me how -- what are all the way you can ingest
4 meth?

5 A You can snort it. I've seen injecting, smoking. I've
6 heard of people putting it on top of their food and eating
7 it.

8 Q Primarily you're going to see smoking and snorting --

9 A Smoking, injecting and sorting. Yes, sir.

10 Q That's Number 18. I'll publish it after you look at
11 it.

12 A Yes, sir.

13 Q What's that?

14 A This is a picture of some lye. Piranha lye. I'll show
15 where it's at right here. This one container of lye is just
16 another chemical ingredient in the one pot located in the
17 top left there.

18 Q Here?

19 A Yes, sir.

20 Q And that's something else you commonly see in these
21 meth labs?

22 A Yes, sir.

23 Q It's a --

24 A Some type of Drano lye. You know, some type of that
25 acid there.

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1 Q Okay. It's a part of this chemical reaction. It's
2 part of the ingredients?

3 A Part of the chemical reaction, yes. Again, in this
4 picture here there's some propane cylinders and there's also
5 a container here in the center of the picture, and also
6 another container of the Piranha lye. This container here
7 with the black tape on it had, I believe, an unknown liquid
8 in it. It was unknown at the time, but it was seized due to
9 not knowing what it was.

10 Q That's Number 17. Okay. So you're talking about this
11 propane here?

12 A Yes, sir.

13 Q Again, what is that? Is that just another heat source?

14 A Just another heat source.

15 Q This is lye?

16 A Yes, sir.

17 Q This is a different picture than Number 18?

18 A Yes, sir. It is.

19 Q At least two bottles of lye. This is the un --

20 A That's an unknown. Yes, sir. We didn't -- we're not
21 able to determine what it is without analysis at the time.
22 We didn't know.

23 Q Okay.

24 A It was deemed -- it was deemed hazardous due to the
25 unknown and it was seized as well.

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1 Q Number 10. I'm sorry.

2 A That's all right. What we have here is some exam
3 gloves. They use the gloves to not get any of these
4 chemicals on their hands as well, and also a bottle of
5 hydrogen peroxide.

6 Q Are these the gloves right here?

7 A Yes, sir.

8 Q Are you saying that's just to protect the
9 manufacturer's hands from some of these --

10 A Yes, sir.

11 Q -- chemicals they're dealing with?

12 A Yeah. Because the chemicals are acids and they might
13 burn them.

14 Q All right. Peroxide and lye, why do we need --

15 A Peroxide, what I've determined peroxide being used for
16 is a term that they use, some of the users, is for cleaning
17 their dope. Sometimes it'll come out with a yellowish tint
18 or reddish tint or brownish tint and they'll use the
19 peroxide to make it more white. And I've heard folks say
20 that it's more pure when it's white, which has no legality
21 of it. I mean, it's just they use it for that purpose.

22 Q Esthetics? Is that what it is?

23 A I guess.

24 Q State's Number 8.

25 A I believe that's Coleman fuel up under the counter

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- 1 inside of the camper, and that is your solvents. It's just
2 one of the ingredients for the chemical reaction.
- 3 Q Did you do an EPIC form?
- 4 A I did.
- 5 Q What's an EPIC form?
- 6 A An EPIC form is something we send to -- they'll pass
7 over to intelligence center who maintains all meth labs in
8 the United States. It just keeps records of where and what
9 agency submitted -- submitted it.
- 10 Q Okay. So there's a national database of all the meth
11 labs?
- 12 A Yes, sir.
- 13 Q Did you generate an EPIC form for this?
- 14 A Yeah, I did.
- 15 Q All right. And you've mentioned all of the suspected
16 ingredients you find at a location.
- 17 A Yes, sir.
- 18 Q Do you have your EPIC form up there with you?
- 19 A I believe I do.
- 20 Q What is this in State's Number 8?
- 21 A Lieutenant Shelton had a copy of it. Thank you, sir.
- 22 Q Yes, sir.
- 23 A I apologize.
- 24 Q Okay. So what is that?
- 25 A That's the Coleman fuel. The solvent used in the

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1 process.

2 Q Would that have been something, along with these other
3 items we've already gone over, that you would document in
4 your EPIC form?

5 A Yes, sir. It is.

6 Q Okay. It's a solvent?

7 A It helps break down. To break down the ephedrine
8 inside the -- from the filler in the ephedrine pill.

9 Q Okay. What's the active -- pseudoephedrine and --

10 A It's pseudoephedrine.

11 Q Okay. That's another active ingredient, I guess?

12 A Yeah. That's a precursor. You can't have
13 methamphetamine without the -- without pseudoephedrine.

14 Q Is that why you can't just go by Sudafed off the shelf
15 anymore?

16 A That's exactly right. You have to show your ID to
17 obtain it. And it's logged through a national database of
18 how many times you're attempting to purchase.

19 Q And that's because you're saying Sudofed is one of the
20 precursors for manufacturing methamphetamine?

21 A Yes.

22 Q I may have already shown you this.

23 A That's the lye again. Yes, sir.

24 Q These are all items pertaining to the actual, what
25 you're calling, clandestine lab?

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- 1 A Yes, sir.
- 2 Q Did you find any finished product, I guess?
- 3 A Yes, sir. We did. There was some on the counter
- 4 inside the residence along with --
- 5 Q Let me show you Number 20. State's Number 20. What's
- 6 that?
- 7 A That is a bag of what we determined, or what appeared
- 8 to be methamphetamine on the counter inside the trailer.
- 9 Q That was sitting right there?
- 10 A Yes, sir.
- 11 Q What is that?
- 12 A I can't. I'm sorry.
- 13 Q What about that right there?
- 14 A That's another container. Upon further search of the
- 15 residence we found more methamphetamine inside that, I
- 16 believe.
- 17 Q There was meth inside of this thing?
- 18 A Yes, sir.
- 19 Q Okay. Let me show you that black thing right there.
- 20 A I believe that's scales. It would appear to be the
- 21 scales on it. I'm not certain.
- 22 Q Did you seize scales?
- 23 A Yes, sir. We did seize scales.
- 24 Q Well, if there had been scales in there you would have
- 25 taken a picture of them, right?

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1 A Yes, sir.

2 Q Let me ask you again to look at that. I don't know
3 what it is.

4 A It looks like a set of scales. I can't swear by that.
5 But I know we located a set of scales at the residence. Or
6 some type of container. It's hard to tell from this
7 picture. I apologize.

8 Q All right. Well, you're saying you did see scales?

9 A Yes, sir.

10 Q I don't have them here with me. Why don't I have them?

11 A Anything taken out of the residence we deem hazardous
12 we let the cleanup crew that arrived on scene -- we give
13 everything to them. That's why we document the photos and
14 an incident report.

15 Q So if it's so hazardous what do they do, destroy them?

16 A Yes, sir. They burn it all. They put it in five
17 gallon buckets and trash bags and they send it off to be
18 destroyed.

19 Q Is that why I don't have the HCL generator here today?

20 A Yes, sir. It's too hazardous to bring inside this
21 courtroom.

22 Q Okay. That's destroyed as well?

23 A Yes, sir.

24 Q All right. State's Number 26. Do you recognize that?

25 A That's the container there. The container located

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- 1 right there. Yes, sir.
- 2 Q Okay. That you're saying had methamphetamine in it?
- 3 A Yes, sir. It has -- it looked like some residue in it.
- 4 Q Was that something else you put in your BEST kit?
- 5 A Yes, sir.
- 6 Q All right. This is State's Number 11.
- 7 A I'm sorry. What we have here is a picture of an
- 8 ashtray with a baggy in it and also a -- what we call a
- 9 smoking pipe with residue and it looks like it's burned
- 10 on one end. That was found also inside the camper.
- 11 Q State's Number 4. What is that?
- 12 A That's a mirror containing some white powder substance
- 13 that later field tested positive for methamphetamine. It
- 14 was also collected and sent to SLED for further analysis.
- 15 Q Okay. State's Number 27.
- 16 A Yes, sir.
- 17 Q What is that?
- 18 A That's the mirror located in the picture there. As you
- 19 can see the white powder. It was all collected and put in
- 20 the bags together and sent for analysis.
- 21 Q State's Number 12.
- 22 A That's an evidence bag containing a baggy of white
- 23 powder that I do believe was located in the backseat of a
- 24 patrol car after Mr. Dobbins was put in it.
- 25 Q State's Number 14. That looks like a -- kind of some

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1 stuff we've already seen that was put together and --

2 A Yeah. That's everything that was put together. One
3 picture of everything that we'd taken. As far as the
4 narcotics seized.

5 Q Okay. What's this?

6 A That's a picture of the money.

7 Q Where was that money found?

8 A I'm not sure exactly where that money was found. I
9 believe it was found on Mr. Dobbins' person. The money was
10 seized by the Sheriff's Office.

11 Q Have you testified how much -- I think somebody else
12 already testified, but do you know how much money that was?

13 A Yes, sir. I know it's over 2,000. I'm not sure the
14 exact dollar amount. I want to say it's in the neighborhood
15 of \$2,200.

16 Q All right. I'll show you State's 23, 24 and 25. What
17 are those items?

18 A Those are the baggies of a white powder substance that
19 were located inside the residence with the substance still
20 in, found throughout the residence.

21 Q Anybody else to your knowledge putting their hands on
22 any of this stuff?

23 A Not to my knowledge. It was given -- I collected it.
24 I take it to -- back to the Sheriff's Office. Fill the BEST
25 kit out. Once the BEST kit was filled out it was given to

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- 1 Deputy Nelson.
- 2 Q Okay. So this is open up here and you --
- 3 A When I get it, it's opened from that end.
- 4 Q Do you document all this stuff through photos?
- 5 A Yes, sir.
- 6 Q Do you label the actual --
- 7 A We put them in evidence bags and it is labeled on the
- 8 evidence bags.
- 9 Q And then you just drop it in?
- 10 A And then we put all the evidence into that bag there,
- 11 and I sign it and date it.
- 12 Q Is that your handwriting?
- 13 A Yes, sir. It is. It's my signature.
- 14 Q And you seal it?
- 15 A I seal it.
- 16 Q And take it to Jason Nelson. Who is he?
- 17 A He's the evidence custodian with the Sheriff's Office
- 18 in Laurens.
- 19 Q How many evidence custodians do y'all have?
- 20 A Just one.
- 21 Q He's responsible for the care and custody of all these
- 22 items?
- 23 A Yes, sir. He's the individual that takes it to and
- 24 from SLED for the analysis as the keeper of all evidence at
- 25 the Sheriff's Office.

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1 Q Your testimony is that State's 27, 26, 25, 24, 23 were
2 all seized by you?

3 A Yes, sir.

4 Q Sealed in a BEST kit?

5 A Yes, sir.

6 Q And then taken to Mr. Nelson, the evidence custodian?

7 A Yes, sir.

8 Q All this stuff we're talking about, I think I've got
9 some Coleman fuel at my house. I probably have some plastic
10 gloves. I know I've got propane. All that stuff is legal,
11 right?

12 A Yes, sir. It is.

13 Q Why is this man being charged with manufacturing
14 methamphetamine?

15 A When you take all these ingredients, such as the
16 Coleman fuel, the lye, the lithium batteries, the ephedrine,
17 and you put it into one bottle there's only one -- there's
18 only one reason why, and that is to manufacture
19 methamphetamine. There's no other reason why you would have
20 that type of a salt like or a powdery liquid substance in
21 those -- those two bottles. There's no other justification.
22 And from my training, they was not able to give me any other
23 justification to why that would be in a bottle like that.

24 Q Any justification for this stuff?

25 A No, sir.

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- 1 Q Not this.
- 2 A No, sir.
- 3 Q How about Number 24?
- 4 A No, sir.
- 5 Q How about the mirror with the powder on it?
- 6 A No, sir.
- 7 Q So in your opinion, your expert opinion, in these
- 8 clandestine meth labs what were you dealing with at [REDACTED]
- 9 [REDACTED]?
- 10 A A meth lab.
- 11 Q That's your opinion as an expert?
- 12 A Yes, sir.
- 13 Q That's your testimony here today?
- 14 A Yes, sir.
- 15 Q Can you testify, in your opinion, how do you -- how are
- 16 these meth -- what's a typical quantity package for resell?
- 17 MR. WISE: Excuse me. I didn't hear his question, Your
- 18 Honor.
- 19 THE COURT: Repeat the question so Mr. Wise can hear
- 20 what you asked, Solicitor.
- 21 Q In your experience and your professional opinion, is
- 22 there a common way that you see this dealt?
- 23 A It's a quarter gram --
- 24 MR. WISE: Your Honor, I would object to that. I think
- 25 that goes beyond his expertise as a lab expert.

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1 THE COURT: I think maybe lay a little more foundation
2 as far as his experience in investigating meth cases. And
3 then Mr. Wise can have the right to renew his objection if
4 he wishes to.

5 Q Scales. Is that something you typically see at these
6 manufacturing --

7 A Yes, sir. That's what they use to weigh their finished
8 product out.

9 Q Why would you need to weigh your finished product?

10 A In my opinion, to weigh it out is for sale. They don't
11 want to give more product away for the price that they
12 charge. They want to get it as close to -- if they're
13 selling a quarter of a gram they want to get it as close to
14 a quarter of a gram as possible, or a half a gram or whole
15 gram.

16 Q Okay. So that's your opinion?

17 A Yes, sir.

18 Q That's why they have these scales?

19 A Yes, sir.

20 Q Is there a reason they would need it if they were using
21 it for themselves?

22 A No, sir. Not that I can think of.

23 Q Okay. It's your testimony in your professional opinion
24 then that these scales are used to weigh out finished
25 product for --

1 MR. WISE: Objection, Your Honor. He's leading the
2 witness.

3 THE COURT: Okay. Try to rephrase your question,
4 Solicitor.

5 Q Again, what's your professional expert opinion as to
6 why they need --

7 A Those scales were there for, in my opinion, to weight
8 out finished product for the distribution of that
9 methamphetamine.

10 Q Okay. I think I've covered this. I'm about to sit
11 down. But State's 31, 32, 28, 29 and 30. I think you
12 testified you seized it earlier. Again --

13 A Yes, sir. I seized all items.

14 Q Again, as applied to the other stuff, would that have
15 been turned into that BEST kit and sealed as well?

16 A All controlled substance or unknown as such there, we
17 put into the BEST kit for analysis. Drug analysis. What we
18 suspected to be drugs.

19 MR. SCOTT: Okay. Thank you. Please answer any
20 question of Mr. Wise.

21 THE COURT: Before we hear from Mr. Wise, I want to
22 make sure I've got it straight what is in evidence and what
23 is not into evidence. What I've got on my list, unless I've
24 missed something, we've got -- other than the pictures and
25 the consent to search, I've got two bottles, 33 and 34, and

1 the BEST kit, number 22.

2 MR. SCOTT: That's correct, Your Honor.

3 THE COURT: Is there anything else into evidence? I
4 know everything's been pre-marked. I just want to make sure
5 my list is correct.

6 MR. SCOTT: Your Honor, we had just simply laid a
7 foundation for the other items. The only ones that have
8 been introduced so far are these two pill bottles, pictures
9 --

10 THE COURT: And the BEST kit?

11 MR. SCOTT: Yes, sir.

12 THE COURT: Okay. Nothing else has been offered into
13 evidence at this point in time?

14 MR. SCOTT: That's correct, Your Honor.

15 THE COURT: Mr. Wise, about how long do you anticipate
16 your cross --

17 MR. WISE: I'm going to run past your lunchtime.

18 THE COURT: Okay. Then what we will need to do is go
19 ahead and break for lunch at this time. I know you all
20 typically like to get a witness completely finished, but
21 because of my situation hopefully you all are okay with
22 that.

23 Madame Forelady and ladies and gentlemen of the jury,
24 we're going to go ahead and break for lunch at this time,
25 and we're going to start back at -- give you a little bit

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1 longer lunch break than I normally would give you. But
2 start back at a quarter till 2:00. So if you'll be prompt
3 back in your room, the jury room, at a quarter till 2:00.

4 I remind everybody again not to discuss this case among
5 yourselves. Not to discuss this case with anybody that you
6 may come in contact with over your lunch break. I hope
7 everyone has a good lunch break and we'll see you back at a
8 quarter till 2:00.

9 (Whereupon, the jury exited the courtroom at 11:53
10 a.m.)

11 THE COURT: Okay. Sergeant Veal, I would remind you --
12 and you already know this. But since we're in the middle of
13 your testimony you're not permitted to discuss with the
14 Solicitor's Office or any of your colleagues anything about
15 your testimony, anything about your case.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Yes, sir. Anything else we need to
18 take up on the record before we adjourn for lunch?

19 MR. WISE: No.

20 THE COURT: Okay. All right. We'll be at recess until
21 quarter till 2:00.

22 (Whereupon, the court was I recess until 1:52 p.m.)

23 (Whereupon, the jury entered the courtroom at 1:54
24 p.m.)

25 THE COURT: I believe, Mr. Wise, we're at cross

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1 examination of this witness.

2 CROSS EXAMINATION

3 BY MR. WISE:

4 Q Sergeant Veal, have you got your laboratory seizure
5 report?

6 A Yes, sir.

7 Q Could I look at it a second. I tell you what, you hold
8 onto it. I've got my notes here on that. All right?

9 A Yes, sir.

10 Q In your laboratory seizure report you have to put down
11 the size of the lab, don't you?

12 A We put down the size of the --

13 Q Manufacturing?

14 A -- the contents that we find in the lab.

15 Q Well, look at item four. Roman number four in your
16 seizure report.

17 A Yes, sir.

18 Q What is that titled?

19 A Estimated lab capacity.

20 Q Lab capacity?

21 A Yes, sir.

22 Q And you estimated this one at under two ounces?

23 A Yes, sir.

24 Q And that's as low as it goes on that chart?

25 A Yes, sir.

MATTHEW VEAL-CROSS-EXAMINATION

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1 Q And it goes in what increments up above that?

2 A Two to eight ounces, nine ounces to one pound, two to
3 nine pounds, 10 to 19 pounds, and 25 or greater.

4 Q And you put under two ounces?

5 A Yes, sir.

6 Q And the method of cooking is what you referred to
7 earlier is the one pot?

8 A Yes, sir. One pot method.

9 Q And you referred to it as a homemade improvised?

10 A Yes, sir. It's homemade.

11 Q And you noted on your report on paragraph Roman number
12 X -- Roman numeral 15 that there were no blister packs.

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q And what is the significance of blister packs in a meth
17 lab operation?

18 A That's what Sudafed comes from and stored. It's what
19 it's sold in.

20 Q Okay. So you found no blister packs?

21 A No, sir.

22 Q You found no -- any other type of pseudoephedrine,
23 right?

24 A No, sir. Other than methamphetamine.

25 Q All right. But you didn't find any, what they call, a

MATTHEW VEAL-CROSS-EXAMINATION

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1 precursor of pseudoephedrine?

2 A No, sir. In my opinion, it had already been converted
3 to meth.

4 Q I understand that. But without pseudoephedrine you
5 don't make meth?

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q All right. And so, you found no remnants of
10 pseudoephedrine in that camper?

11 A It was in the one pot. The remnants of -- the filler
12 from the pseudoephedrine, once it's in the bottom of the one
13 pot, you could determine that the filler is in the bottom of
14 that one pot.

15 Q So you took that -- look at State's Exhibit 9.

16 A Yes, sir.

17 Q You took State's Exhibit 9 to the lab and had it
18 analyzed for pseudoephedrine?

19 A No, sir. In 2011 we did not know that SLED analyzed
20 the one pots.

21 Q You cannot look at that and tell me what's in it, can
22 you?

23 A Yes, sir. I can tell.

24 Q You can?

25 A Yes, sir.

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1 Q What color is pseudoephedrine?

2 A Sometimes it has a red texture to it, some of it has a
3 white texture. That has a pink texture, or a pink color.

4 Q All right. Now, but you found no blister packs from
5 pseudoephedrine in that house?

6 A No, sir. I didn't.

7 Q All right. Is that correct?

8 A Yes, sir.

9 Q All right. Now, you stated earlier that you identified
10 this as a coffee grinder, and if you look at State's Exhibit
11 -- this one right here. State's Exhibit 6., That's a coffee
12 grinder?

13 A Yes, sir. The large item there is a coffee grinder.

14 Q Did you seize that coffee grinder?

15 A It was -- yes, sir. We did and it was disposed of.

16 Q It was disposed of?

17 A Yes, sir.

18 Q You didn't --

19 A All items taken from the house were disposed of by the
20 cleanup group.

21 Q And that was disposed of. Did you get Mr. Dobbins'
22 permission to dispose of the coffee grinder?

23 A Yeah. It was due to a consent with home consent for
24 any items to be taken out of the house.

25 Q No. That's a consent to take items out of the house.

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1 Not consent to destroy them, is it?

2 A No, sir. But if it's deemed hazardous then it --

3 Q And that was deemed hazardous because --

4 THE COURT: Wait a minute. Make sure the witness
5 finishes his answer before you start with the next question.

6 Q And that was deemed hazardous because of what?

7 A Because it was found in a meth lab.

8 Q Because it was found in a meth lab?

9 A That's what we consider part of the meth lab.

10 Q Well actually, you deemed this whole trailer to be part
11 of it, didn't you?

12 A Yes, sir. And it was condemned.

13 Q All right. Now, you said that you thought these were
14 scales. Let me find that picture. Let me see if I can find
15 it again. Have they got it up there? Yeah. That's up
16 there. You said you thought these two --

17 A That's not the exact picture that was shown to me
18 earlier.

19 Q All right. Do you know which one that is?

20 A Yes, sir.

21 Q All right. I don't then. So you're saying -- you're
22 saying the State's Exhibit 6 --

23 A It's this picture. This picture here is one that
24 Solicitor Scott showed me.

25 Q That's State's Exhibit 20?

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- 1 A Yes, sir.
- 2 Q Do you know what that item is in there?
- 3 A It appeared to look like the set or scales that are
- 4 located in here with the top on it is what it looks like.
- 5 Q But you can't tell for sure?
- 6 A No, sir. I can't. Not in that picture. That's --
- 7 Q What about the --
- 8 A -- the drugs.
- 9 Q -- flashlight?
- 10 THE COURT: Wait a minute, now. Let me caution both
- 11 the witness and the attorney. We can't talk at the same
- 12 time.
- 13 THE WITNESS: Yes, sir. I apologize.
- 14 THE COURT: I mean, we've got excellent court reporters
- 15 but there's a point to where we need to help them out.
- 16 THE WITNESS: Yes, sir.
- 17 THE COURT: So I caution you both. Thank you.
- 18 Q So you didn't test the coffee grinder for any
- 19 fingerprints?
- 20 A No, sir.
- 21 Q And that test -- and that's in State's Exhibit 6. And
- 22 in State's Exhibit 9, the bottle, you didn't test it for
- 23 fingerprints?
- 24 A No, sir. I did not.
- 25 Q And did you test any items for fingerprints?

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1 A No, sir. I did not. It was in Mr. Dobbin's and Ms.

2 Wyatt's construction possession, so there was no need for
3 fingerprints.

4 Q Well, find Mr. Dobbins' fingerprints on it, or Ms.
5 Wyatt's fingerprints on it --

6 A Yes, sir.

7 Q -- it would mean they handled it, wouldn't it?

8 A Yes, sir.

9 Q All right. So what did you take out of that trailer
10 and destroy?

11 A We took the chemicals, the scale -- anything to do with
12 the process of manufacturing the chemicals, the one pot, the
13 HCL generator, any coffee filters. Anything that was
14 dealing with the actual lab we took out of the home and
15 disposed of it.

16 Q Well, the scale wasn't actually involved in the actual
17 lab?

18 A You can say that it was because it -- it's weighing out
19 the finished product.

20 Q Do you know it weighed out finished product?

21 A The only thing I can think it would --

22 Q You don't know it weighed out finished product?

23 A I can --

24 Q Correct?

25 A Yes, sir.

MATTHEW VEAL-CROSS-EXAMINATION

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- 1 Q You could have taken that scale, just as you did the
2 mirror, and sent it to SLED to see if there was finished
3 product on it, couldn't you?
- 4 A Yes, sir.
- 5 Q But you didn't do it?
- 6 A No, sir.
- 7 Q So the flashlight in there, did you take it out?
- 8 A Not that I recall.
- 9 Q Look at Exhibit 20.
- 10 A Not that I recall.
- 11 Q All right. The flashlight is right next to the scales,
12 correct?
- 13 A Yes, sir.
- 14 Q It's in the same proximity to the alleged meth lab as
15 the scales?
- 16 A Yes, sir.
- 17 Q You didn't take it out?
- 18 A No, sir.
- 19 Q All right. The mirror -- where's the mirror. The
20 mirror in this case, you took it out?
- 21 A Yes, sir.
- 22 Q You didn't destroy it?
- 23 A No, sir.
- 24 Q All right.
- 25 A It had what we deemed methamphetamine on it, so we sent

MATTHEW VEAL-CROSS-EXAMINATION

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- 1 it for testing.
- 2 Q Correct. But it had methamphetamine on it?
- 3 A Yes, sir.
- 4 Q It had -- you saw no methamphetamine on the scale?
- 5 A No, sir.
- 6 Q And you destroyed it?
- 7 A Yes, sir.
- 8 Q You saw methamphetamine on the mirror and you didn't
- 9 destroy it?
- 10 A Yes, sir.
- 11 Q Is that correct?
- 12 A From my experience, normally they lay the
- 13 methamphetamine in a baggy, so there's probably not any
- 14 residue on the scale.
- 15 Q Well --
- 16 A Most experiences. I'm not going to say a hundred
- 17 percent, but most experiences they weigh them --
- 18 Q Well, then if the scale had been used -- weighed on
- 19 with a baggy then it wouldn't really be contaminated, would
- 20 it?
- 21 A No, sir.
- 22 Q All right. So you could have saved it and checked it?
- 23 A Yes, sir.
- 24 Q You could have brought in what you found that you think
- 25 is the scale and shown it to this jury?

MATTHEW VEAL-CROSS-EXAMINATION

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- 1 A Yes, sir.
- 2 Q But you didn't?
- 3 A We don't bring anything out of a meth lab, at a
4 residence, in the court.
- 5 Q What's this?
- 6 A It was sent to -- to the lab --
- 7 Q Was this found inside the quote meth lab?
- 8 A Yes, sir.
- 9 Q Is it in the court?
- 10 A Yes, sir.
- 11 Q What's this, State's Exhibit 33?
- 12 A I understand -- I understand where you're coming from.
13 Yes, sir. I --
- 14 Q It was found inside the meth lab?
- 15 THE COURT: All right, now. Now, again, Mr. Wise,
16 you're an experienced lawyer. Tried hundreds of cases.
17 Sergeant Veal, you're very experienced at what you do.
- 18 THE WITNESS: Yes, sir.
- 19 THE COURT: But please do not speak at the same time.
20 I'm cautioning both the attorney and the witness, do not
21 speak at the same time.
- 22 Q State's Exhibit 33, found where?
- 23 A It was in -- inside the residence.
- 24 Q Brought in the courtroom?
- 25 A Yes, sir.

MATTHEW VEAL-CROSS-EXAMINATION

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- 1 Q State's Exhibit 31, found where?
- 2 A Inside the residence.
- 3 Q Just like the lead scale?
- 4 A Yes, sir.
- 5 Q You brought it in the courtroom?
- 6 A Yes, sir.
- 7 Q And, of course, State's Exhibit 38, correct?
- 8 A Yes, sir.
- 9 Q Found in the residence?
- 10 A Yes, sir.
- 11 Q Just like the alleged scale?
- 12 A Yes, sir.
- 13 Q You brought this in the courtroom?
- 14 A Yes, sir.
- 15 Q You even brought some of the actual alleged meth into
- 16 the courtroom?
- 17 A Yes, sir.
- 18 Q What is the criteria by which then you determine
- 19 something is so hazardous it cannot be seen in this
- 20 courtroom by this jury?
- 21 A If we deem it -- other than narcotics that are in its
- 22 containers, we -- we dispose of it.
- 23 Q What is the criteria of which you determine an item
- 24 found in that camper is so hazardous and dangerous --
- 25 A If it's a part of a meth lab then we dispose of it.

MATTHEW VEAL-CROSS-EXAMINATION

159

- 1 Other than the narcotics itself and the container it's in.
- 2 Q So if it's part of a meth lab you say you destroy it?
- 3 A Yes, sir.
- 4 Q And you destroyed the coffee grinder after sending it
- 5 to SLED?
- 6 A Yes, sir.
- 7 Q Correct?
- 8 A Yes, sir.
- 9 Q You didn't even scrape anything out of it and sent it
- 10 to SLED, did you?
- 11 A No, sir.
- 12 Q All right. And yet you contend the only thing that
- 13 would have ground in that coffee grinder would have either
- 14 been coffee or, according to you, pseudoephedrine?
- 15 A From the white dusty substance in it, yes, sir.
- 16 Q But you didn't send that anywhere?
- 17 A No, sir.
- 18 Q All right. And without sending it somewhere, all you
- 19 can say is it's a white dusty substance for whatever reason?
- 20 A Yes, sir.
- 21 Q All right. Now, you're the one that went through and
- 22 gathered everything?
- 23 A Yes, sir.
- 24 Q And you said there were -- you had several little
- 25 baggies you found?

MATTHEW VEAL-CROSS-EXAMINATION

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1 A Yes, sir.

2 Q Some of which contained -- one of which contained a
3 white powder substance, and the others contained what looked
4 like the residue of it?

5 A I believe so.

6 Q Is that correct?

7 A I believe so.

8 Q All right. And in your experience, obviously when
9 someone uses methamphetamine and takes it out of the bag it
10 leaves a little residue in the bag?

11 A Yes, sir.

12 Q And you can tell from that whether or not
13 methamphetamine had been in it?

14 A Yes, sir. We field tested it.

15 Q All right. Now, this trailer, or camper, whatever you
16 want to call it, had a little wooden deck on the front of
17 it, correct?

18 A Yes, sir. It did.

19 Q All right. It was attached to the front?

20 A Yes, sir.

21 Q And that's in State's Exhibit -- what number is that?

22 A It is Number 1, sir.

23 Q Number 1. All right.

24 A Yes, sir.

25 Q And it was attached to the front of it?

MATTHEW VEAL-CROSS-EXAMINATION

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- 1 A Yes, sir.
- 2 Q All right. Did you inspect the outside of the trailer
- 3 any?
- 4 A Yes, sir.
- 5 Q Were the tires up or down, or do you remember?
- 6 A I don't remember.
- 7 Q Okay. And did you make a list of what you destroyed
- 8 from that trailer?
- 9 A I believe so.
- 10 Q Excuse me?
- 11 A I believe so.
- 12 Q All right. Could you find it for me?
- 13 A I do not have it. I just note it in a supplemental
- 14 report that I took possession of the items. And other than
- 15 the pictures --
- 16 Q All right. Did you put in your supplemental report
- 17 what items you took possession of?
- 18 A No, sir. Other than what was detailed in the report.
- 19 You've seen those pictures.
- 20 Q All right. When you left this camper did you leave any
- 21 instructions or post any instructions of what the next
- 22 occupant should do to protect themselves?
- 23 A Actually, I left before the cleanup crew finished.
- 24 Lieutenant Shelton was the last one to leave the scene.
- 25 Q All right.

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1 A Due to it being a holiday.

2 Q All right. And did you check around the trailer in any
3 trash piles or anything?

4 A I did not myself, but other officers did and they
5 didn't advise me that they had found anything that we would
6 need to know about.

7 Q Many times when someone attempts to make
8 methamphetamine, or makes methamphetamine, they attempt to
9 burn remnants of pseudoephedrine. You see remnants of that,
10 don't you?

11 A Yes, sir. You do see a burn pile.

12 Q And you can see the burn --

13 A I don't -- I don't recall a burn pile there.. I'm not
14 saying that there wasn't one, but I don't recall.

15 Q And the only thing you found in that entire camper that
16 could have possibly made methamphetamine was two bottles?

17 A Yes, sir.

18 Q That's it?

19 A And the chemicals.

20 Q But you didn't -- well, except for the pseudoephedrine?

21 A Yes, sir.

22 Q All right. You didn't find any old -- other bottles
23 anywhere?

24 A No, sir. I didn't.

25 Q You didn't find any used bottles outside in the trash

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- 1 pile?
- 2 A No, sir.
- 3 Q You didn't find more in the house?
- 4 A No, sir.
- 5 Q All right. You also found a bottle that you thought --
- 6 that you didn't know what it was?
- 7 A Yes, sir.
- 8 Q Could you find that picture?
- 9 A I think there were several unknown here.
- 10 Q And that's --
- 11 A The one with the black tape around the top.
- 12 Q Right. It looks like the little opaque bottle?
- 13 A Yes, sir.
- 14 Q And that's State's Exhibit 17?
- 15 A Yes, sir.
- 16 Q Right?
- 17 A Yes, sir.
- 18 Q And what did you finally determine that to be?
- 19 A I believe that we -- we set it outside for the cleanup
- 20 crew to test it and they -- I think they deemed it -- I'm
- 21 not sure exactly what it was, but they deemed it hazardous
- 22 and took it with them. I'm not sure if it was a flammable
- 23 or a corrosive liquid. I'm not sure.
- 24 Q I mean, an ordinary house lye could be -- is corrosive?
- 25 A Yes, sir. But it would be in its proper container.

MATTHEW VEAL-CROSS-EXAMINATION

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1 Q The lye in this case was in its proper container? Not
2 in that bottle but --

3 A This bottle here is the one I was speaking of.

4 Q I understand. But you don't know what was in that?

5 A No, sir.

6 Q All right. You didn't see the report on it?

7 A No, sir. I haven't seen a report on it.

8 Q But you think it may be corrosive?

9 A It could be flammable or corrosive.

10 Q All right. You don't know?

11 A No, sir.

12 Q All right. Now, did you take the butane torch out of
13 there?

14 A I believe we did, sir.

15 Q All right. What about -- what about the household lye?
16 Where was that?

17 A There's lye here in this picture.

18 Q It was in a --

19 A It was another bottle.

20 Q Where is it?

21 A It's the Piranha lye there in the middle, far left
22 corner.

23 Q Did you take that bottle out?

24 A Yes, sir. Sure did.

25 Q You took that out?

MATTHEW VEAL-CROSS-EXAMINATION

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- 1 A Yes, sir.
- 2 Q All right. Even though it's clearly labeled?
- 3 A Yes, sir.
- 4 Q And something that's a common household product?
- 5 A Yes, sir.
- 6 Q Correct?
- 7 A Yes, sir.
- 8 Q What about -- there was a little can of -- yeah,
- 9 propane. Did you take that out?
- 10 A Yes, sir.
- 11 Q And how do you know you took these things out?
- 12 A Once refreshing myself on the case, I mean, we -- I
- 13 always take the containers like that. Unknown containers.
- 14 Q But the butane torch --
- 15 A It's a propane torch.
- 16 Q Propane. Excuse me. The propane torch by itself is
- 17 not hazardous?
- 18 A No, sir. It is flammable.
- 19 Q Correct. But gasoline is flammable?
- 20 A Yes, sir.
- 21 Q You didn't take the gas can from outside, I assume?
- 22 A I didn't see a gas can outside.
- 23 Q But if you had seen one you would have taken it?
- 24 A If there was anything other than gas in it I might
- 25 would have.

MATTHEW VEAL-CROSS-EXAMINATION

166

- 1 Q If there was gas in it?
- 2 A No, sir.
- 3 Q All right. So my question to you is again, you've got
- 4 common ordinary products that people have in their home on a
- 5 regular basis that all of us have?
- 6 A Yes, sir.
- 7 Q Right? You took those common items out even though by
- 8 themselves they were perfectly legal and perfectly okay?
- 9 A Yes, sir.
- 10 Q They weren't contaminated with anything?
- 11 A I believe they were contaminated.
- 12 Q Contaminated in what way?
- 13 A Due to the fact that they were -- some of those items
- 14 were mixed into a 20-ounce bottle with lithium strips and
- 15 all those items together it -- that makes it hazardous, and
- 16 at one point or another those particular bottles were around
- 17 all the fumes from that particular one-pot.
- 18 Q The flashlight was around the fumes then, wasn't it, if
- 19 they were there?
- 20 A I guess you could say that.
- 21 Q You didn't take the flashlight?
- 22 A No, sir. I didn't.
- 23 Q All right. Everything in that trailer was in around
- 24 the fumes.
- 25 A We condemned the trailer.

MATTHEW VEAL-CROSS-EXAMINATION

167

1 Q Condemned it meaning nobody could live it in ever
2 again?

3 A That means that building codes would have had to clear
4 it before anybody could live in it again.

5 Q But you left numerous items that people use every day
6 in that trailer?

7 A Yes, sir.

8 Q That have been exposed to the same thing that some of
9 the items that you took had been exposed to?

10 A SLED only allows us to take the hazardous materials,
11 because they will -- they're the ones taking it, and tax
12 dollars pay to have that stuff cleaned up, and it's tax
13 dollars that pay to have it disposed of. And what they
14 determine that it's not --

15 Q The coffee grinder was not a hazardous material?

16 A Yes, sir. But it is trash from a meth lab.

17 Q The coffee grinder is not hazardous material?

18 A No, sir. But they will take the trash from a meth lab.
19 What we deem part of a meth lat. I determined -- I
20 determined that it was.

21 Q And the alleged scale is not a hazardous material?

22 A I deemed that it was not.

23 Q You deemed that it was or was not?

24 A Was not.

25 Q A hazardous material?

MATTHEW VEAL-REDIRECT EXAMINATION

168

1 A But it was taken.

2 Q Right. But you didn't carry it down to SLED and have
3 it analyzed?

4 A No, sir. I didn't.

5 Q And the coffee grinder wasn't a hazardous material and
6 you didn't carry it down to SLED and have it analyzed
7 either?

8 A No, sir. I did not.

9 Q And no matter how much you try and how good you are,
10 you're not going to make any meth without pseudoephedrine?

11 A Yes, sir.

12 Q And you found zero evidence of any pseudoephedrine in
13 that apartment -- that camper?

14 A What I believed in the bottom of that one pot --

15 Q Except for the one that maybe had the color of it?

16 A Yes, sir.

17 Q And without chemical analysis of that bottle you can't
18 even be a hundred percent sure that's in there?

19 A Yes, sir. And like I said, at the time we were not
20 able -- we did not -- SLED would not accept it for analysis.

21 Q Right. But the point is, you can give a give a guess
22 as to what's in it, but without a chemical analysis by a
23 chemist you don't know for sure?

24 A My opinion is that there was -- it was.

25 Q I understand it's your opinion.

MATTHEW VEAL-REDIRECT EXAMINATION

169

1 A Yes, sir.

2 Q But to be sure you have to have it analyzed?

3 A Yes, sir.

4 MR. WISE: Thank you.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q You ever worked a crack case as a narcotics agent?

9 A Yes, sir. I have.

10 Q Take baking powder if you find it?

11 A I've never actually caught anybody actually cooking
12 crack, I guess you would say.

13 Q You've never done a crack manufacture case?

14 A No, sir.

15 Q You agree that you use baking powder to cut the
16 cocaine --

17 A Yes, sir.

18 Q -- to make crack, right?

19 A Yes, sir.

20 Q And baking powder is perfectly legal to have; is that
21 right?

22 A Yes, sir.

23 Q But it's evidence they were producing crack, correct?

24 A Yes, sir.

25 Q That Coleman fuel is legal to have?

MATTHEW VEAL-REDIRECT EXAMINATION

170

- 1 A Yes, sir.
- 2 MR. WISE: Your Honor, he's leading the witness.
- 3 Q Is Coleman fuel legal?
- 4 THE COURT: Rephrase.
- 5 A Yes, it's legal to have.
- 6 Q Is plastic tubing legal?
- 7 A Yes, sir. It's legal.
- 8 Q What about lye?
- 9 A Perfectly legal.
- 10 Q Why did you seize it?
- 11 A Because, in my opinion, it was used in the
- 12 manufacturing of methamphetamine.
- 13 Q You didn't find any blister packs. I think that was
- 14 your testimony earlier.
- 15 A Yes, sir. I didn't find any.
- 16 Q And blister packs is just a medicine, that
- 17 pseudoephedrine --
- 18 A It's packaged in when it comes from the pharmacy.
- 19 Q Pop the medicines out of the back? The tinfoil side?
- 20 A Yes, sir.
- 21 Q Okay. State's Number 9. We talked about that earlier.
- 22 What is that again?
- 23 A That's the one pot. That is what we call the container
- 24 that is the -- the meth is manufactured in.
- 25 Q What's all that stuff floating around in there?

MATTHEW VEAL-REDIRECT EXAMINATION

171

1 A The black -- the black substance there is what -- is
2 lithium. Comes out of a lithium battery.

3 Q What's the other stuff?

4 A Highly flammable. In my opinion, it's a finished one
5 pot. So there would be pseudoephedrine, there will be lye,
6 there will be lithium, the Coleman fuel, the ammonia
7 nitrate, and they do add just a little bit of water to start
8 the chemical reaction.

9 Q Okay. So you observed the contents of that one pot
10 while you were there?

11 A Yes, sir.

12 Q And it was your opinion there was ground up Sudafed in
13 there?

14 A Yes, sir. It was still somewhat active when we removed
15 it. It was what we call active. It was still bubbling, as
16 you would say.

17 Q Explain that coffee filter one more time. Why that's
18 significant. Why that's relevant.

19 A It speeds up the -- when they put the pseudoephedrine
20 in the coffee grinder to grind it up to break down the pill
21 as a whole, and it speeds up the process and -- while it's
22 in the one pot itself. It just speeds up the process to
23 break it down faster.

24 Q That's State's Number 6, by the way. I'm sorry. So
25 they don't throw the whole tablets in there, you're saying?

MATTHEW VEAL-REDIRECT EXAMINATION

172

- 1 They grind it up first?
- 2 A Yeah. They grind it up and then they put the entire
3 contents in the 20-ounce bottle.
- 4 Q How many scales did you all seize?
- 5 A I believe it was just one.
- 6 Q Let me show you State's Number 20. What is this item
7 right there?
- 8 A It looks like -- I guess it looks like a set of scales.
- 9 Q What's it say on it, Sergeant Veal?
- 10 A It says scales.
- 11 Q It's actually labeled as a set of scales?
- 12 A It says -- I can't read -- I guess it would say Blade
13 scale maybe, because it's got a picture of a knife.
- 14 Q All right. So in State's Number 20 this item right
15 here is the digital scale you're talking about, right?
- 16 A Yes.
- 17 Q As a matter of fact, it says scale on it.
- 18 A Yes.
- 19 Q Did you say you didn't ask Mr. Dobbins for permission
20 to dispose of this coffee grinder?
- 21 A I did not ask him.
- 22 Q Did you ask for his permission to destroy his one pot
23 cook?
- 24 A No, sir. I didn't.
- 25 Q Did you ask for his permission to take his

MATTHEW VEAL-REDIRECT EXAMINATION

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1 methamphetamine?

2 A No, sir. I didn't. It's against the law, so I seized
3 it according to the law. I had a consent to search by Mr.
4 Dobbins.

5 Q On cross-examination he asked you, you only found two
6 bottles?

7 A Yes, sir.

8 Q And that's your lab?

9 A Yes, sir.

10 Q How many bottles does it take for a one pot shake and
11 bake method lab?

12 A Two bottles.

13 Q It only takes two bottles?

14 A Well, it takes the two -- yes, sir. The one --

15 Q And you found two bottles?

16 A -- pot and -- yes, sir.

17 Q It only takes two bottles, right?

18 A At minimum. Yes, sir.

19 Q I'm going to ask you this. It was covered just a
20 little bit in cross. Why did you charge him with disposal
21 of methamphetamine?

22 A Because he threw it in the household trash can. That
23 HCL generator over there was thrown in the household trash.
24 It wasn't proper disposal. Because the proper disposal
25 would be to contact -- like we do. Call SLED and have them

MATTHEW VEAL-RECROSS EXAMINATION

174

1 neutralize it and dispose of it properly. They burn it.

2 Q Under a controlled --

3 A Under a controlled environment. Yes, sir. Neutralized
4 first before they destroy it.

5 Q What happens if you dump this stuff in the trash or
6 dump it in the dirt around your house?

7 A You risk the chance of the lithium or the fumes from
8 the HCL generator or the lithium hitting water and causing a
9 fire.

10 MR. SCOTT: Thank you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Re-cross?

13 MR. WISE: Just a couple of questions.

14 THE WITNESS: Yes, sir.

15 RE-CROSS EXAMINATION

16 BY MR. WISE:

17 Q Did you take that bottle out of the trash can and take
18 a picture of it by itself?

19 A I don't believe so.

20 Q All right. So we don't know what the bottom of the
21 bottle looks like?

22 A From my eyes it was a salt like substance.

23 Q You had the ability to take that bottle, put it on a
24 table and take a good picture of it?

25 A I took --

MATTHEW VEAL-RECROSS EXAMINATION

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1 Q You chose not to do it?

2 A Yes, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q You had the ability to take that bottle to SLED and
6 have it analyzed, didn't you?

7 A Did not know that at the time.

8 Q You had the ability to take that bottle to SLED and ask
9 them to analyze it, didn't you?

10 A I was under the impression that SLED did not analyze
11 one pots or HCL generators at the time.

12 Q You had the ability to take that bottle down to SLED
13 and ask them to analyze it, didn't you?

14 MR. SCOTT: Objection, Your Honor. Asked and answered.

15 THE COURT: Sustained.

16 Q Did you take that bottle down to SLED and ask them to
17 analyze it?

18 A No, I did not.

19 MR. WISE: Thank you.

20 THE COURT: Anything further from the State of this
21 witness?

22 MR. SCOTT: Just only thing.

23 REDIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q What did you do with the finished product? Did you

MATTHEW VEAL-RECROSS EXAMINATION

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1 take that to SLED?

2 A Yes, sir. I did.

3 Q Sergeant Veal, did you take State's Number 29 down to
4 SLED to be tested?

5 A Yes, sir. I did.

6 Q What about 28?

7 A Yes, sir. I did.

8 Q This powder in State's 23, did you take that to SLED to
9 be tested?

10 A Yes, sir. I did.

11 Q This rock powder in State's 24, did you take that to be
12 tested?

13 A Yes, sir. I did.

14 Q What about this rock in 25, did you take that to be
15 tested?

16 A Yes, sir. I did.

17 Q What about this container in State's 26? Did you take
18 that to be tested?

19 A Yes, sir. I did.

20 Q State's 30. Did you take that to be tested?

21 A Yes, sir. I did.

22 Q Have you -- without saying what they are, did you get
23 results back?

24 A I did.

25 MR. SCOTT: Thank you.

HOWARD CHILDS-DIRECT EXAMINATION

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1 THE COURT: Anything further from the Defense?

2 MR. WISE: Nothing further.

3 THE COURT: Okay. You can step down. Thank you for
4 your testimony.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Call your next witness.

7 MR. NEELY: The State would call Howard Childs.

8 THE COURT: Are you going to need any of that for this
9 witness?

10 MR. NEELY: No, sir, Your Honor.

11 THE COURT: It may be good to maybe put it back
12 somewhere. Swear the witness in.

13 HOWARD CHILDS, having been first
14 duly sworn, testified as follows:

15 THE COURT: Be sure to sit close to that microphone.
16 State your name, please.

17 THE WITNESS: Howard Childs.

18 DIRECT EXAMINATION

19 BY MR. NEELY:

20 Q Mr. Childs, I'll be brief. Do you own the lot at 102
21 Childs Circle?

22 A Yes, sir.

23 Q That's your property?

24 A Yes, sir.

25 Q Do you recall who was -- do you rent that property out?

HOWARD CHILDS-CROSS EXAMINATION

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1 A Yes, sir.

2 Q Do you recall who was renting that property on November
3 24th, 2011?

4 A Johnny Dobbins.

5 Q Is he in the courtroom today?

6 A Yes, sir.

7 Q Where's he at?

8 A Right there.

9 Q He was renting that property from you at that time?

10 A Yes, sir.

11 MR. NEELY: Thank you. That's all have. Please answer
12 any questions Mr. Wise has for you.

13 CROSS EXAMINATION

14 BY MR. WISE:

15 Q And how long have you been renting that property?

16 A Those are campgrounds, so I've had it now probably
17 about 15 years.

18 Q Well, how long have you been renting that particular
19 lot?

20 A I don't know. I didn't keep up with it.

21 Q Okay. Did you go out and look at it on a regular
22 basis?

23 A Yes, sir.

24 Q Okay. And he had a camper there with a porch built
25 onto it?

WALTER BENTLEY-DIRECT EXAMINATION

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1 A Yes, sir.

2 Q And do you know any idea about the condition of the
3 tires on his camper?

4 A No, sir.

5 Q It had been -- it had been there a couple of years?

6 A It had been there about a year.

7 Q About a year? In the same spot?

8 A In the same spot.

9 Q It had never been moved in that whole year or more?

10 A No, sir. It hadn't been moved since it was put there.

11 MR. WISE: All right. Thank you.

12 THE COURT: Anything redirect?

13 MR. NEELY: Nothing from the State, Your Honor.

14 THE COURT: Thank you for your testimony. You can step
15 down. Any objections to this witness being excused?

16 MR. NEELY: None from the State, Your Honor.

17 THE COURT: From the Defense?

18 MR. WISE: None from the Defense.

19 THE COURT: Okay. You're excused, sir. You're welcome
20 to stay with us or you can leave.

21 Call your next witness.

22 MR. NEELY: The State would call Walter Bentley.

23 THE COURT: If you would swear the witness, Madame
24 Clerk.

25 WALTER BENTLEY, having been first

WALTER BENTLEY-DIRECT EXAMINATION

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1 duly sworn, testified as follows:

2 THE COURT: Sit close to the microphone. State your
3 name, please, sir.

4 THE WITNESS: Walter Bentley.

5 DIRECT EXAMINATION

6 BY MR. NEELY:

7 Q Mr. Bentley, where do you work?

8 A I'm currently employed by the Solicitor's Office here
9 in Laurens.

10 Q So our office?

11 A Yes, sir.

12 Q So we're co-employees?

13 A Yes.

14 Q Have I asked you to look into anything on this case for
15 me?

16 A Yes. You asked to attempt to find Sandy Wyatt, who is
17 a co-defendant in this case.

18 Q Were you able to find Ms. Wyatt?

19 A No, I was not.

20 Q Where did you look?

21 A I started with [REDACTED] and when I got there I
22 realized that the trailer there had been moved. I then
23 moved on to an older address on [REDACTED] Road. I had
24 no luck there. Her South Carolina DMV address --

25 MR. WISE: I would object to this. I don't see where

WALTER BENTLEY-CROSS-EXAMINATION

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1 it's relevant to anything.

2 THE COURT: Okay. Do we need to discuss it outside the
3 presence of the jury, or do you want to do a sidebar and
4 then --

5 MR. WISE: Well --

6 THE COURT: Okay. Try a sidebar.

7 (Whereupon, a sidebar was held outside the hearing of
8 the jury.)

9 THE COURT: Solicitor, just repeat your last question
10 so we can all kind of pick up where we were before we dealt
11 with the objection from Mr. Wise.

12 MR. NEELY: And, Your Honor, my last question is going
13 to be my last question for Mr. Bentley.

14 Q Where did you go look for Ms. Wyatt?

15 A I started with [REDACTED], which was the last known
16 address that we had listed for her. I didn't have any luck
17 there. The camper didn't appear to be there anymore. I
18 then went to [REDACTED] Road which was an older address
19 and I had no luck there. Then I checked [REDACTED] in
20 Joanna which was the address that a long time ago was on her
21 South Carolina driver's license. I did not have any luck
22 there.

23 MR. NEELY: Thank you. That's all I have for this
24 witness.

25 THE COURT: Anything on cross?

JASON NELSON-DIRECT EXAMINATION

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1 CROSS EXAMINATION

2 BY MR. WISE:

3 Q Isn't Ms. Wyatt a defendant in this case?

4 A That's correct.

5 Q And when did you start looking for her?

6 A Last week when I was given --

7 Q Last week? That was the first time you started looking
8 for her in how long?

9 A I was given the subpoena last week, Mr. Wise.

10 Q I assume you gave the bonding company a call?

11 A No, I did not.

12 MR. WISE: Okay. Thank you.

13 THE COURT: Thank you, sir, for your testimony. You
14 can step down.

15 MR. SCOTT: The State calls Jason Nelson.

16 THE COURT: Swear the witness, please, Madame Clerk.

17 JASON NELSON, having been first
18 duly sworn, testified as follows:

19 THE COURT: And sit close to the microphone and state
20 your name for the record, sir.

21 THE WITNESS: My name is Jason Nelson with Laurens
22 County Sheriff's Office. I am the evidence technician.

23 DIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q You are the evidence technician?

JASON NELSON-DIRECT EXAMINATION

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1 A Yes, sir. I am.

2 Q And what is an evidence technician?

3 A Handle all the evidence for the Sheriff's Office.

4 Secure it and make sure that the chain of custody and

5 everything is done properly. Make sure no one has access to

6 it. I transport the evidence to SLED for analysis, pick it

7 back up from SLED, and then secure the evidence until the

8 time of trial.

9 Q Evidence custodian. Is that another name?

10 A Yes, sir. It is.

11 Q How long have you been the evidence technician or

12 custodian for Laurens County?

13 A About three years now.

14 Q How many evidence technicians are there?

15 A Just myself.

16 Q You're the only one?

17 A That's correct.

18 Q What does that mean?

19 A That means I'm the only one that has access to the

20 evidence once it's secured or given to me.

21 Q Is it fair to say all evidence comes through you?

22 A Yes, it is.

23 Q Did you have an occasion to become involved with this

24 present case here?

25 A Yes, I did.

JASON NELSON-DIRECT EXAMINATION

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1 Q Did you receive some evidence?

2 A I did.

3 Q And who did you receive the evidence from in this case?

4 A From Sergeant Matt Veal.

5 Q When did you receive the evidence?

6 A I received the evidence on November the 28th, 2011.

7 Q Okay. And what was the method or -- how did it come to
8 you?

9 A We had a standardized kit, the BEST kit, that SLED
10 issues all agencies to submit evidence to the lab for
11 analysis.

12 Q All right. Let me find -- State's 22? Is that what
13 you're talking about?

14 A Yes, sir.

15 Q Go ahead. I'm sorry.

16 A Matt did the BEST kit. It was sealed when he brought
17 it to me. I double check and make sure everything's sealed,
18 all the paperwork is filled out properly, and then secure it
19 to take it to SLED.

20 Q Let me back you up one second.

21 A Sure.

22 Q This happened at 3:21 a.m. Did he hand deliver it to
23 you?

24 A Yes, he did. On the 11/28 he did.

25 Q He put it in your hand?

JASON NELSON-DIRECT EXAMINATION

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1 A He did.

2 Q Tell me, what's a drop box? Do you have drop boxes
3 over there? Some agencies have what's called a drop box.

4 A We do. We have a temporary evidence room. That's a
5 room that's secured. It is locked. All the officers have
6 keys to it. There are empty lockers, but there would be
7 locks in that room. What they do is then secure the
8 evidence in those lockers, they lock the locks, and I'm the
9 only one with a key to those lockers. And then in the
10 morning I go in and retrieve the evidence from the lockers
11 and secure it into the vault for permanent storage.

12 Q Okay. But in this particular case he handed all this
13 stuff to you?

14 A Yes, sir. He hand delivered it to me.

15 Q All right. I show you State's Number 27.

16 A Yes, sir.

17 Q State's 26, State's 23, State's 30, State's 28, State's
18 32, State's 25, 29, State's 24, State's 31, State's Number
19 22.

20 A Yes, sir.

21 Q How would these items have been delivered to you?

22 A Okay. The BEST kit has a manilla envelope. You put
23 this along with the chain of custody and the paperwork
24 that's submitted to SLED is all included in that. All these
25 items, along with the copy, which is the bottom carbon copy,

JASON NELSON-DIRECT EXAMINATION

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1 it's a dark yellow sheet of paper, is submitted in this bag.
2 Matt sealed the bag along with the paperwork and all the
3 evidence in it before he gave it to me. When he brought it
4 to me it was all sealed and completed. The only thing I had
5 to do was I had to sign for the delivery of the evidence to
6 myself.

7 Q Okay. Were you with us when we opened all this stuff
8 up out of the package today?

9 A No, sir. I was not.

10 Q Well, would you have gotten it like this?

11 A No. It would have all been already packaged and sealed
12 in this envelope here, BEST pack.

13 Q All these items would have been in State's 22 when you
14 received it? Is that what you're saying?

15 A That's correct. It would have been sealed.

16 Q Do you recall receiving all those items in that BEST
17 kit, State's Number 22?

18 A Yes, I did.

19 Q So, now, when he hand delivers it to you tell me again
20 what you do next?

21 A As soon as I get the kit I make sure it's sealed, make
22 sure all the paperwork is filled out properly. I then go
23 into the iLAB computer system, which is SLED's online
24 submission system, fill out all the information in the
25 computer system so they have that on file when I bring it

JASON NELSON-DIRECT EXAMINATION

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1 down. I then take the bag and secure it into the evidence
2 vault, which again, I'm the only one with a key to, and
3 which it stays in that location until I transport it to
4 SLED.

5 Q Okay. So it's your testimony that all these items were
6 enclosed in that BEST kit --

7 A Yes.

8 Q -- and remained under lock and key until you personally
9 transported it down to Broad River Road in Columbia?

10 A That's correct, yes.

11 Q And that's SLED headquarters, right?

12 A That's correct.

13 Q That's where they do all the analysis for all our drug
14 cases, for the most part, throughout the south -- in South
15 Carolina; is that correct?

16 A That is correct.

17 Q Laurens County doesn't have their own in-house
18 laboratory?

19 A No, sir. We don't.

20 Q Okay. So you get this on November 28th, 2011?

21 A Yes, sir.

22 Q I think you just mentioned that you check that bag for
23 any tears or --

24 A That's correct.

25 Q -- breaks?

JASON NELSON-DIRECT EXAMINATION

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1 A That's correct. It has a seal at the top that's tamper
2 proof that if you look at it you can tell that it's never
3 been opened. You just make sure all that's intact.

4 Q All right. When did you take it down to Columbia?

5 A I transported it to Columbia on 12/21/2011.

6 Q All right. So almost a month after you received it?

7 A That's correct.

8 Q So is it going to be your testimony that you left it in
9 that vault until December 21st?

10 A Yes. It was secure in the vault.

11 Q All right. Do you make that trip every month, or how
12 often -- frequently do you make the trip down to Columbia?

13 A I try to make it weekly. When I first started in the
14 evidence position I was trying to figure out a system and
15 now I try to go weekly to make sure I don't take a bunch at
16 one time down to SLED.

17 Q Okay. So you accumulate drug evidence for various
18 cases and then go down there?

19 A Yes, sir. Usually, if I had to guess, maybe 10 a week
20 or something like that.

21 Q Okay. Do you have -- so you take it on December 21st.
22 Who do you sign it in with?

23 A The lady at intake at SLED. Her name was Selena
24 Kinard.

25 Q Do you know where Selena Kinard is? Is she still at

PATRICIA CROOKS-DIRECT EXAMINATION

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1 SLED, do you know?

2 A I'm not sure.

3 Q All right. It's just your testimony that all that drug
4 evidence there was secured in that BEST kit. There were no
5 tears or compromises in the BEST kit. It remained in your
6 care and custody the entire time.

7 A That's correct.

8 Q And then you personally took it down to Selena Kinard
9 at SLED?

10 A That is correct.

11 MR. SCOTT: Thank you.

12 THE COURT: Cross examination?

13 MR. WISE: I don't have any questions.

14 THE COURT: Okay. Thank you for your testimony, sir.
15 You can step down. Solicitor, you got another witness?

16 MR. SCOTT: The State calls Pat Crooks.

17 THE COURT: Come around, please, ma'am. Madame Clerk,
18 if you'd swear this witness in, please.

19 PATRICIA CROOKS, having been first
20 duly sworn, testified as follows:

21 THE COURT: Ma'am, if you would sit close to the
22 microphone and state your name, please.

23 THE WITNESS: Patricia Crooks, C-R-O-O-K-S.

24 THE COURT: Thank you, ma'am. Your witness.

25 DIRECT EXAMINATION

PATRICIA CROOKS-DIRECT EXAMINATION

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1 BY MR. SCOTT:

2 Q Ms. Crooks, how long have you been with SLED?

3 A Almost 30 years.

4 Q And what are your current duties?

5 A I work strictly in the evidence room. My duties in the
6 evidence room include pulling any evidence requested by a
7 forensic scientist or by a forensic technician. Once the
8 evidence is pulled and transferred to that person or persons
9 it is then examined, and after the evidence has been
10 examined it is returned to the evidence room. And then as
11 individual agencies come in to the evidence room I return
12 the evidence to them.

13 Q Are you actually involved with the intake of drug
14 evidence over there at SLED?

15 A No, I am not.

16 Q Who is Selena Kinard?

17 A May I refer to my electronic chain?

18 Q Yes, ma'am.

19 A Selena Kindard was an evidence technician in the log in
20 department. That's separation from evidence control.

21 Q All right. So is she the person who takes the evidence
22 in and logs it in?

23 A She's one of the people who take evidence in. We have
24 four people who do that.

25 Q On this particular case, and this is SLED lab number

PATRICIA CROOKS-DIRECT EXAMINATION

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1 L11-14585. Was she the intake person?

2 A Yes, she was.

3 Q And then as part of the intake do they document what's
4 coming in?

5 A Yes. When they take evidence in our computer system
6 automatically gives that piece of evidence a unique number
7 to that evidence, and then that number has a bar code on it.
8 In this case it was L11-14585. Once it's logged in she
9 would place that in a storage area of the evidence room.

10 Q Why all the safeguards?

11 A Well, you want a good chain of custody. You want to
12 know where the evidence is and who has access to it.

13 Q You've got to account for that dope -- those drugs
14 every step of the way; is that right?

15 A Yes. Each person has a bar code. Each person who
16 handles evidence has a bar code that is unique to them. So
17 say I was taking some evidence from the evidence room to
18 transfer to the technician. I would take that evidence, scan
19 my bar code, and then scan that evidence. The bar code on
20 the evidence. And that would appear in the electronic chain
21 of custody.

22 Q When you receive drug evidence has it already been
23 assigned these bar codes and these labels? Is that what
24 your testimony is?

25 A Before it's placed in the evidence room, yes. It

1 already had a label that's unique to that case.

2 Q Tell me what some of the concerns are for you when you
3 receive a -- I guess, do they all come in the BEST bag kits
4 like we have here in State's Number 22?

5 A That's how we generally get drug evidence in.

6 Q Okay. Are you -- do you examine the BEST kit at any
7 point when you receive it?

8 A When I receive it, it's inside a manilla envelope that
9 comes with this BEST kit -- with the BEST kit, and that
10 would be the contact I had with it initially.

11 Q Okay. Do you check it for any kind of compromises in
12 the bag?

13 A Yes. If there was something wrong with the bag, if it
14 had been tampered with, I would not take it.

15 Q Okay. Now, did that happen in this case? Was there
16 any tears or any kind of --

17 A No, there were not.

18 Q Okay. So this, Number 22, has now been cut open. When
19 you received it, it would have had contents; is that
20 correct?

21 A That's correct.

22 Q And can you tell with your notes what the contents
23 were?

24 A According to the electronic chain of custody, this came
25 in as item one. You see right here. Right below that is

PATRICIA CROOKS-DIRECT EXAMINATION

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1 the bar code. And it was entered into the chain as one
2 parenthesis one, sealed BEST evidence pouch containing BEST
3 kit evidence.

4 Q Okay. And according to the electronic chain you -- and
5 you can identify this, State's Number 22. It doesn't have
6 the contents anymore. But you can identify this as the BEST
7 kit you received?

8 A Yes. I identify it with the SLED laboratory label L11-
9 14585.

10 Q All right. And when did you receive that, Ms. Crooks?

11 A On 12/28/2011.

12 Q Okay. Tell me what you did with it next according to
13 the electronic chain of custody.

14 A According to the electronic chain I received it on
15 12/28/11 at 9:26 in the morning. The same day at 9:27 I
16 transferred that evidence to a forensic scientist Larry
17 Zivkovich.

18 THE COURT: Could you spell that last name for the
19 record, please, ma'am.

20 THE WITNESS: Yes, sir. Z-I-V-K-O-V-I-C-H.

21 Q Let me -- the intake person again, Selena Kinard, in
22 this particular case?

23 A Correct.

24 Q Where is Selena Kinard now?

25 A She no longer works at SLED. She hadn't worked there

PATRICIA CROOKS-CROSS-EXAMINATION

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1 in, I believe, about a year.

2 Q Okay. But December 21st, 2011 she was still over
3 there?

4 A Yes, sir.

5 Q And again, your testimony, when you received that BEST
6 kit containing the alleged drug in evidence it would have
7 not been compromised in any way?

8 A No. It was sealed as it came in to the lab up here.
9 It had not been tampered with.

10 MR. SCOTT: Thank you, Ms. Crooks.

11 THE COURT: Cross examination.

12 MR. WISE: Just a few.

13 CROSS-EXAMINATION

14 BY MR. WISE:

15 Q Ms. Crooks, when you received that bag it was sealed?

16 A Yes, sir.

17 Q That's correct?

18 A Yes, sir.

19 Q You're not here testifying to the condition of the bag
20 when it came into SLED --

21 A No, sir.

22 Q -- six days earlier?

23 MR. WISE: Thank you.

24 THE COURT: Anything in redirect?

25 MR. SCOTT: Thank you.

PATRICIA CROOKS-REDIRECT EXAMINATION

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1 REDIRECT EXAMINATION

2 BY MR. SCOTT:

3 Q Tell me about -- what does tamper-evident mean?

4 A Well, if someone had tried to pull this open, that
5 would be clearly visible if you looked at it.

6 Q Okay. And there's --

7 A It has no tears along the side and it wouldn't have
8 been torn across the bottom. It would have been completely
9 intact as you seal it.

10 Q The handwriting on the front, what does that say?

11 A Actually, I can't read it. Laurens -- LCSO. That
12 would be Laurens County Sheriff's Office. The date is
13 11/24/11, and the person printed their name, Matt Veal, and
14 then signed their signature.

15 MR. SCOTT: Okay. Thank you.

16 THE COURT: Any further cross?

17 MR. WISE: None further.

18 THE COURT: Thank you for your testimony, ma'am. You
19 can step down.

20 THE WITNESS: Thank you.

21 THE COURT: Any objections to this witness being
22 excused?

23 MR. SCOTT: No, sir.

24 MR. WISE: No objection.

25 THE COURT: Without objection, ma'am, you're welcome to

LAWRENCE ZIVKOVICH-DIRECT EXAMINATION

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1 stay with us or you can leave the courthouse.

2 THE WITNESS: Thank you.

3 MR. SCOTT: Your Honor, the State calls Lawrence A.
4 Zivkovich.

5 THE COURT: Come around, sir. Madame Clerk, swear the
6 witness.

7 LAWRENCE ZIVKOVICH, having been
8 first duly sworn, testified as follows:

9 THE COURT: Sit close to the microphone, state your
10 name, and you'll need to spell your last name, please, sir.

11 THE WITNESS: Lawrence Zivkovich, Z-I-V-K-O-V-I-C-H.

12 DIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q Mr. Zivkovich, were are you employed?

15 A I'm employed with South Carolina Law Enforcement
16 Division.

17 Q What is your title over there?

18 A I'm a forensic scientist.

19 Q What do you do all day long?

20 A I am assigned to the drug analysis section where we
21 analyze evidence for the controlled substances.

22 Q How long have you been doing that?

23 A Approximately seven and a half years.

24 Q Is this all the illegal narcotics under the code?

25 A Yes, sir.

LAWRENCE ZIVKOVICH-DIRECT EXAMINATION

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1 Q Marijuana, cocaine, heroin, crack, meth?

2 A Yes, sir.

3 Q What about prescription pills?

4 A Yes, sir. We analyze those also.

5 Q Tell me what kind of training you have to undergo to be
6 a forensic scientist at SLED.

7 A I received a bachelor of science degree in chemistry
8 and I spent nine years at the Department of Health and
9 Environmental Control as a chemist. And then when I was
10 hired at SLED I was trained for nine months as a forensic
11 scientist there. And I also went to a PBA seminar on drug
12 analysis.

13 Q Do you have any kind of ongoing training that you have
14 to complete every so often?

15 A Every year we do in-house and out-sourced proficiency
16 exams which are unknown samples of which we have to analyze.

17 Q Okay. Tell me, seven and a half years over -- just on
18 like SLED experience, how many drug analyses have you
19 performed?

20 A A little over 5,000 probably.

21 Q Can you break it down per drug? Do you know?

22 A I really don't have any idea.

23 Q Approximately how many times have you tested
24 methamphetamine? Any idea?

25 A Over 1,000.

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1 Q How many times have you testified in general sessions?

2 A Eighteen times.

3 THE COURT: How many times, sir?

4 THE WITNESS: Eighteen.

5 THE COURT: Eighteen.

6 Q Were you qualified as an expert each one of those 18
7 times?

8 A Yes, sir.

9 MR. SCOTT: Your Honor, the State would offer Lawrence
10 Zivkovich as an expert in forensic analysis of narcotics.

11 THE COURT: Any examination as to qualifications?

12 MR. WISE: No objection, Your Honor.

13 THE COURT: Okay. So qualified as an expert in forensic
14 analysis of drugs.

15 Q All right. Mr. Zivkovich, December 21st of 2011 did
16 you have occasion to receive some evidence from the Laurens
17 County Sheriff's Office in a case with a John Dobbins listed
18 as a suspect?

19 A The case that was referred to earlier, I actually
20 picked it up and put it in my possession on December 28th.

21 Q Okay. I'm sorry. What do your notes show -- what was
22 the date it came into SLED?

23 A I don't have a chain of custody with me.

24 Q Okay. Do you remember the chain of custody?

25 A No, sir. I just write down the day I pick it up from

LAWRENCE ZIVKOVICH-DIRECT EXAMINATION

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1 the evidence login.

2 Q Do you --

3 A I don't pick up cases the day they come in to SLED. I
4 used to pick them up on a weekly basis. Now we've changed
5 to a daily basis.

6 Q How do you typically receive them?

7 A As far as timing or how I pick them up?

8 Q How do you pick them up?

9 A Normally what happens is they are logged in downstairs
10 and then our supervisor gets a list of everything that's
11 downstairs for drug analysis and then she will assign it to
12 different chemists in the section and we decide when we go
13 pick up the cases from downstairs.

14 Q Okay. I guess my question is how does it -- how does
15 the drug evidence get on your desk?

16 A I send a request down to evidence custodian, and when
17 she has time then I go down and pick them up from her.

18 Q How was Pat Crooks involved with this case then?

19 A Pat Crooks would be the evidence custodian, so she
20 would be the person I pick up from.

21 Q Okay. You go downstairs and she hands it over to you.
22 Is that your -- is that what you're saying?

23 A That's correct.

24 Q Okay. December 28th did you have occasion to pick up
25 drug evidence from Patricia Crooks as applies to this case

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1 today?

2 A Yes, sir.

3 Q What are your next -- shows that you received?

4 A I picked up case L11-14585.

5 Q Okay. Let me show you State's Number 22. Do you
6 recognize that?

7 A Yes, sir.

8 Q What is that?

9 A It's a BEST kit that I picked up. I signed on the top
10 saying that the seal was intact on 12/28/11 and initialed.

11 Q So that's the actual BEST kit you received that your
12 notes -- you're just referring to your notes on?

13 A Yes, sir.

14 Q And you say you checked it for -- to make sure it was
15 sealed?

16 A Yes, sir. When we pick it up we just make sure that
17 the seals on them are tamper evident, the writing on the
18 sides, and we put the seal on the top. All that means is
19 that if somebody did attempt to open it anywhere that it
20 would give an appearance that it was tampered with. Once
21 it's been opened it's impossible to seal back without
22 somebody realizing what happened. And each one has a unique
23 serial number on the kit so you couldn't take out one kit
24 and place it in another one.

25 Q What would you do if you found a tear in it?

LAWRENCE ZIVKOVICH-DIRECT EXAMINATION

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1 A We have found cases that weren't sealed properly.

2 We'll return to the agency.

3 Q You don't test them if it's torn open?

4 A Correct.

5 Q All right. But I guess you have to tear it open in
6 order to perform your test; is that right?

7 A That's correct.

8 Q And is there any way you -- you cut it from the bottom
9 typically, or is there any certain way you usually do it?

10 A Yes, sir. The kits actually do say to cut them on the
11 bottom and the wording says to cut here to open. We do that
12 just to try to keep the seal that was originally placed
13 there by the officer intact.

14 Q Okay. So it's your testimony that that BEST kit was
15 sealed and intact when you received it?

16 A Yes, sir.

17 Q All right. So do your notes show what was in the BEST
18 kit?

19 A Generally when I pick up a BEST kit, when I go to work
20 at -- each BEST kit comes with an analysis request which is
21 -- the officer has an option as to whether they actually put
22 the inventory on it and someone just write the drug
23 evidence. The officer that filled this one out actually put
24 an inventory on it. And if it comes with an inventory we
25 check to see that what's in the BEST kit matches the

LAWRENCE ZIVKOVICH-DIRECT EXAMINATION

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1 inventory.

2 Q Do you have the inventory?

3 A I have the request form that's filled out by the
4 officer.

5 Q Does it show what they're requesting to be tested?

6 A Yes, sir. It just shows that it had five different
7 evidence bags enclosed inside the BEST kit with various
8 items in them.

9 Q Okay. Did you try to reconcile that with what you
10 actually found in the BEST kit?

11 A I did.

12 Q Was anything missing?

13 A No, sir. I initialed at the bottom of it when I
14 finished my check.

15 Q Tell me -- tell me what kind of test you performed.

16 A Depending on the type of evidence we usually -- the
17 first thing we do is a visual exam just to make sure that it
18 matches the inventory and what they listed on there. Then
19 once that's done we'll usually perform a chemical test which
20 gives us a preliminary answer to what substance it may be.
21 And then after that we do a further test on instrumentation.

22 Q Okay. Did you label one of the items 1.1?

23 A Yes, sir.

24 Q What was item 1.1?

25 A 1.1 was an evidence bag number one containing

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1 prescription bottle containing a crystal substance.

2 Q Were you able to test the items in item 1.1 in the bag?

3 A I did.

4 Q What were your findings?

5 A I found that it contained methamphetamine --

6 MR. WISE: Your Honor, this is -- excuse me.

7 THE COURT: Wait a minute, sir.

8 MR. WISE: This is subject to my previous position.

9 THE COURT: Certainly.

10 MR. WISE: Right.

11 THE COURT: So noted. You may be proceed, sir.

12 A Found that it contained methamphetamine, .02 grams.

13 Q Tell me about item 1.2.

14 A 1.2 was an evidence bag that had an open prescription
15 bottle and it contained 40 yellow tablets that were found to
16 be a oxycodone and acetaminophen mixture, and 10 white
17 tablets that were found to be a mixture of aspirin,
18 acetaminophen and caffeine, and one big tablet that was
19 found to be ranitidine which is an over the counter drug.

20 THE COURT: Can you spell that, please?

21 THE WITNESS: Yes, sir. It's R-A-N-I-T-I-D-I-N-E.

22 A Then there was a partial blue tablet which was found to
23 be diazepam. And there were 11 peach tablets which were
24 indicated as fexofenadine, and they weren't tested since
25 they were over the counter and we had literature to indicate

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1 what the tablets were.

2 THE COURT: Can you spell that?

3 THE WITNESS: Yes, sir. It's F-E-X-O-F-E-N-A-D-I-N-E.

4 THE COURT: Thank you.

5 A And lastly there was a -- four white tablets that were
6 found to be amoxicillin. And those were all the -- that was
7 all the evidence contained in the evidence bag.

8 Q Okay. And some of it was just over the counter --

9 A Yes, sir. If they're over the counter generally all we
10 do is get literature sources that indicate what they are and
11 don't do any further testing on them.

12 Q Okay. Any of those controlled substances?

13 A Yes, sir. The oxycodone and acetaminophen were
14 controlled, and --

15 Q What schedule drug is that oxycodone and acetaminophen?

16 A That's a schedule two drug. And the other one, item
17 1.2.4 was found to be diazepam which is a Schedule IV drug.

18 Q So diazepam and oxycodone are schedule -- scheduled
19 drugs. Oxycodone is Schedule II and diazepam is Schedule
20 IV?

21 A Yes, sir.

22 Q What does that mean?

23 A That's just a schedule that's administered by the
24 federal government to indicate the varying degrees of
25 tablets as far as their ability for addiction, their

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1 pharmacological effects, and how they're used as far as the
2 medical industry goes.

3 Q The next item is 1.3. What did you receive in item
4 1.3?

5 A That was the evidence bag labeled number three
6 containing a mirror containing a powder substance.

7 Q Did you test that powder substance?

8 A Yes, sir.

9 Q And what did you determine that powder substance was?

10 A I found methamphetamine with a weight of less than 0.1
11 grams.

12 Q Item 1.4.2.

13 A Yes, sir. That was a plastic bag containing a powder
14 substance.

15 Q Okay. Did you test it?

16 A Yes, sir. I found methamphetamine with a weight of 1.2
17 grams.

18 Q Item 1.4.3.

19 A That was a glass vial containing a powdered substance
20 and I found it to be methamphetamine with a weight of 0.1
21 grams.

22 Q How about item 1.5?

23 A 1.5 is an evidence bag number five containing a plastic
24 bag containing a powdered substance which I found to be
25 methamphetamine with a weight of 1.2 grams.

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- 1 Q Okay. It's your testimony you tested five different
2 containers with meth?
- 3 A Six total tests were done.
- 4 Q Six containers? Is that 1.1, 1.4.1, 1.4.2 --
- 5 A You skipped 1.3. We had a 1.1, and item 1.3, 1.4.1,
6 1.4.2, 1.4.3 and 1.5.
- 7 Q Okay. So your weights are going to be .2 grams from
8 1.1, .1 gram from 1.3, .1 gram from 1.4.1 --
- 9 A 1.3 was actually less than .1 gram.
- 10 Q Okay. And 1.2 grams in 1.4.2., .1 gram in 1.4.3, and
11 1.2 grams in 1.5?
- 12 A Correct.
- 13 Q Okay. This is State's Number 27, 32, 31, State's 29,
14 State's Number 30, State's 25, State's Number 26, State's
15 23, State's 28, State's 24. Just take a minute and examine
16 those items.
- 17 A Yes, sir.
- 18 Q All right. Do you recognize all those items?
- 19 A Yes, sir.
- 20 Q How are you able to recognize those?
- 21 A They all have my initials with the -- the laboratory
22 item number on each bag.
- 23 Q Can you link these items, State's Number 22, to the
24 BEST kit bag?
- 25 A Yes, sir.

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- 1 Q How are you able to do that?
- 2 A The lab number that was assigned downstairs is written
3 on each one of the individual items.
- 4 Q Okay. So when do you label these individual items?
5 After you test them or right when you open the BEST kit bag?
- 6 A When I open the BEST kit bag I start labeling items as
7 I test them. Each one gets a unique item -- item number as
8 it's being tested.
- 9 Q Okay. Those are all -- those are all items that were
10 tested. They're all items that you received in State's
11 Number 22?
- 12 A That's correct.
- 13 Q It's your professional opinion in item 1.1 you found
14 0.2 grams of methamphetamine?
- 15 A Yes, sir.
- 16 Q All right. It's your professional opinion that item
17 1.2.1 you found a Schedule II oxycodone and acetaminophen?
- 18 A There were four tablets total. Yes, sir.
- 19 Q Okay. But those were the tablets that were in there?
- 20 A Yes, sir.
- 21 Q It's your professional opinion that item 1.2.4 you
22 found Schedule IV controlled substance diazepam?
- 23 A Yes, sir.
- 24 Q Okay. And it's your professional opinion in item 1.3
25 you found some more methamphetamine, less than .1 gram?

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1 A Correct.

2 Q It's your professional opinion that 1.4.1 you found
3 another presence of methamphetamine, less than .1 gram?

4 A Yes, sir.

5 Q Item 1.4.2, is it your professional opinion that there
6 was 1.2 grams of methamphetamine in that bag?

7 A Yes, sir.

8 Q And item 1.4.3 it's your professional opinion there was
9 .1 gram of methamphetamine found?

10 A Yes, sir.

11 Q It's your professional opinion that in item 1.5 there
12 was 1.2 grams of methamphetamine found?

13 A Yes, sir.

14 Q Okay. That's 2.8 grams total of methamphetamine?

15 A I wouldn't be able to add them all together because
16 some of them have a weight of less than .1 gram and you
17 can't add multiple items that don't have an actual number
18 for it. So I don't have an actual total for the entire
19 case.

20 Q Why do you do -- why do you do less than -- why don't
21 you give it -- assign it a number instead of saying there's
22 some unknown less than .1 gram?

23 A Well, the reason is mainly financial, and also because
24 of the law. Financially, for a scale to be that accurate
25 down to a certain scale you're talking about 10s of

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1 thousands of dollars for a scale which the state just
2 doesn't have money to buy. And so, our policy is that if
3 it's less than .1 grams that we just report it out as less
4 than .1 instead of giving an actual number for a weight that
5 low. If we do a heroin case which actually has a weight
6 value of less than that we actually have a special scale in
7 the lab that everybody uses.

8 Q Okay. Can you conclusively say there was at least 1.7
9 grams of methamphetamine?

10 A Well, two of them -- the two combined we have 2.4 grams
11 between the two items.

12 Q Okay. Well, then item 1.4.3 says .1 gram, correct?

13 A Yes, sir.

14 Q So we can say one and a half grams.

15 A Totals that we have are 2.5 grams total, sir.

16 Q 2.5.

17 MR. SCOTT: Now, the State would offer -- I think State
18 22 is already entered. We would offer State's 31, 32,
19 State's Number 27, State's Number 24, State's Number 29,
20 State's Number 30, State's Number 25, State's Number 26,
21 State's Number 28, State's Number 23 for admission into
22 evidence.

23 MR. WISE: Subject to our previous position.

24 THE COURT: Okay. So admitted into evidence.

25 (Whereupon, State's Number 23, 24, 25, 26, 27, 28, 29,

1 30, 31 and 32 were entered into evidence.)

2 MR. SCOTT: Thank you. Please answer any questions Mr.
3 Wise may have for you.

4 THE COURT: Mr. Wise, about how long do you think you
5 may take to cross? And I don't want to limit you in any
6 way. I'm just trying to figure out about a break.

7 MR. WISE: Twenty minutes at the most.

8 THE COURT: All right. Let's go ahead and take our
9 afternoon break. Madame Forelady and ladies and gentlemen
10 of the jury, we're going to ask that you retire to your jury
11 room and get you something to drink and whatever else you
12 need to do. Remind you not to discuss this case among
13 yourselves. And we'll come back out in about 15 minutes.

14 (Whereupon, the jury exited the courtroom at 3:11 p.m.)

15 THE COURT: Okay. Remind the witness that since we're
16 in the middle of your testimony, as I'm sure you know, you
17 cannot discuss your testimony or any aspect of this case
18 with anybody else. But certainly you're free to move around
19 and talk about anything else you'd like to talk about.

20 Mr. Wise, do you want to put on the record your
21 objection made at sidebar about Mr. Bently's testimony?

22 MR. WISE: Yeah. I just thought it was not relevant
23 and really was not probative of anything, and just can tend
24 to make the jury wonder what -- what it's all about. I
25 don't see any -- you know.

1 THE COURT: Okay. And --

2 MR. WISE: And besides, you know, she is a co-
3 defendant. There's no way they could call her as a witness
4 anyway, so. . .

5 THE COURT: Solicitor Neely, do you want to go ahead
6 and state your position? We're dealing with Mr. Bently's
7 testimony. Mr. Wise objected at side -- well, he objected
8 on the record, and then at the sidebar we discussed it.
9 Hold it down, please. You want to put the State's position
10 on it?

11 MR. NEELY: Your Honor, the State's position in that
12 matter was merely that we've encountered in the past at
13 trial the Defense's preference to attack the lack of
14 investigative work done by our office and the Sheriff's
15 Office. We were merely showing that we made an effort in
16 this case to find the co-defendant and were unable to do so.

17 THE COURT: Okay. Objection noted and overruled.
18 Thank you.

19 We'll be at ease about 15 minutes.

20 (Whereupon, the court was in recess)

21 THE COURT: Anything from the State before we bring the
22 jury out?

23 MR. SCOTT: Your Honor, I just want to bring up Mr.
24 Dobbins' son wasn't on the witness list, and I'm not sure if
25 the jury knows it's Mr. Dobbins' son or not. I believe Mr.

1 Rauch intends to call him -- Mr. Wise.

2 MR. WISE: Right. I did not receive any discovery
3 about any money. It's not in the incident report. It's not
4 in any of the pictures they sent me. They come in and they
5 talk about this money that was seized. I need his son now
6 to explain that.

7 THE COURT: Well, I think probably the best way of
8 handling this, see what you guys think, is let me just --
9 let me voir dire the trial jury on that one particular point
10 today that they're related by blood or marriage to -- I'll
11 get his name in a minute, or do they have any business or
12 social relationship with him and go from there. And if we
13 get any affirmative response then we'll have to regroup and
14 figure out what to do.

15 MR. WISE: If they don't know Johnny, they don't know
16 his son as a practical matter.

17 THE COURT: And I think you're probably right. But
18 does anybody have an objection --

19 MR. WISE: That's fine.

20 THE COURT: -- for the court to voir dire the trial
21 jury on that particular point?

22 MR. SCOTT: I don't think so if we do it that way, Your
23 Honor. But since he's here, possibly have him stand up and
24 see if any of them recognize him. All too often they don't
25 recognize the name, and then when they see the fellow --

1 MR. WISE: That's probably better to just ask them
2 about that.

3 THE COURT: Well, I think I need to still -- if I'm
4 going to voir dire I need to kind of use the standard
5 questions. What is --

6 MR. WISE: Joseph. Your middle name?

7 MR. DOBBINS: Bradley.

8 MR. WISE: Joseph Bradley --

9 THE COURT: Dobbins.

10 MR. WISE: -- Dobbins.

11 THE COURT: You can have a seat. But then when I bring
12 the jury out to ask them I'll just ask that you stand and --
13 so if no objections to doing it in that fashion then from
14 the State?

15 MR. SCOTT: None from the State, Your Honor.

16 THE COURT: All right. From the Defense, no objections
17 to that, Mr. Wise? No objections to the court to voir dire
18 the --

19 MR. WISE: No objection.

20 THE COURT: -- trial jury on that? Okay. Bring the
21 jury out, Mr. Bolt, please, sir.

22 (Whereupon, the jury entered the courtroom at 3:45
23 p.m.).

24 THE BAILIFF: All jurors are present, Your Honor.

25 THE COURT: Okay. So noted for the record. Thank you,

1 Mr. Bolt.

2 Madame Forelady and ladies and gentlemen of the jury,
3 just one -- I'm going to call it a housekeeping matter
4 before we continue with the testimony. There is one
5 gentleman witness whose name, for whatever reason, did not
6 appear on that initial witness list when we were qualifying
7 you, the jury. And Joseph Bradley Dobbins, would you please
8 stand?

9 (Whereupon, Mr. Joseph Bradley Dobbins stands.)

10 THE COURT: Is anyone related by blood or marriage to
11 Mr. Joseph Bradley Dobbins?

12 (Whereupon, no response from the jury.)

13 THE COURT: No response from the jury. Does anyone
14 have a business or social relationship with Joseph Bradley
15 Dobbins?

16 (Whereupon, no response from the jury.)

17 THE COURT: No response from the trial jury. Thank you
18 very much. You can have a seat.

19 (Whereupon, Mr. Joseph Bradley Dobbins takes his seat.)

20 THE COURT: Any further voir dire of the trial jury
21 from the State?

22 MR. SCOTT: None from the State, Your Honor.

23 THE COURT: From the Defense?

24 MR. WISE: Nothing.

25 THE COURT: Okay. Thank you very much. And, Mr. Wise,

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

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1 I think we're in cross-examination of this witness.

2 CROSS EXAMINATION

3 BY MR. WISE:

4 Q You'll have to help me again with your last name
5 because I lost it during the break.

6 A Zivkovich.

7 Q Zivkovich.

8 A Yes, sir.

9 Q All right. In your position as a SLED analysis people
10 send you -- not people, but law enforcement send you items
11 that they believe to be illegal, correct?

12 A They send me items to test for --

13 Q To test to see if they're illegal, correct?

14 A Yes, sir.

15 Q All right. Obviously if they believe them to be legal
16 they wouldn't send them to you?

17 A Well, there are legal -- I mean, prescription items are
18 legal, but --

19 Q Well, let me rephrase that. Items that are over the
20 counter, so to speak, that you don't need a prescription
21 for?

22 A Well again, sometimes we're still sent that, such as
23 like with ephedrine, pseudoephedrine. There are certain
24 amounts that are illegal to have.

25 Q Right.

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

216

- 1 A So it's a legal substance, but the amount --
- 2 Q But, in this --
- 3 A -- matters.
- 4 Q -- particular case, item number 1.2.2. Have you got
- 5 it?
- 6 A Yes, sir.
- 7 Q And what did that turn out to be?
- 8 A It's a mixture of aspirin, acetaminophen, and caffeine.
- 9 Q All right. And nothing illegal about that?
- 10 A No, sir.
- 11 Q All right. But it was sent to you to be analyzed?
- 12 A Yes, sir.
- 13 Q All right. Because someone apparently thought it was
- 14 maybe something illegal?
- 15 A I don't know their intention, but --
- 16 Q Okay. But generally that would be an accurate
- 17 statement?
- 18 A I would think so.
- 19 Q Okay. And how about item 1.2.3?
- 20 A That would be ranitidine. Yes, sir.
- 21 Q All right. And that's an over-the-counter product?
- 22 A That's correct.
- 23 Q That's not illegal either?
- 24 A That's correct.
- 25 Q But somebody didn't know? They sent it to you to be

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

217

- 1 tested to determine whether or not it was legal or illegal?
- 2 A Yes, sir.
- 3 Q And item 1.2.5.
- 4 A Yes, sir.
- 5 Q And what was that item?
- 6 A That was fexofenadine.
- 7 Q And that's over the counter?
- 8 A No, sir. That's prescription.
- 9 Q That's prescription. All right.
- 10 A Yes, sir.
- 11 Q And how about 1.2. -- but being prescription doesn't
- 12 mean it's necessarily on the schedules?
- 13 A A prescription you still -- it's illegal to possess if
- 14 you don't have a doctor's --
- 15 Q Have a prescription.
- 16 A -- order for it. But it was not under the schedule of
- 17 drugs which are considered addictive.
- 18 Q Okay. It's kind of like heart pressure -- heart --
- 19 blood pressure medicine and stuff like that?
- 20 A It spans the entire spectrum of medical disorders.
- 21 Q All right. How about 1.2.6?
- 22 A That was amoxicillin.
- 23 Q And that's --
- 24 A That's an Rx also.
- 25 Q So you get things occasionally that people have

1 mistaken for illegal things that turn out to be okay?

2 A Not necessarily mistaken. They might just not have any
3 idea what they are.

4 Q Are not sure?

5 A Yes, sir.

6 Q Okay. And the only way really to tell when you see any
7 sort of white substance or residue or whatever, the only way
8 to really tell what it is is to send it to a chemist such as
9 yourself to have it analyzed?

10 A Yes, sir.

11 Q And you can look at it and you make a guess?

12 A Yes, sir.

13 Q You can say oh, it's in this house. I think I know
14 what it is. But you really don't know until you send it off
15 to be analyzed?

16 A Yes, sir.

17 Q Because a lot of it looks alike, right?

18 A Yes, sir.

19 Q Now, you have analyzed residue inside coffee grinders
20 before, haven't you?

21 A Yes, sir.

22 Q You were not given any coffee grinders to be analyzed
23 in this case?

24 A No, sir.

25 Q And you have analyzed residue inside of plastic bottles

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

219

1 before that were found in an alleged meth lab?

2 A Actually, we have a clan lab expert at our site. We
3 generally don't accept liquids from the suspected clan lab
4 because of their toxicity and flammability.

5 Q You don't accept the liquid, right?

6 A No. We do accept them, but they have to go through
7 somebody that --

8 Q A different procedure?

9 A Correct.

10 Q Is that correct? But you can analyze it?

11 A If it's deemed safe by our clan lab expert.

12 Q Right. You have someone that it goes through first
13 before it gets to you?

14 A Yes, sir.

15 Q All right. And once that person says analyze it, you
16 can analyze it?

17 A Yes, sir.

18 Q And if you've got a plastic bottle with a white powder
19 in it, of course you can analyze that?

20 A Yes, sir.

21 Q And you were given no bottles to analyze in this case?
22 No plastic bottles?

23 A Just a glass vial.

24 Q Just a glass vial. And that is --

25 A 1.4.3.

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

220

1 Q I believe it's -- is that it?

2 A Yes, sir.

3 Q Okay. Now, you, of course, were never given anything
4 like a scale to analyze?

5 A Not in this case. No, sir.

6 Q You were given a mirror, correct?

7 A Yes, sir.

8 Q And what did you do to that mirror in order to
9 determine whether it had anything probative to do with this
10 case?

11 A All I would do is I would take whatever powder -- if
12 there is enough powder to do a chemical test, do a chemical
13 test, which in this case -- which in this case there was. I
14 did do a chemical test on it. Do a preliminary test. And
15 then I scrapped off enough to do an extraction analysis on
16 it.

17 Q All right. And you had to actually scrap stuff off of
18 it?

19 A I didn't necessarily scrap it off. I took whatever
20 powder was on the mirror and in the bag, since static cling
21 makes it cling all over to the bag, the bag of powder.

22 Q Okay. But you were able to determine that there was a
23 residue of methamphetamine on that mirror?

24 A Yes, sir.

25 Q And had something been used to weigh methamphetamine

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

221

1 and some methamphetamine had fell onto it, you could have
2 taken that instrument and conducted basically the same type
3 test?

4 A If there was enough residue, yes.

5 Q If there was enough residue?

6 A Yes, sir.

7 Q And sometimes residue is so small you -- it's not even
8 visible to the eye?

9 A That's correct.

10 Q All right. And you can test it?

11 A Yes, sir.

12 Q All right. But you didn't get any scales or anything
13 in this case to have it tested?

14 A No, sir.

15 Q All right. When you test this you do several types of
16 tests?

17 A We have -- we have different options, yes.

18 Q All right. And you do the gas --

19 A Gas chromatography and mass spectrometry.

20 Q Gas chromatography. What is that?

21 A Gas chromatography. What that is, is we extract
22 whatever residue there is and when we put it into a
23 tube, different molecules cling to the tube at
24 different temperatures and they come through the tube
25 at different times, so it separates them by time. The

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

222

1 tubes will be 20 meters long and the molecules will
2 cling to part of the residue and pull back out, go back
3 in. So they take different timing to come out of the
4 tube, and so, separates them by time. And what we do
5 with that is that's considered a preliminary test in
6 mass spectrometry.

7 Q And the next test you do is what?

8 A Mass spectrometry.

9 Q And what is that exactly?

10 A Mass spectrometry. What that does is it uses energy to
11 break apart the molecules that are passing through it, and
12 each molecule will have a unique fingerprint, so to speak,
13 such as your own fingerprint, so that when it comes through
14 it can uniquely identify each individual molecule.

15 Q And this is not something that you personally analyze.
16 It -- when it comes out of the mass spectrometry a computer
17 generates a finding, doesn't it?

18 A It does, but we can't go by that finding. We actually
19 have to look at the spectrum that it generates --

20 Q Correct.

21 A -- and the chemist has to okay it.

22 Q And some of them -- some of them are very similar to
23 each other?

24 A Correct.

25 Q All right. Did you get a printout of this case from

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

223

- 1 the computer as to what this substance was?
- 2 A For which item?
- 3 Q For any of the items?
- 4 A Yes, sir.
- 5 Q All right. Have you got that with you?
- 6 A Yes, sir.
- 7 Q Could I see that? Just pick an item. I'm not
8 particularly choosy about which one.
- 9 A This would be all the data from item 1.1.
- 10 Q All right. I notice it's got a lot of stuff in here
11 beside methamphetamine.
- 12 A Yes, sir.
- 13 Q It's also got methopphetamine?
- 14 A I would have to see the spectrum--
- 15 Q Well, you could probably pronounce it better than I
16 can. The last two items on that sheet.
- 17 A No. Those are just different degrees of matches. What
18 it does is it gives you a -- it gives you a menu with the
19 highest to the lowest matching orders.
- 20 Q All right. So that is items -- what order are those
21 two on the list?
- 22 A Methamphetamine is the top word, but that's only a 43
23 percent match.
- 24 Q Right. What's the second one?
- 25 A Methoxyamphetamine.

- 1 Q And the third one is?
- 2 A Norepinephrine.
- 3 Q So that's -- that computer is telling you it could be
- 4 any one of those three things?
- 5 A No, sir.
- 6 Q It's not?
- 7 A It's not telling me it's any of them.
- 8 Q It's not telling you it's any of them?
- 9 A No, sir.
- 10 Q It's telling you those are the three things you need to
- 11 look at?
- 12 A It's telling me these three things might possibly be a
- 13 match.
- 14 Q Might possibly be a match, right?
- 15 A Right.
- 16 Q And then what --
- 17 A It's up to the computer -- it's up to the chemical
- 18 analyst to figure out what --
- 19 Q What goes -- what do you do after that?
- 20 A As far as when I receive the data?
- 21 Q Right.
- 22 A Then I go through the data package and look at the
- 23 spectrum that's been generated and find out what it actually
- 24 does match.
- 25 Q And do you have that spectrum?

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

225

- 1 A For this particular item?
- 2 Q Right.
- 3 A This particular item, the one item I called a match to
- 4 is methamphetamine.
- 5 Q Right. But do you have the spectrum that you looked at
- 6 to match that?
- 7 A Yes, sir.
- 8 Q All right. And do you have the other two spectrums?
- 9 A It only generates the highest --
- 10 Q It only generates the highest. So you didn't compare
- 11 this spectrum to the other two items?
- 12 A I can if I choose to.
- 13 Q Okay. But you chose not to?
- 14 A That's correct.
- 15 Q Okay. So, and that spectrum was generated at the same
- 16 time the initial printout was made or was it done later?
- 17 A The same time.
- 18 Q Same time.
- 19 A And the three matches on that one are all
- 20 methamphetamine. So there's no sense in making --
- 21 Q So -- well, what do you -- what do you compare this
- 22 spectrum to?
- 23 A This is a library generated by an actual compound that
- 24 we know to be methamphetamine and that's entered into a
- 25 library so it has something to match to it.

LAWRENCE ZIVKOVICH-CROSS-EXAMINATION

226

1 Q All right. Now, in your experience, and -- and you've
2 been involved in testifying in drug cases for how many
3 years?

4 A Approximately almost seven.

5 Q Seven years. You testified the total amount of
6 methamphetamine found in this case would have been slightly
7 over 2.5 grams?

8 A It was at least 2.5.

9 Q Right. And then you had some that were less than a
10 gram, but you don't know how much less. So the best you
11 would say is slightly over 2.5?

12 A All I can say is it's at least 2.5.

13 Q At least 2.5. Okay. Have you acquired any knowledge
14 in your work in this area what the street price of
15 methamphetamine is per gram?

16 A No, sir.

17 Q You haven't?

18 A No, sir.

19 Q Okay. Now, when you get items in such as -- hard items
20 in such as the mirror, do sometimes the instructions tell
21 you to pass this mirror on to another agency for other
22 tests?

23 A We will sometimes pass on to other departments in SLED,
24 but not to another agency.

25 Q I mean -- when I said agency I meant another department

LAWRENCE ZIVKOVICH-REDIRECT EXAMINATION

227

- 1 with SLED.
- 2 A Yes, sir.
- 3 Q Okay. So sometimes you'll get something in and say,
- 4 you know, check this for drugs and then go check it for
- 5 finger prints?
- 6 A That's correct.
- 7 Q And you would pass that on?
- 8 A That's correct.
- 9 Q And no one requested that this mirror or anything be
- 10 passed on for fingerprints?
- 11 A Not to my knowledge.
- 12 Q No one asked any of these little bottles to be passed
- 13 on for fingerprint analysis?
- 14 A Not to my knowledge.
- 15 Q All right. Do you have any knowledge about
- 16 fingerprints?
- 17 A No, sir.
- 18 Q Okay. But that has been done on occasions?
- 19 A Yes, sir.
- 20 Q And occasions you've even sent baggies over to be
- 21 analyzed for fingerprints?
- 22 A That's correct.
- 23 Q The bags that drugs are found in; is that correct?
- 24 A That's correct.
- 25 Q All right. But none of that happened in this case?

LAWRENCE ZIVKOVICH-RECROSS-EXAMINATION

228

1 A No, sir.

2 MR. WISE: Give me one moment.

3 THE COURT: Certainly.

4 MR. WISE: Thank you very much.

5 THE COURT: Anything in redirect from the Solicitor?

6 REDIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q It's your testimony you found at least two and a half
9 grams packaged in no less than six containers; is that
10 correct?

11 A That's correct.

12 MR. SCOTT: Thank you.

13 THE COURT: Any re-cross?

14 MR. WISE: Just -- just a few.

15 RE-CROSS EXAMINATION

16 BY MR. WISE:

17 Q What was the weight -- get your notes out. What's the
18 weight in those containers?

19 A Which ones?

20 Q Let's go through all six.

21 A Okay. 0.2 grams --

22 Q Whoa. 0.2 grams?

23 A Yes, sir.

24 Q All right. Now, a gram is roughly the size of a
25 Sweet'N Low packet?

LAWRENCE ZIVKOVICH-RECROSS-EXAMINATION

229

- 1 A It depends on what you're weighing. Everything has a
2 different density.
- 3 Q Well, if you -- I mean, a Sweet'N Low packet purports
4 to be a gram.
- 5 A Even with methamphetamine, a gram, depending on whether
6 it's really dense or very powdery, can be anything from a
7 Sweet'N Low pack to a small rock.
- 8 THE COURT: A small what?
- 9 THE WITNESS: A small rock.
- 10 Q All right. Did you -- well, can you tell us in these
11 exhibits up here what is the .2 grams? What number are you
12 looking for?
- 13 A 1.1.
- 14 Q 1. what?
- 15 A 1.1.
- 16 Q 1.4. Is this 1.1?
- 17 A That should be 1.3.
- 18 Q I do not see 1.1. So you're missing the 1.1?
- 19 A It should be a prescription bottle containing a crystal
20 substance. It was not repacked. So it should be in a
21 prescription bottle. That would be it right there.
- 22 Q That would be it. All right. So what -- when you say
23 1.1 gram, are you talking about what's in there?
- 24 A That's 0.2. Yes, sir.
- 25 Q 0.2?

LAWRENCE ZIVKOVICH-RECROSS-EXAMINATION

230

- 1 A Yes, sir.
- 2 Q All right. So that's -- you can see it, correct?
- 3 A Yes, sir.
- 4 Q But it's not a lot of it?
- 5 A It depends on what you're comparing it to.
- 6 Q All right. That's true. What's another item?
- 7 A You just want meth items, correct?
- 8 Q Right.
- 9 A Item 1.3.
- 10 Q And how much was it?
- 11 A That was less than .1 gram.
- 12 Q Less than .1 gram. So we have less -- that's the
- 13 mirror?
- 14 A Yes, sir.
- 15 Q And we have this one. What's the other item?
- 16 A The next item is 1.4.1, which is also less than .1
- 17 gram.
- 18 Q 1.4.1. So that's -- those are three of the six items
- 19 right there?
- 20 A Yes, sir.
- 21 Q Okay. What's the next one?
- 22 A 1.4.2.
- 23 Q And what is that?
- 24 A That's 1.2 grams. That should be --
- 25 Q 1.4, 1.2. That we can see. It's clear. All right.

LAWRENCE ZIVKOVICH-RECROSS-EXAMINATION

231

- 1 And what's the next one?
- 2 A 1.4.3, which would be the glass vial.
- 3 Q The glass vial. And how much was in it?
- 4 A 0.1 grams.
- 5 Q And we've got another 0.1 grams in --
- 6 A This one was 0.2.
- 7 Q All right. Was this 0.2 or less than 1?
- 8 A 0.1. 0.1.
- 9 Q All right. What's the next one?
- 10 A And the next one is item 1.5 which is 1.2 grams.
- 11 Q 1.2 grams. So of these six items, 1.4.2 and 1.5 really
- 12 are the only ones that have any -- well again, you don't
- 13 know what these -- these are clearly visible?
- 14 A Yes, sir.
- 15 Q And the others are what they are?
- 16 A Yes, sir.
- 17 Q As far as being able to see them and so forth, correct?
- 18 A Yes, sir.
- 19 Q All right. And the 1. -- 1.4.1 has attached to it a
- 20 little baggie, right?
- 21 A Yes, sir.
- 22 Q And it's not uncommon to find a very trace amount of
- 23 cocaine in a little baggie when people send it in?
- 24 A Well, when people are sending stuff in to us it's
- 25 usually a common finding in narcotics.

1 Q Right. If you put methamphetamine in a baggie, leave
2 it there for a while and then pour it all out, a little bit
3 of it is going to cling to that baggie?

4 A It's possible.

5 Q And, in fact, it's usually probable, isn't it?

6 A I can't speak to probability, but yes.

7 Q Right. And then what you get -- what's left over is
8 what you get there with less than one gram or something like
9 that? Less than .1 gram?

10 A Well, certainly less than residue. When I put on my
11 worksheet residue that means stuff that I can't weigh. I
12 can't get off to put on my weigh paper. So if I put less
13 than 1 -- .1 gram what that means is it's visible, I see it
14 on there, and I attempt to make a weight but it doesn't
15 reach .1 gram.

16 Q It doesn't weigh. So it's so small you really can't
17 weigh it, but you can see it?

18 A I can weigh it, but it just doesn't reach .1 grams.

19 Q Okay, got you. Because that's where your threshold is?

20 A Right. Our scale is accurate beyond that, but our
21 policy is just to report less than .1 gram.

22 MR. WISE: All right. Thank you.

23 MR. SCOTT: No, Your Honor.

24 THE COURT: You know, I think it may be helpful with
25 this witness or by stipulation is to match up the 1.

1 whatever numbers with the exhibit number. Now, if you
2 believe you can do that by way of stipulation then we can
3 deal with that.

4 MR. WISE: We can. I'm sorry. I should have done
5 that. But we can do it by stipulation.

6 THE COURT: Okay. All right. You don't need this
7 witness to do that?

8 MR. SCOTT: No, Your Honor.

9 THE COURT: It's not -- I just think before we close
10 the record in the case I think that needs to be put on the
11 record. So gentlemen, if you all would take care of that at
12 the appropriate time.

13 MR. SCOTT: Okay.

14 THE COURT: Anything further from this witness?

15 MR. SCOTT: No, Your Honor. And the State would rest
16 at this time.

17 THE COURT: Okay. All right. Sir, you can step down.
18 Thank you for your testimony. Any objections to this
19 witness being excused?

20 MR. WISE: No objection.

21 THE COURT: Okay. You're welcome to stay with us or
22 you're free to leave.

23 Let me just see the lawyers up here.

24 (Whereupon, a sidebar was held outside the hearing of
25 the jury.)

JOSEPH DOBBINS-DIRECT EXAMINATION

234

1 THE COURT: Okay. The State rests. Mr. Wise, I'll be
2 glad to --

3 MR. WISE: I call Joseph Dobbins.

4 THE COURT: Okay. Madame Clerk, if you would swear
5 this witness in, please, ma'am.

6 JOSEPH DOBBINS, having been first
7 duly sworn, testified as follows:

8 THE COURT: Get the rest of that evidence off the
9 witness box, please. Thank you. Your witness.

10 DIRECT EXAMINATION

11 BY MR. WISE:

12 Q Please give us your full name.

13 A Joseph Bradley Dobbins.

14 Q And where do you live, Mr. Dobbins?

15 A [REDACTED], Clinton, South Carolina.

16 Q And how long have you been living there?

17 A Five years.

18 Q Are you married?

19 A Yes, sir.

20 Q Got any children?

21 A Yes, sir.

22 Q How many?

23 A One mine, two that's not mine.

24 Q Excuse me?

25 A One that's mine, two that's not mine, but I raise them.

JOSEPH DOBBINS-DIRECT EXAMINATION

235

- 1 Q You married into two?
- 2 A Yes, sir.
- 3 Q All right. What do you do for a living?
- 4 A General construction.
- 5 Q Do you know Johnny Dobbins?
- 6 A Yes, sir.
- 7 Q And what kin are you to him?
- 8 A He's my father.
- 9 Q All right. Back in November of 2011, October,
10 September, the fall of 2011, were you doing work with him?
- 11 A Yes, sir.
- 12 Q And what were you all doing?
- 13 A We built a 35x40 metal building.
- 14 Q For somebody?
- 15 A For Ms. Anita Ginsler.
- 16 Q All right. And did you all have any other projects
17 during that time period also?
- 18 A Yes, sir.
- 19 Q All right. And how did y'all's business operation
20 work?
- 21 A I'm sorry?
- 22 Q How did your arrangement with your father work? How
23 did -- how did you get paid and stuff like that?
- 24 A We went out and worked and whatever profit we cleared
25 off of the job we split 50/50.

JOSEPH DOBBINS-DIRECT EXAMINATION

236

1 Q All right. Did y'all -- did y'all have a name for your
2 business?

3 A We called it Dobbins Masonry, but we do all general
4 construction. We specialize in masonry.

5 Q Did you all have a checking account or anything?

6 A No, sir.

7 Q All right. So when you get paid what would you with
8 the check, or if you got paid by check?

9 A I would go to the bank and cash it and give him half of
10 the cash.

11 Q And you'd take half?

12 A Yes, sir.

13 Q Specifically -- I don't necessarily on every case. But
14 in November of 2011, around the time of this incident, were
15 you all doing a job --

16 A Yes, sir.

17 Q -- for Ms. -- what's her name? Anita?

18 A Anita Ginsler.

19 Q Ginsler, all right. And how much was that job?

20 A The total of the job was 15,500.

21 Q All right. And how was -- how were the equipment and --
22 - or the -- what do you call it? The supplies paid for on
23 that job?

24 A Ms. Ginsler paid by credit card and by check.

25 Q All right. And do you know approximately the dates --

JOSEPH DOBBINS-CROSS-EXAMINATION

237

1 I think you've got some notes there?

2 A Yes.

3 Q Approximately the dates that you and your father were
4 paid on that project for approximately how much and when?

5 A On 11/1 he received a check for \$1,500. On 11/10 I
6 received a check for \$1,500. On 11/25 I received a check
7 for \$1,800. On 12/2 I received a check for \$300. And on
8 12/8 of 2011 I received a check for 2,692.26, which was --

9 Q You know those are accurate because you've got that
10 information?

11 A Yes, sir.

12 Q And were there some other projects about this time, not
13 necessarily this big, that you all were also working on?

14 A Yes, sir. We take any small job basically.

15 Q And y'all would split that money?

16 A Yes, sir.

17 Q And you'd give him cash for it?

18 A Yes, sir.

19 MR. WISE: All right. Thank you.

20 THE COURT: Anything on cross examination, Solicitor?

21 MR. SCOTT: Your Honor, just briefly.

22 CROSS EXAMINATION

23 BY MR. SCOTT:

24 Q Johnny Dobbins?

25 A Joseph.

JOSEPH DOBBINS-CROSS-EXAMINATION

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- 1 Q Joseph Dobbins. And Johnny is your father?
- 2 A Yes, sir.
- 3 Q And the two of you is Dobbins Masonry; is that --
- 4 A Yes, sir.
- 5 Q Okay. And you all filed with the Secretary of State
- 6 and everything, right?
- 7 A I'm sorry?
- 8 Q You filed that business with the Secretary of State?
- 9 A No, sir.
- 10 Q No? So how were y'all operating?
- 11 A We typically worked underneath the -- my grandfather's
- 12 business.
- 13 Q How does that work?
- 14 A Just basically worked with him. He's kind of like, I
- 15 guess you would say, business owner.
- 16 THE COURT: Sit a little closer to that microphone,
- 17 please, sir.
- 18 THE WITNESS: I'm sorry, sir.
- 19 THE COURT: That's okay.
- 20 Q Now, wait a minute. What do you mean work under his
- 21 business but you're called Dobbins Masonry and you're not --
- 22 A He is, too. He is, too.
- 23 Q And you all haven't filed with the Secretary of State
- 24 as a business --
- 25 A No, sir.

JOSEPH DOBBINS-CROSS-EXAMINATION

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- 1 Q -- to operate in this state?
- 2 A No, sir.
- 3 Q Are you a licensed contractor?
- 4 A No, sir.
- 5 Q Do you have any -- how do we know about the existence
- 6 of Dobbins Masonry? There's nothing filed with the state
- 7 about this business?
- 8 A No, sir.
- 9 Q so what do you do with this money? How do you report
- 10 it?
- 11 A I pay taxes.
- 12 Q How are you reporting the income coming in to you?
- 13 A I go to the place that you file your taxes and tell
- 14 them what I've made throughout the year and they come up
- 15 with an estimate that I have to pay.
- 16 Q Okay. But truly what you're telling us is that this
- 17 Dobbins Masonry is kind of a ghost company, right? It's not
- 18 on a record anywhere, is it?
- 19 A I assume. No, sir.
- 20 Q What were you reading up there with those monetary
- 21 amounts coming in?
- 22 A This was Ms. Ginsler's paper that she had filled out
- 23 saying the materials ordered and the checks paid.
- 24 Q Where's Ms. Ginsler?
- 25 A I assume at home.

JOSEPH DOBBINS-REDIRECT EXAMINATION

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1 Q And that's her handwriting? That's your testimony?

2 A Yes, sir. There's the check right there that was wrote
3 to him. So you can match handwriting, if you like --

4 Q Did you bring --

5 A -- on that.

6 Q All right, look. This is your father, right?

7 A Yes, sir.

8 Q You don't want to see him get into any trouble, do you?

9 A No, sir.

10 MR. SCOTT: Okay. Thank you.

11 THE COURT: Anything in redirect?

12 MR. WISE: Just one redirect.

13 REDIRECT EXAMINATION

14 BY MR. WISE:

15 Q Where did your father go to live after he got out of
16 jail with this offense?

17 A Childs Circle. I don't know the number.

18 Q Is that where he was living before?

19 A Yes, sir.

20 MR. WISE: Okay. Thank you.

21 THE COURT: Anything on re-cross?

22 MR. SCOTT: No, sir, Your Honor.

23 THE COURT: Okay. You can step down, sir. Thank you
24 for your testimony.

25 MR. WISE: And with that the Defense rests, Your Honor.

1 THE COURT: Okay. All right. Solicitor, do you plan
2 to have any reply or rebuttal case?

3 MR. SCOTT: None from the State, Your Honor.

4 THE COURT: All right. The evidentiary record is now
5 closed in this case.

6 Madame Forelady and ladies and gentlemen of the jury,
7 it's about 4:15. There's some matters that I need to take
8 up with the lawyers. So we're going to go ahead and adjourn
9 for the day and let me just kind of tell you what we'll do
10 tomorrow. The lawyers will make their closing arguments to
11 you, and then after that is done then I will give you the
12 court charge on the law, at which time then you would begin
13 your deliberations. But there's no need to try to get into
14 all that, because if we tried to do the charge and closing
15 arguments we would be well after 5:00. So we're going to go
16 ahead and adjourn. I want you back at 10:00 in your jury
17 room in the morning.

18 And again, I remind you once more, and will continue to
19 remind you until I give you the case to deliberate on, not
20 to discuss this among yourselves, not to discuss it with any
21 family members, any friends that you may come in contact
22 this afternoon, this evening and in the morning before you
23 come back to the courthouse. So I hope you have a good
24 evening and we'll see you at 10:00 in the morning.

25 (Whereupon, the jury exited the courtroom at 4:17 p.m.)

1 THE COURT: Okay. Mr. Wise, do you have anything you
2 need to put on the record?

3 MR. WISE: Your Honor, as we've discussed at the -- at
4 the bench before --

5 THE COURT: All right. It was agreed that any motions
6 you needed to make which are customarily made at the close
7 of the State's case would be made after you put up your
8 short witness.

9 MR. WISE: Right. I would move for a directed verdict
10 in this matter on several of the charges.

11 First of all, on the disposal of meth waste. What can
12 I say. We don't know what was in that plastic container
13 that was in the trash can. No one ever analyzed it. That
14 was the sole act that they relied upon to charge Mr. Dobbins
15 with disposal of meth waste. And to say that a plastic
16 bottle in a trash can inside his camper, which has not been
17 carried out into the environment, is improper disposal of
18 meth waste, I think, just carries that law much, much too
19 far. It's an ambiguous law to begin with, but this
20 certainly is ambiguous to allow merely placing something in
21 your trash can to be a disposal of meth waste. I don't
22 think there's remotely enough evidence to go to the jury on
23 that issue.

24 THE COURT: Okay. And any other ground for your motion
25 for directed verdict any other indictments?

1 MR. WISE: Well, on the -- on the methamphetamine, or
2 manufacturing meth charge, you know, there's not a scintilla
3 of evidence -- well, maybe -- scintilla is a civil rule.
4 There's no substantial evidence in this case to show that
5 there was ever any pseudoephedrine in that camper which is
6 an essential agreement -- ingredient to manufacture meth.
7 Without some evidence that pseudoephedrine was there because
8 there are empty packages, or we found pseudoephedrine pills,
9 or we analyzed the coffee grinder and it had pseudoephedrine
10 in it, all that would be some circumstance that could lead a
11 reasonable person to conclude that meth was being
12 manufactured because pseudoephedrine was in the camper at
13 that time. But simply because there's some red color in one
14 of these bottles, that is very speculative I think, at best,
15 to proof a manufacturing meth charge. Because try as you
16 want, if you don't have pseudoephedrine you're not going to
17 make meth.

18 THE COURT: Well, again, I'm to look to see if there's
19 any evidence, and viewing the evidence in the light most
20 favorable to the State, you know, is there any evidence or
21 any inferences drawn therefrom. And I'm not concerned with
22 the weight of the evidence. We do have a certified officer,
23 Sergeant Veal, who stated in his opinion that it was there
24 by examining the contents of the bottom of the pot. Now
25 again, that may go to the weight and may give you a very

1 strong argument to make to the jury, but I don't think that
2 would be enough to direct a verdict on that charge. So I'll
3 deny your motion there. But we're going to come back to the
4 disposal, but let's just go ahead and hit the rest of them.)

5 MR. WISE: On all the others, I understand that the
6 statute has an inference of possession with intent when it's
7 above a certain amount, which we'll address in charge
8 argument.

9 THE COURT: Right.

10 MR. WISE: But that's another issue. So I think that -
11 -

12 THE COURT: Sure.

13 MR. WISE: -- gets the State past it at this stage.
14 But I would ask for a directed verdict on all the charges on
15 this ground.

16 The State in this case has basically proven one of
17 three things. Well, maybe two of three things. All right?
18 They have proven these drugs are Sandy Wyatt's, these drugs
19 are Johnny Dobbins', or these drugs are both theirs. And I
20 don't think two out of three is sufficient to be proof
21 beyond a reasonable doubt. And that's -- you know, there's
22 been no scintilla of evidence beyond that. No one has --
23 there's no statements made by anybody. There's no
24 fingerprints that associate someone with it. So I think the
25 jury is left to completely speculate as to whether or not

1 these drugs are Mr. Dobbins', Ms. Wyatt's, or both theirs.
2 And that's the speculation. I don't think they're --
3 they're allowed to do it in a case such as this.

4 THE COURT: Okay. Thank you very much, Mr. Wise.
5 Solicitor, first address the disposal charge.

6 MR. NEELY: Certainly, Your Honor. First off, we saw
7 the pictures were entered into evidence and, you know,
8 Matthew Veal who was qualified as an expert talked about the
9 plastic tubing that goes -- was drilled into the top of the
10 Coke bottle was consistent with an HCL generator. Again,
11 Veal who was, again, qualified as an expert, testified he
12 saw salt-like residue in the bottom of the HCL generator
13 which was consistent with the HCL generator.

14 There was also testimony that you need two bottles for
15 a one pot, and Officer Veal testified that there was one
16 bottle that was the end product going in the bathroom. The
17 bottle in the trash can was the other bottle of those two --
18 of the tubing process. And then under a lot of those
19 circumstances we have methamphetamine. We have a one pot
20 going in the bathroom and we've got the other half of that
21 one pot in the trash can obviously being disposed of by
22 normal household means, which is illegal under the statute
23 and was not, as was elocuted on the stand, was not being
24 done by calling SLED and disposing of it properly.

25 THE COURT: Okay. I believe -- and again, I think this

1 goes to the weight and may very well give you some pretty
2 good jury arguments to convey, but I think there is -- there
3 is some evidence based upon Sergeant Veal's testimony that
4 would get the State past a directed verdict. So I'm going
5 to deny that.

6 Solicitor, what about Mr. Wise's arguments concerning
7 the -- on all the charges, either they're the Defendant's or
8 they're Sandy's, or they're both. What about that argument?

9 MR. NEELY: Well, as -- Your Honor, as it came out.
10 earlier, Ms. Wyatt has been charged as well. And as Your
11 Honor well knows, constructive possession can be on more
12 than one person.. It's been put on the record that this was
13 Mr. Dobbins' trailer. He had rented the property and he was
14 living there, not only by our witnesses but also by his son
15 that he was living at that location. He was living at that
16 location. That he opened the door, that he gave consent to
17 search, that it was his property, and all this stuff was in
18 plain view. There was one bathroom. The one pot was going
19 on in that one bathroom. It appeared to be one trash can.
20 The HCL generator was in that one trash can. The mirror in
21 the one kitchen had a line of meth on it when the officers
22 entered. And I believe even one of the officers on the
23 stand mentioned that -- in response to one of Mr. Wise's
24 questions, that Mr. Dobbins was, in fact, in possession. He
25 was in constructive possession, which will be our argument

1 to the jury as well.

2 THE COURT: Okay. Again, viewing the evidence in a
3 light most favorable to the State, the court does find that
4 there is some evidence that would justify sending the case
5 to the jury on all the charges. So certainly, Mr. Wise,
6 your motion and grounds and basis therefore are noted for
7 the record, but will be denied.

8 Anything else we need to take up with on the record
9 before we adjourn for today?

10 MR. WISE: No. I've sent some emails out concerning the
11 order of closing argument. I'm going to require that the
12 State open fully and review that over the evening. And I've
13 also sent emails out on the *U.S. versus Cheek* case which I
14 think involved the question of willful violation which is
15 required in this case by the indictment. But that's
16 something everybody can review overnight and discuss in the
17 morning. Just reminding everybody to check their email.

18 THE COURT: Okay. Concerning the order of closing
19 arguments, you have been -- let's see how the right way to
20 put it. Let me put it this way. A very capable head public
21 defender in this circuit, Janna Nelson, who tried a case
22 before me last week made the same argument, and I didn't
23 know if y'all -- y'all collaborate at times. And so, if
24 that's basically the argument she made then I've got an idea
25 where you're coming from.

1 MR. WISE: Well, she's -- she's -- I'll have to put on
2 the record she stole mine. But yeah --

3 THE COURT: I got you.

4 MR. WISE: -- it's an issue that's been out there with
5 me for --

6 THE COURT: Sure.

7 MR. WISE: -- a number of years.

8 THE COURT: I understand. It's an interesting
9 argument. I'm familiar with where you're coming from on
10 that.

11 Anything else before we adjourn for the day?

12 MR. NEELY: Just on that last basis, Your Honor. If
13 you want, we can send the case law as well as an email the
14 way we did last night.

15 THE COURT: Yeah. Yeah. If you got anything that is
16 really on point that you really want me to look at, then do
17 that. And certainly my law clerk and I will work whatever
18 amount of time it takes to do the job that we need to do.
19 We were here until after 7:00 last night. Of course, I know
20 evidently you all were kind of working at night, too. But
21 yeah, we'll take a look at anything you got for us.

22 MR. WISE: Before you think I was working too late, I
23 had a -- I had a 6:00 meeting in Newberry, so I didn't send
24 mine out until after I got back from Newberry and my
25 meeting.

1 THE COURT: I got you. All right. We're adjourned for
2 -- we'll just -- after we adjourn we'll discuss about time
3 in the morning. But we're adjourned for the day.

4 TRIAL DAY 2-09/11/13

5 (Whereupon, the proceedings were commenced at 10:25 a.m.)

6 THE BAILIFF: Let's all rise and the court come to
7 order, please.

8 THE COURT: Thank you very much. Have a seat. Mr.
9 Bolt, if you'll bring the jury out, please, sir.

10 (Whereupon, the jury enters the courtroom at 10:25 a.m.)

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: Thank you, Mr. Bolt. Good morning.

13 THE JURY: Good morning.

14 THE COURT: I saw some smiles on some faces. What I
15 wanted to let you know. We're working on finalizing what we
16 need to do this morning and we need a few more minutes to
17 put that in final form. So I didn't want you to be sitting
18 in your jury room thinking that we were not doing anything.
19 I wanted to bring you out and explain to you that we've been
20 working very hard. The lawyers got here probably before
21 9:00. I got here about 8:00. So we've all been working
22 real hard to put everything in final form in the best shape
23 that we can put it in and we just need a few more minutes to
24 do that. So I requested that you be brought out so that I
25 could explain that to you so you'll know that we are

1 working. So I'm going to ask that you go back to your jury
2 room, and just as soon as we finish everything then we'll
3 bring you out and have the final closing arguments and the
4 court charge. So please be patient with us and we'll get
5 you back out just as soon as we possibly can. Thank you
6 very much.

7 (Whereupon, the jury exited the courtroom at 10:27
8 a.m.)

9 THE COURT: We met in chambers concerning the final
10 charge. So anything that the State and the Defense feels
11 like you need to put on the record concerning the final
12 charge, and certainly after I charge, I'll certainly give
13 you the opportunity to make any additional comments. I
14 don't think you necessarily need to repeat any objections or
15 exceptions you take now. But anyways, from the State,
16 anything on the record concerning the court's charge?

17 MR. SCOTT: Your Honor, just what we talked about. We
18 would just note that the manufacturing, the first
19 provisionary thing, we would object to. We certainly
20 understand the situation we're in and agree that the charge
21 as is would be an appropriate alternative.

22 THE COURT: Right. And thank you. And as we discussed
23 in light of the comment that the court made at the outset in
24 order to try to -- I hate to use the word compromise but
25 I'll use it anyways. The court would just charge the entire

1 definition of manufacture and manufacturer. Thank you,
2 Solicitor.

3 Mr. Wise, anything you want to put on the record
4 concerning the charge? And you can go ahead and put on the
5 record, too, about the matter of the order of closing
6 argument, too.

7 MR. WISE: Right.

8 THE COURT: You may want to do that first. Put that on
9 the record first.

10 MR. WISE: Well, I would make the motion that the State
11 be required to open fully on the law and the facts of the
12 case on the grounds that the State has the burden in this
13 case and it is fundamentally unfair and deprives the
14 Defendant of due process of law under both state and federal
15 constitution. The Fourteenth Amendment of the Constitution
16 of the States. And it's -- here is the reason. This is a
17 circumstantial evidence case, period. There's very little
18 direct evidence in this case. For the State to listen to my
19 theory of the case and then to be able to get up and give
20 their theory of the case without my having the opportunity
21 to refute their theory of the case is fundamentally unfair.
22 They have the advantage of hearing of what I have to say
23 about the facts of the case and then coming up with their
24 theory and I will have no opportunity to reply to their
25 theory. In fact, I would like to reserve after the end of

1 the State's case at the appropriate time and put on the
2 record issues I would have raised had they been required to
3 open fully.

4 THE COURT: I think maybe you can do that. Right.
5 Because we're going -- after the closing argument then we're
6 going to send to the jury room --

7 MR. WISE: Right.

8 THE COURT: -- and then at that time you can state for
9 the record those issues raised by the State that create some
10 concern for you certainly.

11 MR. WISE: And the reason I say that is I argued this
12 case, an issue on appeal one time, and the state asked me --
13 or the court asked me how I was prejudiced and I did not
14 have the record in front of me to --

15 THE COURT: Right. Right. And I understand why you're
16 doing that, and certainly you'll be given an opportunity.

17 MR. WISE: Right. Secondly, I would like to object on
18 page 10 of the requested charge to the phrase that
19 constructive possession means the Defendant had dominion and
20 control, or the right to exercise dominion and control, over
21 the property on which the oxycontin and the diazepam was
22 found. I think that's an improper statement of the law and
23 puts a burden on the Defendant to prove that he did not
24 possess the drugs, as opposed to putting the burden on the
25 State to prove that he did knowingly possess it.

1 THE COURT: Right. And as we discussed, that language
2 is --

3 MR. WISE: Right.

4 THE COURT: -- certainly you're aware, Mr. Wise, that
5 language is straight out of *State vs. Logan*, but your
6 objection, exception is so noted.

7 MR. WISE: All right. And then the Defendant's
8 knowledge may be inferred -- still on page 10. The
9 Defendant's knowledge and possession may be inferred when
10 the substance was found on the property under the
11 Defendant's control. I feel that is a charge on the facts
12 in violation of the state constitution. I believe I handed
13 it up to your law clerk and other counsel a little
14 memorandum of law on that issue. There's an old South
15 Carolina case that clearly holds that when a judge charges a
16 jury that they may infer something, but that's a charge on
17 the facts.

18 THE COURT: Right.

19 MR. WISE: And I think that is true in that case.

20 THE COURT: Right. And that's denied. But let's note
21 on the record that your request to have the phrase
22 "knowledge of the drugs" inserted in two places on the
23 charge, that was granted.

24 MR. WISE: Right. I saw that. Again on page 12 we
25 again have a dominion and control issue and inferring

1 knowledge of the Defendant from the fact that drugs were
2 found on his property being a charge on the facts.

3 THE COURT: Right.

4 MR. WISE: Moving over to page 15. Again --

5 THE COURT: Now -- yeah. I don't remember 15, but
6 certainly -- you're going to have to educate me on that one.

7 MR. WISE: Page 15.

8 THE COURT: I just don't remember discussing page 15 in
9 chambers.

10 MR. WISE: Well, it's the same issue. Where you say
11 constructive possession means it's --

12 THE COURT: Got you.

13 MR. WISE: The same issue is in there three times.

14 THE COURT: Got you.

15 MR. WISE: I may not have gotten through it in
16 chambers.

17 THE COURT: That's fine.

18 MR. WISE: But the same two issues are there of being a
19 charge on the facts and violation of the state constitution
20 --

21 THE COURT: Right. I understand.

22 MR. WISE: -- and an improper charge as to dominion and
23 control. I think that switches the burden. And then on
24 page 17 I object to the charge that possession of one or
25 more grams of methamphetamine creates an inference. I

1 understand that that is in the statute. My objection again
2 is that a charge telling the jury that a particular fact
3 creates an inference is a charge on the facts because
4 they're instructed to take that one fact and elevate it to a
5 higher level than all the other facts in the case, and that
6 is exactly what a charge on the facts is designed to
7 prevent. And while that is in the statute, I think the
8 statute is unconstitutional under the State Constitution
9 because it does permit a judge to give a charge on the facts
10 and the legislature, as well as the judge, cannot violate
11 the State Constitution.

12 THE COURT: Okay. Thank you very much. So noted.

13 MR. WISE: And I think that was -- that covers all of
14 it.

15 THE COURT: Right.

16 MR. WISE: I do have one issue, too, that I meant to
17 raise yesterday and forgot to. I would also request that
18 the State be required to basically -- and leave out for the
19 moment the prescription drugs. Between the possession with
20 intent, disposal of meth waste and manufacturing meth, I
21 think the State should be required to elect as to which one
22 of those that we should go to the jury on. I think a
23 conviction of all -- of two of those charges, or all three,
24 would violate the double jeopardy clause because the same
25 facts in this particular case that gave rise to the

1 manufacturing also gives rise to a possession and gives rise
2 to disposal of meth waste. By the same token, the disposal
3 of meth waste under the facts of this case are simply
4 nothing more than another factor in the manufacturing
5 process for which the Defendant is also charged.

6 THE COURT: Right. Does the State want to respond to
7 that?

8 MR. NEELY: Your Honor, it's by statute. I mean,
9 that's basically what it comes down to. There's a statute
10 for unlawful disposal of methamphetamine waste and that's
11 exactly what we have in this case. There are a number of
12 statutes that where one statute closely relates to another
13 statute and they follow each other. For instance, we have,
14 you know, burglary. You have to go in with intent to commit
15 a crime therein. That crime you commit therein is also a
16 separate offense.

17 THE COURT: Right.

18 MR. NEELY: So you have a burglary and petty larceny
19 are both separate offenses that the Defendant can be charged
20 with and found guilty of both. There's a lot of related
21 statutes like that.

22 THE COURT: Okay. I understand. And, Mr. Wise, your
23 request for election is so noted and denied.

24 The verdict form. Are we okay with the verdict form?
25 I understand that maybe the State had some -- some problem

1 with charging the lesser included offense of possession
2 under -- with the possession with the intent to distribute.
3 But apart from that are we okay with the verdict form?

4 MR. NEELY: Apart from that, Your Honor, we're fine
5 with the verdict form.

6 THE COURT: The State's okay with the verdict form --
7 the Defense?

8 MR. WISE: We're fine with the verdict form.

9 THE COURT: Okay. All right. And I'll try to do a
10 good job of explaining the verdict form to them. It's not
11 necessarily -- I mean, it's set out. I'll go a little bit
12 beyond what is set out in the jury charge as far as going
13 over the verdict form with them. Okay.

14 Anything else for the record before we bring the jury
15 out?

16 MR. NEELY: Not from the State, Your Honor.

17 THE COURT: Okay. Defense?

18 MR. WISE: Not from the Defense.

19 THE COURT: All right. One matter. At the conclusion
20 of the case I failed to give the Defendant the instruction
21 on the right to testify or not testify. I think it would be
22 permissible, Mr. Wise, for you to waive that, or I could go
23 right now while the jury's out.

24 MR. WISE: Yeah. I have discussed it with him at
25 length. I have no problem waiving. You can ask -- Mr.

1 Dobbins will probably --

2 THE COURT: Let me just kind of summarize. Mr.

3 Dobbins, if you would stand, please, sir. Let's go ahead

4 and do it so make sure the record is correct.

5 Madame Clerk, would you swear Mr. Dobbins in, please.

6 JOHN WILLIAM DOBBINS, having
7 been first duly sworn, testified as follows:

8 THE COURT: Mr. Dobbins, even though the Defense has
9 rested your case I needed to, and failed to do so, so I'm
10 doing so now. And if you elected to testify I would reopen
11 the case and allow you to. But let me just explain some of
12 what your rights are to make you that you understand it.
13 And I know Mr. Wise has explained all this to you.

14 You have the right to testify or not testify in this
15 case. You have the right to claim the protections given to
16 you by the Fifth Amendment to the Constitution of the United
17 States. This Amendment states in part, "No person shall be
18 compelled in any criminal case to be a witness against
19 himself." This means that you cannot be required to testify
20 in this case. You have the right to testify on your own
21 behalf; however, no one can make you testify. This is a
22 personal right and no one can waive this right except you.

23 If you decide to testify you'll be subject to the same
24 rules that govern other witnesses and you may be examined
25 and cross examined on any relevant issue in this case. In

1 addition, if you have any convictions involving dishonesty
2 or false statement or for crimes punishable by imprisonment
3 for more than one year and this court determines that the
4 probative value of admitting this evidence outweighs it's
5 prejudicial effect to you, the Solicitor will be able to
6 introduce your record to attack your credibility.

7 If you decide to testify, this decision on your part
8 must be freely, voluntarily, and intelligently made with
9 knowledge of the protections given to you by the Fifth
10 Amendment and the consequences of your decision to testify.

11 If you decide not to testify I will instruct the jurors
12 that they cannot give the fact that you did not testify any
13 consideration whatsoever and that there is to be absolutely
14 no prejudice to you because you did not testify. It's left
15 entirely up to you whether or not you testify. And you may
16 talk with your attorney, which you've already done, any
17 family members that you have, in reaching that decision.

18 Do you understand what I've explained to you, Mr.
19 Dobbins?

20 MR. DOBBINS: Yes, sir.

21 THE COURT: Okay. Do you have any questions?

22 MR. DOBBINS: No, sir.

23 THE COURT: And what is your desire? Do you want to
24 testify or not testify?

25 MR. DOBBINS: No, sir.

1 THE COURT: No, sir, meaning?

2 MR. DOBBINS: I don't want to testify.

3 THE COURT: Okay. Don't want to testify.

4 (Whereupon, Mr. Dobbins shakes his head negatively.)

5 THE COURT: Okay. Let the record reflect that he shook
6 his head no. All right. Thank you very much. You can have
7 a seat.

8 Okay. Anything further before we bring the jury out?

9 MR. WISE: Does the State going to open on the law?

10 MR. NEELY: No, sir, Your Honor. We're going to open
11 on -- we're going to close on the law and the facts after
12 Mr. Wise's closing.

13 THE COURT: Okay. Now, I believe that if the Defense
14 requests I think you -- if I -- if my reading of *State vs.*
15 *Rogers* is correct, I believe the State can require the State
16 to at least open on the law.

17 MR. WISE: That's correct. But not to be long. I
18 request that they open on the law.

19 THE COURT: Yeah. I think that -- I mean, if you can
20 show me something differently.

21 MR. NEELY: Just give me a second.

22 THE COURT: The way I read *State vs. Rogers*, it
23 requires a discussion of the law to be included in that
24 argument if demanded by the Defendant. Solicitor is not
25 required to make an opening argument to the jury on the

1 issues of fact but may do so at its discretion. Again, I
2 think under *State vs. Rogers* I don't think there's any
3 question the State has the right to close in the argument.
4 I guess the question is can the Defendant make the State
5 open on the law.

6 MR. SCOTT: Yes, but applicable language -- and we've
7 got a summary here in front of us. Not the actual case. As
8 far as opening on the law, if the Solicitor chooses to open
9 on the law, or the Defense insists that the Solicitor open
10 on the law, the Solicitor will have the opportunity to
11 address the jury concerning the applicable law in the case
12 before the Defense addresses the jury. Is that the actual
13 dicta in the *Rogers* case?

14 THE COURT: Is that what you're looking at?

15 MR. WISE: It is a cite in *State v. Rogers*. It looks
16 like a summary. I don't know if it's --

17 THE COURT: Right.

18 MR. WISE: -- direct language from the case.

19 THE COURT: All right. Let me just read then from the
20 case. It says, "Appellate alleges that the trial judge
21 erred in allowing the Solicitor to argue the facts of the
22 case during his initial closing argument to the jury. It is
23 contended that Circuit Court Rule 58, as interpreted by,
24 quote, common and well established practice, dictates that
25 the lawyer -- that the Solicitor be limited to a discussion

1 of the law during his initial closing argument and should
2 only discuss the facts during reply argument." That's what
3 the appellate -- I'll keep reading in just a minute.

4 MR. SCOTT: I think, in other words, if it is
5 bifurcated they can't discuss the facts in the opening.
6 Only the law.

7 THE COURT: Right. "The Solicitor is entitled to open
8 the closing arguments to the jury unless the Defendant has
9 offered no evidence." Well, we know that. "The right to
10 open and close an argument to the jury is a substantial
11 right, the denial of which is reversible error." So you
12 have the right to open and close. "It follows that such
13 right cannot be limited solely by custom or practice.
14 There's nothing in Circuit Court Rule 58 which limits the
15 initial closing argument to the law of the case. It simply
16 requires a discussion of the law to be included in that
17 argument if demanded by the Defendant. The Solicitor is not
18 required to make an opening argument to the jury on the
19 issues of fact, but may do so in his discretion."

20 So the way I read that -- and I'll be glad to hear from
21 both sides. The way I read that, if the Defendant requires,
22 then the State must open on the law. Certainly close on the
23 facts, but open on the law. Do you read it differently,
24 Solicitor?

25 MR. SCOTT: I think that language you read does seem to

1 indicate that if they -- if you wouldn't mind doing it,
2 would you be willing to read that one sentence again where
3 if insisted by the Defense?

4 THE COURT: Yeah. Let me do the sentence prior to that
5 and then that sentence you just referred to. "There's
6 nothing in Circuit Court Rule 58 which limits the initial
7 closing argument to the law of the case. It simply requires
8 a discussion of the law to be included in that argument if
9 demanded by the Defendant."

10 MR. NEELY: Your Honor, to me that just says that if we
11 choose to do it, and they insist on it, we have to talk
12 about the law.

13 THE COURT: All right. Again, the way I understand
14 this is that since you have the right to open and close, all
15 right, because the Defendant has put up evidence, then if he
16 demands it you have to open on the law. You still close on
17 the facts, but you have to open on the law. I mean, that's
18 the way I'm reading that.

19 MR. SCOTT: That's what -- I agree, Your Honor. That's
20 kind of what it seems to indicate.

21 THE COURT: That's what it seems. And, you know, when
22 it talks about tradition and practice, and I know we kind
23 of, you know, by habit do it kind of different ways. But I
24 think since you still get to close -- that's the primary
25 thing, be able to close on the facts.

1 MR. NEELY: Point of clarification, Your Honor, is that
2 we'll be closing on the facts and as they apply to the law,
3 but the law would be spoken of as well in the final closing.

4 THE COURT: Right. I mean -- yeah. Yeah. You can --
5 I mean, certainly when you close, I mean, that includes
6 facts in the law. But if insisted by the Defendant you need
7 to at least open on just the law involved in the case. But
8 certainly you're not precluded from talking about the law in
9 your final closing. Okay? So we're okay now?

10 MR. WISE: Like I say, they don't have to go into any
11 great detail, but they have to open on the law.

12 I would like to supplement my motion about the charge
13 on the inference. Under *Yarborough vs. Southern Railroad*
14 *Company* found in 59 SE 936, a 1907 case was the case where
15 the South Carolina Supreme Court ruled that charging a jury
16 that they can infer a fact -- infer a fact from facts proven
17 or infer a conclusion from facts proven was a charge on the
18 facts, and I think that's pretty persuasive to how the court
19 interprets that law.

20 THE COURT: Okay. Thank you very much. So noted and
21 denied. All right. Do we need to beat anything else to
22 death before we bring the jury out?

23 MR. SCOTT: I don't think so, Your Honor. The horse
24 has been beat pretty good.

25 THE COURT: Okay. Let's bring the jury out, Mr. Bolt.

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1 (Whereupon, the jury enters the courtroom at 11:35
2 a.m.)

3 THE COURT: Madame Forelady, ladies and gentlemen of
4 the jury, it's now time where the lawyers for both sides
5 will make their closing arguments to you. They worked
6 extremely hard in this case, so please give them your very
7 close and undivided attention. Solicitor?

8 MR. NEELY: Thank you, Your Honor. May it please the
9 court.

10 THE COURT: Certainly.

11 CLOSING ARGUMENT

12 BY MR. NEELY: Ladies and gentlemen if the jury, I'm
13 just going to talk to you a little bit about the law of the
14 case. In this case a lot of it deals with possession.
15 There are two kinds of possession. There's actual
16 possession. I've got this pen in my hand, actually
17 possessing it. Constructive possession. (Whereupon, Mr.
18 Neely places pen on table.) That's still my pen. Even
19 though it's not in my hand, it's not in my pocket, it's
20 still my pen. If you were go come to take my pen, you would
21 have taken my pen. It doesn't make it your pen. It's
22 constructive possession. In fact, you're going to hear the
23 judge say that constructive possession -- that you can infer
24 knowledge and possession if the substance is found on
25 property under the Defendant's control. So you can infer

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1 knowledge and possession if you find the substance on the
2 property under Defendant's control. And Defendant has been
3 charged with possession with intent to distribute in this
4 case. Intent to distribute methamphetamine. That means
5 that he has the meth and he intends to distribute it. Now,
6 the judge is also going to tell you that you can infer the
7 intent to distribute in the weight. And he's going to tell
8 you that if it's more than one gram of methamphetamine you
9 can infer that he had the intent to distribute it because of
10 the weight of the meth that he has.

11 Two other charges are possession of controlled
12 substance and another possession of controlled substance.
13 And on these possession of controlled substance charges it's
14 the exact same actual and constructive as to the meth. It
15 works in the exact same way. Actual and constructive or the
16 exact same in that they both qualify as their stuff. Mine
17 is mine.

18 For manufacture of methamphetamine it requires
19 obviously that meth is being produced, made, manufactured.
20 It makes him -- it makes Mr. Dobbins the manufacturer. And
21 the judge will tell you about that statute and read that
22 statute to you to understand that better. The manufacture
23 of methamphetamine, again, the production of meth by which
24 all methamphetamine is made.

25 And then we have unlawful disposal of methamphetamine

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1 waste. We need to show that that is methamphetamine waste
2 and that it was being disposed of improperly. That is the
3 entirety of the charge. Very simple. None of the law in
4 this case is very difficult. It's all very simple. Very
5 easy to grasp. You'll hear the judge recite a good bit
6 about law. A long string. Just listen very carefully to
7 what the judge says because the judge is the ruler of the
8 law. He's the one you need to listen to on the law.

9 THE COURT: Okay. Mr. Wise.

10 CLOSING ARGUMENT

11 BY MR. WISE: Madame Forelady and ladies and gentlemen
12 of the jury. If you go to your jury room and you say to
13 yourself or among yourselves, you know, Johnny Dobbins is
14 probably guilty of manufacturing meth, he probably did it,
15 what should your verdict be? Your verdict should be not
16 guilty, because in this court of law when we talk about
17 proof beyond a reasonable doubt it is not what could have
18 happened, might have happened, possibly happened, or even
19 probably happened on that day in November of 2011. When we
20 talk about proof beyond a reasonable doubt we're not talking
21 about any percentage of probabilities. We're talking about
22 proof that is so strong that there is no other reasonable
23 explanation. That's what we mean when we talk about proof
24 beyond a reasonable doubt.

25 Now, His Honor will charge you in this case on

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1 circumstantial evidence. And circumstantial evidence is a
2 unique type of evidence. If proven to its standard you use
3 it just like you do direct evidence. And direct evidence is
4 pretty -- pretty clear if you -- you know, if I'm sitting
5 here holding this little bottle and somebody sees me holding
6 it then it's direct evidence that I possess this bottle.
7 And that's what direct evidence means. But when you have to
8 rely upon inferences and conclusions from some facts to draw
9 the ultimate fact, then that's circumstantial evidence.
10 There's a great, great legal scholar named John Henry
11 Wigmore who wrote a big treatise on Wigmore on Evidence
12 that's still used today. And he said in one of his
13 commentaries in one of the articles that he wrote that cross
14 examination is the greatest engine ever generated in our
15 legal system for determining the truth. Cross examination
16 is the greatest engine ever generated for determining the
17 truth in the case. That's a true statement except in one
18 type of case. And that type of case is what this one is.
19 Is a circumstantial evidence case. Because a circumstantial
20 evidence case, when people draw inferences from inferences
21 from inferences, everyone can tell the truth and an innocent
22 person be convicted because someone drew the wrong
23 inference. And yet you can have an effective cross
24 examination, as Mr. Wigmore talked about, but it won't work
25 out when everyone tells the truth, because the purposes of

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1 cross examination is to find people who are not telling the
2 truth or have inconsistencies in their story. But when you
3 get a circumstantial evidence case everyone can tell the
4 truth and you draw the wrong inference. So against that
5 background we have to analyze the facts of this case and
6 determine what the State has proven.

7 The State said in their opening statement we have to
8 prove this case beyond any and all reasonable doubt and we
9 welcome the burden. Well, welcoming the burden is not the
10 same as meeting the burden. And what you have to determine
11 in this case, has the State met the burden of proving facts
12 that are consistent with each other and consistent
13 conclusively proving the guilt of John Dobbins. And when
14 the judge charges you conclusively proving the guilt of John
15 Dobbins that obviously means to the exclusion of a
16 reasonable explanation that he's not guilty. So let's look
17 at this case.

18 Let's start out with a simple proposition. Simple
19 issue that you have to decide in this case. We have here
20 State's Exhibit 7. All right. This was the bottle found in
21 the trash can. The question that you have to answer is who
22 put the bottle in the trash can. Based upon the testimony
23 we heard yesterday, who put the bottle in the trash can.
24 Who beyond any and all reasonable doubt put it there. What
25 was the testimony about who put it there. There was none.

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1 There was none. Did it fall there? Maybe not, maybe so.
2 But who put it there. To be guilty of disposing of meth
3 waste -- and we'll get to what disposal means and whether
4 it's meth waste later, whether they've proven that even
5 later. But right now to be guilty of disposing meth waste,
6 according to the State's case, the first thing they have to
7 prove is who put it there. Who put it there. There was no
8 testimony about that and I doubt if the Solicitor in their
9 closing argument is going to tell you there was any evidence
10 as to who put it there.

11 The Solicitor talked in his opening statement a little
12 bit about constructive possession. He gave a little example.
13 These are my glasses. I put them down. I walk over here.
14 I'm still in possession of them because I'm in constructive
15 possession of them even though I don't have them in my hand.
16 All that proves is that he was in prior actual possession of
17 them. And we know that because we saw him put it down. And
18 even though he walked away from it he still possesses it
19 constructively because we know he possessed it previously.
20 And constructive possession simply means proving not that
21 someone might possess something in the future, and an
22 attempt to possess, but that someone has possessed it in the
23 past.

24 Another good example of that is if you have a safe at
25 home and you go and put something in there. Obviously if

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1 it's in the safe it's not in your possession. But if you're
2 the only one that has the combination to that safe, even
3 though that item in the safe is not in your pocket, it is
4 certainly proper for someone to infer, as no one else had
5 the combination to that safe, that you possess the items in
6 those safes -- in that safe even though they're not in your
7 pocket. That is a circumstantial evidence case. But the
8 only logical explanation is because it was in the safe, and
9 you were the only one with the combination, you possess it.
10 And that's certainly logical. But to say that you walk away
11 from something and if you saw them put it down you're in
12 possession. But question. Was Solicitor in constructive
13 possession of this pen back here on the table? He was close
14 to it. He was near to it. He obviously saw it. He had
15 knowledge it was a pen. Was he in constructive possession
16 of it? No. Because there was absolutely no proof that he
17 ever physically possessed that pen. In fact, I think it was
18 the pen I left on the table yesterday. But the practical
19 matter, he is not in constructive possession of that pen.
20 That's what this case is about.

21 We have in this case some pills. They're in one of
22 these. They're in here. This was found in the house
23 roughly in that condition. Okay? Based on the testimony,
24 who possessed them? Who possessed them? Any fingerprints
25 on that box -- or bottle? No. It would not be conclusive

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1 but certainly it would be a fact you could consider if you
2 have a fingerprint on that bottle to consider who possessed
3 it.

4 When the judge charges you about drugs there's several
5 things he's going to charge you. You have to have knowledge
6 that it's drugs. Is it in my house like this: Who possess
7 it. Who has knowledge of what's in it. Who does. What
8 testimony has the State brought you when they willingly
9 accepted this burden of proof beyond a reasonable doubt.
10 What testimony have they brought you to say who possesses
11 it, other than the fact that it was in the house. That's
12 it. They have the burden. They just can't rely upon
13 default. They have the burden of coming in here and
14 presenting to you evidence that they contend conclusively
15 shows beyond a reasonable doubt that Johnny Dobbins
16 knowingly and intentionally possessed these pills, had the
17 power to exercise dominion and control over the pills, and
18 the intent to do it. But it's not there. It's not there at
19 all. Just keep looking at the evidence and add them up. Do
20 they say, well, possesses methamphetamine that was seen in
21 some of these pictures. The only thing we're realistically
22 talking about in this case, as far as any reasonable
23 possession, is two little pieces of methamphetamine that are
24 any usable quantity. All right?

25 We have State's 20. We have a little bit of

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1 methamphetamine type stuff on the counter. Not stored
2 anywhere. Just sitting out on the counter. And then we
3 have State's 14 we have some powder on a mirror looking as
4 if in preparation for use. All right. Who possessed it?

5 Now, let's assume for the moment of argument that both
6 Sandy Wyatt and Johnny Dobbins could see that meth there.
7 But knowledge is not sufficient to convict. Knowledge that
8 meth is in your house isn't sufficient to convict. It may
9 be stupid, it may be dumb, you may be a complete idiot for
10 allowing it to stay there. But knowledge is not sufficient.
11 You've got to prove someone knowingly possessed it. That's
12 why the judge will charge you in his charge. Mere presence
13 is not sufficient to convict. If they only prove that
14 Johnny Dobbins was in a camper with meth in it, and that's
15 all, that's not sufficient to convict. That is mere
16 presence. That is simply being there where it is. Not a
17 good idea. But we don't convict people for being stupid.
18 We convict people for doing a criminal act which is
19 knowingly possessing a controlled substance. And that's
20 what they have to prove in this case.

21 Now, manufacturing. Who put those bottles together?
22 It's a simple question, but it's an important question
23 because it's the crux of this case, and if the State hasn't
24 come in here and given you proof beyond a reasonable doubt
25 as to who put those bottles together they've failed in their

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1 burden of proof. Is there a fingerprint taken from anybody.
2 Is there any statement from anybody that says Johnny Dobbins
3 put those bottles together? Is there a statement from
4 anybody that says Sandy Wyatt put them together? No. That
5 burden of proof is on the State. They have to come in here
6 and tell you this. They have to prove this to you.

7 Now, they say we're manufacturing meth. Listen to the
8 judge's instruction from that. He will instruct you that it
9 does not apply to an individual who's making it for their
10 own use. It does not apply to an individual who's making --
11 preparing the controlled substance for their own use. It's
12 someone who is distributing drugs.

13 So what proof do we have of that. They have the
14 burden. All right? They have that picture of
15 methamphetamine allegedly being made in State's Exhibit 9.
16 A picture. All right. So let's ask some very frank and
17 serious questions about this. One, how much meth can be
18 made by this method. Did we hear an answer to that
19 question? Now, it's relevant for this reason. If making
20 meth for your personal use is not manufacturing meth, then
21 it's important to know how much was being made. Did you
22 find -- the question was asked. Did you find any other
23 bottles to indicate that someone had been making meth over
24 two, three, four days. No. How much meth can be made from
25 this method. We do know this much. It's less than two

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1 ounces. And the reason we know it's less than two ounces
2 because when Mr. Veal filled out some form for the federal
3 government the lowest number they had on there was less than
4 two ounces. How much is this capable of making? Less than
5 two ounces. But we don't know. You don't know how much was
6 being made. And if you don't know how much was being made,
7 how can anyone rationally conclude it was made for the
8 purpose of distribution if you don't know the answer to that
9 simple question.

10 They found in the house -- and they've charged him with
11 possession with intent to distribute. They found in the
12 house a little over 2.5 grams of methamphetamine. There are
13 28 grams to an ounce, so that'll give you some idea. If you
14 go get a package of Sweet'N Low it weighs a gram. How big
15 something is and how fluffy it is. You can have something
16 that weighs a very small amount and it'll be fluffy and look
17 big. But the point is, if you want to know how much a gram
18 is, it weighs about a penny. It is the packet -- it weighs
19 the same as a package of Sweet'N Low weighs. So we have, at
20 the most, realistically two packages of methamphetamine that
21 allegedly weighed about one gram each.

22 Question. How much is that worth on the street? It's a
23 decent question. Because, you know, if that -- for people
24 to use meth, if that's a lot we need to know it. If it
25 isn't, we need to know it. The question was not answered.

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1 I asked the chemist. He wasn't familiar with it. How much
2 is that on the street? That is a factor you need to have
3 and information you need to have in order to determine
4 whether or not someone possesses something with intent to
5 distribute and not just possess it. If you don't have that
6 information, how can anyone rationally conclude that's an
7 amount necessary for distribution.

8 Let's take gold for a minute. Gold today is what,
9 \$1,300 an ounce I believe it is. Something in that range.
10 If you had 28 grams it would be about \$50 a gram. Something
11 like that. Maybe a little more. But let's say \$55 a gram
12 is what gold is selling for today. If someone put up a sign
13 on Main Street in Laurens and said gold dealer and you went
14 in and said, you know, I think I'd like to buy some gold.
15 Show me what you got. And he pulls out two and a half grams
16 of gold worth under \$200. You would probably walk back
17 outside and look at that sign again and see if it says what
18 you thought it said. This is not for exaggeration. This is
19 a realistic thing. If someone is selling something, you're
20 going to have it. 2.5 grams. The judge will charge you
21 that the law says you can infer. But you can infer from
22 what? What knowledge, what else do you have to reach that
23 conclusion that this was possessed with intent to
24 distribute. Certainly no one has come in here we've been
25 hearing and say, you know, the night before on the 23rd of

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1 November I was over there and Johnny Dobbins sold me a
2 little meth. Then you would have a reasonable basis for
3 saying that's one reason he possessed that. It still may
4 not be proved because he may have just sold that one time
5 and had no intention of selling this. But you could -- at
6 least the inference gives some support. But what supports
7 it here. They're going to say the scales.

8 Question. Did those scales weigh down to a tenth of a
9 gram? You know, when someone's allegedly weighing out meth
10 to sell it you want something that weighs down to at least a
11 tenth of a gram. Did those scales pictured in that picture
12 weigh out to a tenth of a gram. We don't know. And the
13 reason we don't know is because for some unknown reason
14 those scales, if they were scales, were destroyed. They're
15 gone. They're not here. Was meth ever weighed on those
16 scales. We don't know, because they didn't take them in to
17 analyze them. They took the mirror which had meth on it and
18 was safe enough to bring into this courtroom and scraped a
19 little bit of residue off the mirror where people using it
20 used. They come in here and give you the mirror. But then
21 when they say the scale which might have had meth on it, oh,
22 that was too dangerous to bring into the courtroom. We had
23 to destroy it. That defies common sense. That defies all
24 logic. I mean, just -- you know, what does that scale
25 weigh? Does it weigh that fine? We don't know.

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1 Also, if a person manufacturers meth. I would assume
2 that people just don't throw globs of stuff into a jar and
3 you end up with meth. You've got to know what you're doing.
4 You've got to weigh the stuff out to put it in there to get
5 the right ingredients to get the right combination to get
6 the right results. So if you're going to make meth for
7 personal use you're going to weigh stuff. People weigh food
8 all the time. Make sure they follow their diet. It's a
9 million and one uses. Not a million and one necessarily,
10 but a lot of uses for scales. But no one took those scales
11 into SLED and had it analyzed to give you any help on what
12 it had been used for. But the mirror made it in here. The
13 scales didn't.

14 Then they want to say, on manufacturing meth -- and
15 again, this is a circumstantial evidence case, whether there
16 was any meth manufactured. Right? A circumstantial
17 evidence case whether anything was manufactured, and here's
18 why. Clearly, clearly if you're manufacturing meth you need
19 pseudoephedrine. Sudafed and all these other things that
20 you have to now buy behind the counter because it's so easy
21 to make meth. You can't go buy them off the shelf like you
22 used to. All right. You don't have pseudoephedrine you
23 cannot make meth.

24 Question. Where are the packages of pseudoephedrine in
25 this case? Where are they? There aren't any. That we know

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1 they looked for. That we know they searched the house for.
2 That we know they went outside and looked in the trash, if
3 there was trash out there, looked for it and they did not
4 find any. That we do know. So if you cannot make meth
5 without pseudoephedrine then how was meth being made with no
6 pseudoephedrine. So you're going to have to conclude in
7 some fanciful world that whoever is making that meth went
8 out and took the pseudoephedrine packages and dumped those
9 in some place way off and, gosh, I forgot to take the
10 bottles with me. That makes no sense. That makes no sense.
11 You know, why would you take the pseudoephedrine packages
12 and leave the bottles there. It makes no sense. So anyway.
13 Was there an attempt to make meth and didn't go through?
14 Who knows. But they have the burden to prove it to your
15 satisfaction.

16 Another interesting thing. The coffee grinder. You
17 remember the coffee grinder. There. There was white powder
18 in there that I believe was pseudoephedrine. Fine. Did you
19 take it down to SLED and test it? No. It was too hazardous
20 and we had to destroy it. It was too hazardous and we had
21 to destroy it because it -- it only had pseudoephedrine in
22 it. Something that a lot of people take on a daily basis.
23 Because it was a coffee grinder it was too dangerous and we
24 had to destroy it. But the mirror, again, which actually
25 had meth on it was safe enough to bring into this courtroom.

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1 Makes no sense.

2 Now, he says how do we know that meth was in there.

3 Never analyzed that either. They never sent that down to

4 SLED, although the SLED chemist testified there's a

5 procedure for doing it. Never carried it down there. How

6 do you know there's -- well, there's pink stuff in there.

7 Any idiot knows that. Pink stuff in there. You know, you

8 make meth with sometimes pink stuff. Well, there's no pink

9 stuff in here. It's white stuff, according to them. It

10 mysteriously turned pink from white. If it did, they've got

11 to explain that to you. And if they did, I missed it. So

12 what does that mean? We don't know.

13 Let's talk a minute back to where we started out. The

14 bottom of the trash can. The disposal of meth waste. What

15 was in that bottle? The testimony was I think there was a

16 little bit of meth in there. You know, I'm the expert. I

17 know drugs. I know drugs, you know. Meth was in there.

18 That's meth waste. Well, remember, the testimony of I know

19 drugs is brought to you by the same person who sent some

20 five substances down there, none of which ended up in this

21 case. That same person that sent to SLED for analysis, the

22 I know drugs guy, was aspirin. Was aspirin. And if he can

23 mistake aspirin for a controlled substance that he sends to

24 SLED to analyze, how can you trust the same testimony on a

25 little bit of powder in here. Aspirin is what the chemist

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1 said it was. Another one was another over the counter
2 product, I forgot which one it was, that you can go buy.
3 They were sent down there by the expert who knows drugs.
4 This is proof beyond a reasonable doubt as to what's in
5 here? That's proof beyond a reasonable doubt of what's in
6 here? All he had to do -- no liquids were in there. There
7 was nothing dangerous in there. All they had to do was take
8 that jar and send it down to SLED and find out if anything's
9 in it at all. They elected not to do it. This isn't a case
10 of something interfering with them. They decided not to do
11 it. They decided to destroy it. And yet they want to say
12 we have proven disposal of meth waste beyond any and all
13 reasonable doubt. Trust us. We're from the government.
14 Trust us. That is what they're saying.

15 Now, let's get to another question about this.
16 Disposal of meth waste means to get rid of it. It doesn't
17 look to me like they've gotten rid of it. You carry it out
18 to the trash dump and leave it, you've gotten ride of it.
19 You put it in your trash can you haven't gotten rid of it.
20 It's still there. No one thinks of getting rid of something
21 by putting it in their trash can. They think of getting rid
22 of something by taking it out, put it out -- well, you put
23 it down your garbage disposal. That's why they call them
24 disposals. Once it goes down the garbage disposal you're
25 rid of it. You've disposed of it. Once you carry it to the

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1 center where you carry your garbage you've gotten rid of it.
2 But putting it in your trash can? And again, of course, who
3 put it in there.

4 That's the proof in this case. They come in and they
5 put somebody on the stand from the Solicitor's office and
6 they say, well, you know, last week -- last week we started
7 looking for Sandy Wyatt so we could talk to her. We started
8 looking last week. And what did you do? Well, I called the
9 number and just wasn't there. I looked at the address on
10 the warrant which was placed here which we now know nobody
11 lives at anymore. It wasn't there. Wasn't there. So I
12 asked him a simple question. There's one person that has
13 more interest in where Sandy Wyatt is than anybody else in
14 the world, probably more so than her own mother. That's the
15 bondsman. So I asked him a simple question. Did you call
16 the bondsman. No. No. If the bondsman doesn't know where
17 she is, she's truly missing. They didn't even try to call
18 the bondsman. So how dedicated were they really to trying
19 to find her? And when you listen to the argument about
20 Johnny Dobbins think of another case. Next year, next week,
21 next month, who knows when. But think of another case and
22 how is the argument going to go in the other case. When you
23 have the exact same facts, the exact same testimony, and the
24 Defendant is Sandy Wyatt. What's it going -- what's the
25 State going to say then? Oh, she's manufacturing meth.

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1 She's possessing pills. She's possessing methamphetamine.
2 Now, the judge is going to charge you they can both jointly
3 possess them. And they may say, well, in this case they're
4 jointly possessing them. In that case, under the facts of
5 this case, what the State has proven then, one of two
6 things. Either they -- either they know they jointly
7 possess them or they don't know which one possessed them.
8 Either they prove they jointly manufactured meth or they
9 don't know which one manufactured meth. And that's a 50/50
10 chance of getting the right person. And a 50/50 chance of
11 getting the right person is not proof beyond a reasonable
12 doubt. They assume the burden, they need to meet it.

13 And we'll talk about one of things I meant to mention
14 earlier. They're going to say, oh, he had money on him.
15 Yes, he did. He was making money. You heard his son
16 talking about what he had been paid that month on one job
17 and then a couple other little jobs they were working on.
18 So money was on him. So what. Is there any proof at all --
19 is there a scintilla of proof in this case that one \$20 bill
20 from that money came from the sale of any methamphetamine?
21 Is there any evidence of that? If there is, where is it?
22 What testimony was presented in this case that said a single
23 dollar that Mr. Dobbins had in his billfold came from the
24 sale of any meth? To assume it is to assume a fact not in
25 evidence. To assume it is to convict someone on

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1 speculation, conjecture and surmise, and you can't convict
2 on speculation, conjecture and surmise.

3 Now, I get to sit down in a minute. I don't get a
4 chance to get back up and address you. But I know during my
5 argument many of you have raised questions, and I wish in
6 many respects, except it really wouldn't work, that we could
7 have a question and answer session instead of just my
8 lecture session and you could ask me questions and I could
9 answer your question. To the extent I stand up here and
10 figure out what questions you have and I guess right, that's
11 good. To the extent I forget something or don't figure it
12 out, then unfortunately I get the disadvantage of that. But
13 as I'm sure many of you have raised questions from my
14 argument to you, continue to raise questions during the
15 Solicitor's argument. Continue to raise the questions of
16 who put the bottle in the trash can. Simple question. It
17 deserves a simple answer. But that's pretty kind of crucial
18 to the whole thing. If you know who put the bottle in the
19 trash can a lot of other pieces fit together. But if you
20 don't know who put the bottle in the trash can you don't
21 even know where you're going from there.

22 Two people were in that camper. Two people were there.
23 One of them you know has a meth problem. Problem is in this
24 case the State is asking you to guess as to which one or
25 both. The State is asking you to guess as to which one, or

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1 even guess as to whether both knew it. Not knew it was
2 there. Excuse me. Knew it was there and continued to
3 possess it and possessed it under possession, and therefore
4 was still in constructive possession of it because they had
5 recently possessed it. Who had previously possessed that
6 methamphetamine? Who had previously possessed those pills
7 so that it would still be in their constructive possession
8 when it's out of their actual possession. Those of you who
9 have a spouse or significant other at home, your house is
10 full of things that don't belong to you. You know it's
11 there. You see it on a daily basis. But if you took it out
12 and sold it you'd catch a little grief for it, because you
13 don't have the right and the power to possess it and sell it
14 and it's not yours. Even though it's in the house and you
15 know it's there. Granted cocaine is not -- methamphetamine
16 is illegal. As I said before, stupid thing to do. But it
17 doesn't change the fact that the State still has to prove
18 which one possessed those drugs. Which one manufactured
19 those drugs. Are you going to say that Johnny Dobbins
20 manufactured them because he was up when they came in?
21 Well, what if they'd come in an hour earlier? Would she
22 have been there by herself and him not been there? We don't
23 know. It's speculation. You're still given the
24 speculation, and you cannot convict someone beyond a
25 reasonable doubt. All the government is asking you to do is

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1 speculate and speculate and speculate. And that's what
2 they're doing. So when you look at the evidence, even if
3 you sit here and say one of the two is guilty, until the
4 government can give you proof as to which one you have to
5 acquit. You have to acquit. It doesn't matter if you know
6 one might be guilty, or one is guilty, or one beyond a
7 reasonable doubt is guilty, because it's not whether or not
8 one is guilty beyond a reasonable doubt. It's whether the
9 State has picked the right one beyond any and all reasonable
10 doubt. And in this evidence it's simply not there and the
11 proper verdict should be not guilty. Thank you.

12 THE COURT: Thank you, Mr. Wise. Solicitor, you may
13 proceed.

14 MR. NEELY: Thank you, Your Honor. May it please the
15 court.

16 CLOSING ARGUMENT

17 BY MR. NEELY: I'll tell you who's guilty. Johnny
18 Dobbins is guilty. Johnny Dobbins is guilty of making
19 poison. The same poison that you heard Dale Scott talk
20 about at the beginning of this case when he spoke for the
21 State. The poison is a problem in Laurens. A poison that
22 he's furthering in Laurens county. This is not a trailer.
23 This is not some random person's trailer. This is Johnny
24 Dobbins' trailer. You heard that from the property owner
25 who said he'd been there for a year. You heard that from

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1 Johnny Dobbins own son who said he'd been there for a year.
2 This is his trailer. And you're going to hear the judge say
3 that if you have dominion control of the property then
4 you're responsible. Now, if somebody has a book at your
5 house and puts it down on the counter you know it's their
6 book, but you're in control of it because it's in your house
7 on your counter. Now, if somebody comes and puts meth on a
8 mirror, puts some scales down, puts meth in various
9 locations throughout the house, puts a bottle that's
10 currently manufacturing meth in your only bathroom such that
11 the whole place smells like urine in a paint shop, what we
12 heard, that's not reasonable. It doesn't make any sense.
13 It's ridiculous.

14 You have heard Sergeant Veal say that they even found
15 meth in the back of the cop car they put Johnny Dobbins in
16 that night. He had meth on him.

17 MR. WISE: Objection, Your Honor. We didn't have any
18 testimony about that.

19 MR. NEELY: Your Honor, that was testified to by
20 Sergeant Veal.

21 THE COURT: Just come up. I hate to break up closing
22 argument.

23 (Whereupon, a discussion was held at the bench outside
24 the jury's hearing.)

25 MR. NEELY: As I was saying, Sergeant Veal did, in

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1 fact, testify they found meth in the car they put Johnny
2 Dobbins in. This is Johnny Dobbins' meth. This is Johnny
3 Dobbins' camper. And you're going to hear the judge tell
4 you that when you've got over a gram of meth that is such --
5 when you hit over a gram you have an inference that they're
6 distributing. You have an inference 'cause that's a ton of
7 meth. The picture that he showed you of the mirror with the
8 meth on it -- this. That is less than .1 gram of meth.
9 That's the meth that was on that mirror that you heard the
10 expert testify to that he had scraped off the mirror.
11 That's less than .1 gram. We're dealing with over 2.5
12 grams. That's why the inference is one gram. Once you go
13 over a gram you can infer that they're distributing because
14 it's so much. And not only does he have 2.5 grams just
15 lying around the house -- more than 2.5 grams because he's
16 got some out that's ready for use, too. You've also got
17 some that he's making in the bathroom. So he's not even
18 waiting to use that supply. To sell that supply. He's
19 already making more. We've got this constant problem
20 making, manufacturing, selling -- we know he's selling. He
21 had the scales. Even though, you know, Veal didn't --
22 Sergeant Veal didn't first realize those were scales. It
23 does say scales on there. You'll get the pictures. You can
24 read on there yourself if you want to. It says scales.
25 Those are digital scales. You know, Mr. Wise says we can't

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1 tell if these scales will work, if they'll weigh down to a
2 gram. I submit to you we have two baggies that weigh
3 exactly 1.2 grams. And I don't know about you but I can't
4 eye grams. I can't eye grams. I submit to you that Johnny
5 Dobbins probably can't eye grams either. He's weighing it
6 out. And why would you weigh it out? You weigh it out to
7 sell it, and that's what he's doing. And that's where that
8 money came from. He's got two grand in his pocket, living
9 in that camper. You've seen the camper. He's got two grand
10 in his pocket. That's a lot of cash, and that's a lot of
11 dope. And this is a big problem.

12 And the unlawful disposal. I'll tell you where it is.
13 It's in his camper in his trash can. He's responsible.
14 Now, I mentioned earlier if somebody comes by with a book
15 and puts it down in your house that's in your dominion and
16 control. If this was my house and you came and placed that
17 pen down there, it's under my dominion and control. And
18 again, I submit to you, if he came down and placed some meth
19 down there we'd have a problem.

20 And he's talking about how Mr. Dobbins is only using it
21 for personal use. He's only manufacturing it for himself.
22 Ms. Wyatt was passed out in bed with a meth pipe by her head
23 while he was up at 3:30 in the morning with a one pot. A
24 lab going on in this bathroom. He knows he's making that
25 meth. We're not dealing with a user. We're dealing with

1 somebody who deals in poison. Who makes poison. Somebody
2 who's feeding the addictions of others. Somebody who is
3 profiting off the addictions of others. Meth is a horrible
4 drug and it kills people. And he is making money off of
5 that addiction.

6 Controlled substances, the pills we found. You heard
7 the expert testify that those pills were a Schedule II and a
8 Schedule IV substances. That's the deal. I don't know much
9 about chemistry, but he testified that's what those were.
10 And they were found, again, in whose trailer? Dobbins'
11 trailer. We know whose pills those were. We know who's
12 meth that was. Found it on him -- well, found it in the car
13 seat that he left. Found it in his trailer all over his
14 trailer. Found the meth making in the one bathroom that he
15 had. This is a simple case. And the judge is going to tell
16 you that reasonable doubt means firmly convinced. It's not
17 a magic standard. It's not some grand thing that's almost
18 impossible to overcome. Everybody person in jail be
19 reasonably -- beyond a reasonable doubt. Is guilty beyond a
20 reasonable doubt. And all it needs is firmly convinced. If
21 you're firmly convinced that meth is Johnny Dobbins, if you're
22 firmly convinced that one pot that was making new meth in
23 his own bathroom was his, you're firmly convinced that those
24 pills were his, were in his house under his control, the
25 only verdict you can come back with is guilty on all counts.

1 Thank you.

2 THE COURT: Thank you, Solicitor. Madame Forelady and
3 ladies and gentlemen of the jury, what we're going to do now
4 is before the court makes the final charge we're going to
5 take a break and we're going to let you order lunch, and
6 we're going to feed you lunch. So -- and while that's being
7 done, ordered and prepared and all that then we'll do the
8 court's charge. We don't want to do the court's charge,
9 then you order, then we have to sit around and wait for
10 lunch. So since it's 25 after 12:00, so I'm going to ask
11 that you retire to your jury room and we'll give you an
12 opportunity to order lunch with the help of the clerk and
13 the bailiffs. And again, remind you not to start your
14 deliberations. Don't discuss among yourselves anything
15 about this case. And so, just retire back to your room and
16 we'll be with you very shortly to get lunch ordered.

17 (Whereupon, the jury exited the courtroom at 12:24
18 a.m.)

19 THE COURT: You want to go ahead and put on the record
20 --

21 MR. WISE: Right. I want to get my glasses so I can
22 read it. I was in possession of these still even though
23 they were over there.

24 THE COURT: Those are not in evidence; is that correct?

25 MR. WISE: That's correct. Your Honor, in response to

1 the Solicitor's argument the drugs found in the car by Matt
2 Veal, I would point it out to the jury they said that in
3 their opening statement, which they would have been required
4 to do, that no such drugs were ever introduced in this case.
5 That all the drugs that were introduced in this case were
6 found in the trailer of his.

7 In response to his argument if someone came in my house
8 and placed a pen I would have dominion and control over it,
9 I would say and have responded that even if that's true you
10 still would not be in possession of it constructively or
11 actually because it wasn't your property. You didn't have
12 the right to exercise control over it.

13 To his response to his argument that Mr. Dobbins was
14 making money off of that addiction, I would have responded
15 that there's actually no proof that he was making money off
16 of anybody, and if Mr. Dobbins were addicted he is feeding
17 his own addiction and not someone else's.

18 And again, they made a comment about they found it --
19 found it on him, and I would point out that whatever was
20 found on him was never introduced in this court.

21 THE COURT: Okay. Noted for the record. I don't know
22 if I need really any response from the State. He's just
23 trying to protect the record.

24 All right. We'll be at ease for just a little bit.
25 And once the jury gets their lunch ordered then we will come

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1 back and I'll do the final charge. So we'll be at ease for
2 a view moments.

3 (Whereupon, a recess was in recess until 12:44 p.m.)

4 THE BAILIFF: All rise and the court come back to
5 order, please.

6 THE COURT: Thank you so much. Have a seat. Anything
7 for the record before we bring the jury out for the final
8 charge from the State?

9 MR. NEELY: Not from the State, Your Honor.

10 THE COURT: Defense?

11 MR. WISE: None from Defense.

12 THE COURT: Okay. Mr. Bolt, would you bring the --

13 (Whereupon, the jury enters the courtroom at 12:44
14 p.m.)

15 THE BAILIFF: All jurors are present, Your Honor.

16 THE COURT: Thank you, Mr. Bolt. Madame Forelady and
17 ladies and gentlemen of the jury, it's time for the court to
18 give you the final charge on the law of this case.

19 The indictments charges the Defendant with the
20 following offenses; manufacturing methamphetamine,
21 possession with intent to distribute methamphetamine,
22 unlawful disposal of methamphetamine waste, possession of a
23 Schedule II controlled substance, and possession of Schedule
24 IV controlled substance.

25 And I'll remind you as I've told you at the outset of

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1 this case that these indictments, which you'll have back in
2 the jury room with you, are not evidence. I further remind
3 you of the fact the Defendant was arrested, charged and
4 indicated in this case is not evidence and cannot be
5 considered by you as evidence of guilt in this case. Nor
6 does it create any presumption or inference of guilt. These
7 documents are simply the formal written instruments which
8 contains the charges made against the Defendant. They are
9 the formal documents by which this case is brought in the
10 court.

11 The indictments in this case allege several different
12 offenses against the Defendant. Again, the charges are
13 manufacturing methamphetamine, possession with intent to
14 distribute methamphetamine, unlawful disposal of
15 methamphetamine waste, possession of a controlled substance
16 Schedule II, and a possession of a controlled substance
17 Schedule IV. Each indictment charges a separate and
18 distinct offense. You must decide each indictment
19 separately on the evidence and the law applicable to it
20 uninfluenced by your decision as to any other indictment.
21 The Defendant may be convicted or acquitted on any or all of
22 the offenses charged. You'll be asked to write a separate
23 verdict of guilty or of not guilty for each indictment.

24 Now, Madame Forelady and ladies and gentlemen of the
25 jury, the Defendant has plead not guilty to each of the five

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1 indictments and that plea puts the burden on the State to
2 prove the Defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent. I charge you that it is
5 an important rule of the law that the Defendant in a
6 criminal trial, no matter what the seriousness of the charge
7 may be, will always be presumed innocent of the crime for
8 which the indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a reasonable
10 doubt. This presumption of innocence does not end when you
11 begin your deliberations, but it accompanies the Defendant
12 throughout the trial until you reach a verdict of guilt
13 based on evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 The presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the Defendant
17 which remains with the Defendant until it has been stripped
18 from the Defendant by evidence satisfying you of the
19 Defendant's guilt beyond a reasonable doubt. The
20 presumption of innocence is not mere legal theory. It is
21 not just a legal phrase. It is a substantial right to which
22 every defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the Defendant's guilt beyond
24 a reasonable doubt.

25 The State has the burden of proving the Defendant

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1 guilty beyond a reasonable doubt. Some of you may have
2 served as jurors in civil cases where you were told that it
3 is only necessary to prove that a fact is more likely true
4 than not true such as by the great weight or preponderance
5 of the evidence. In criminal cases the State's burden must
6 be more powerful than that. It must be beyond a reasonable
7 doubt.

8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the Defendant's guilt. There are
10 very few things in this world that we know with absolute
11 certainty. And in criminal cases the law does not require
12 proof that overcomes every possible doubt. If, based on
13 your consideration of the evidence, you are firmly convinced
14 that the Defendant is guilty of the crime charged, you must
15 find the Defendant guilty. If on the other hand you think
16 there is a real possibility that the Defendant is not
17 guilty, you must give the Defendant the benefit of the doubt
18 and find him not guilty.

19 Now, Madame Forelady and ladies and gentlemen of the
20 jury, I remind you again that during this trial you and I
21 have had certain duties to perform. As a trial judge it is
22 my responsibility to preside over the trial of this case,
23 and I also have the duty to rule on the admissibility of the
24 evidence offered during this trial. You are to consider
25 only the competent evidence before you. If there was any

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1 testimony ordered stricken from the record in this case
2 during the trial you must disregard that testimony. You are
3 to consider only the testimony which has been presented from
4 the witness stand, any exhibits which have been made a part
5 of the record in this case, and any stipulations by counsel.

6 I have the additional duty to charge you the law
7 applicable to this case. As a presiding judge I am the sole
8 judge of the law of this case and it is your duty as jurors
9 to accept and apply this law as I now state it to you. If
10 you already have any idea as to what the law is or what the
11 law ought to be and it does not agree with what I now tell
12 you the law is, you must abandon this idea because you are
13 sworn to accept the law and apply the law exactly as I state
14 it to you.

15 In every case tried in this court before a jury, the
16 jury becomes the sole and exclusive judges of the facts in
17 the case. A trial judge cannot intimate, state, comment on
18 or make any statement to a trial jury about the facts in a
19 case. Since you, the jury, are the sole judge of the facts
20 in this case you are not to infer from what I have said
21 during the progress of this trial in ruling upon the
22 admissibility of evidence or otherwise, or anything that I
23 saw now during the course of this instruction to you that I
24 have any opinion about the facts in this case. The law does
25 not allow me to have an opinion about the facts in this

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1 case. This is a matter solely for you, the jury, to
2 determine. As jurors it is your duty to determine the
3 effect, value, weight and truth of the evidence presented
4 during this trial.

5 Now, there are two types of evidence which are
6 generally presented during a trial. Direct evidence and
7 circumstantial evidence. Direct evidence directly proves
8 the existence of a fact and does not require deduction.
9 Circumstantial evidence is proof of a chain of facts and
10 circumstances indicating the existence of a fact. Crimes
11 may be proven by circumstantial evidence. The law makes no
12 distinction between the weight or value to be given to
13 either direct or circumstantial evidence. However, to the
14 extent the State relies on circumstantial evidence all of
15 the circumstances must be consistent with each other and
16 when taken together point conclusively to the guilt of the
17 accused beyond a reasonable doubt. If these circumstances
18 merely portray the Defendant's behavior as suspicious the
19 proof has failed.

20 The State has the burden of proving the Defendant
21 guilty beyond a reasonable doubt. This burden rests with
22 the State regardless of whether the State relies on direct
23 evidence, circumstantial evidence or some combination of the
24 two.

25 Necessarily you must determine the credibility of

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1 witnesses who have testified in this case. Credibility
2 simply means believability. It becomes your duty as jurors
3 to analyze and to evaluate the evidence and determine which
4 evidence convinces you of its truth. In determining the
5 believability of witnesses who have testified in this case
6 you may believe one witness over several witnesses or
7 several witnesses over one witness. You may believe a part
8 of the testimony of a witness and reject the remaining part
9 of the testimony of that same witness. You may believe the
10 testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety. You may consider
12 whether any witness has exhibited to you any interest, bias,
13 prejudice or other motive in this case. You may also
14 consider the appearance and manner of a witness while on the
15 witness stand.

16 Now, the rules of evidence ordinarily do not permit
17 witnesses to testify to opinions or conclusions. An
18 exception to this rule exists for a witness we call expert
19 witnesses. A witness who by education and experience has
20 become expert in some art, science, profession or calling
21 may state an opinion as to relevant and material matter in
22 which the witness claims to be an expert, and may also state
23 the reasons for that opinion.

24 Madame Forelady and ladies and gentlemen of this jury,
25 I instruct you and emphasize that the fact the Defendant did

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1 not testify is not a factor to be considered by you in any
2 way in your deliberation and in your consideration on the
3 question of the guilt or the innocence of the Defendant.
4 You must not be considered -- it must not be considered by
5 you in any manner whatsoever. A Defendant has the
6 constitutional right to remain silent, and the assertion of
7 this right must not be considered by you in your
8 deliberations. I repeat, under your oath, you are to draw
9 no conclusion whatsoever from the fact that the Defendant in
10 this case did not testify. The fact that this Defendant did
11 not testify should not even be discussed in the jury room.
12 The burden of proof, as I have stated to you, is on the
13 State. The Defendant is not required to prove his
14 innocence. The burden of proof remains on the State to
15 prove guilt beyond a reasonable doubt.

16 To prove possession the State must prove beyond a
17 reasonable doubt the Defendant had the power, knowledge of
18 the drugs and the intent to control the disposition or use
19 of the diazepam and oxycodone. Possession may either be
20 actual or constructive. Actual possession means that the
21 oxycodone or diazepam was in the actual physical custody of
22 the Defendant. Constructive possession means that the
23 Defendant had dominion and control or the right to exercise
24 the dominion or control over either the oxycodone or the
25 diazepam itself or the property on which the oxycodone and

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1 diazepam was found. Mere presence at the scene where the
2 drugs were found is not enough to prove possession. The
3 Defendant's knowledge and possession may be inferred when a
4 substance is found on the property under the Defendant's
5 control. However, this inference is simply an evidentiary
6 fact to be taken into consideration by you along with the
7 other evidence in the case and to be given the weight you
8 decide it should have. Also, two or more persons may have
9 joint possession of a drug. The Defendant is charged with
10 possession of diazepam and oxycodone. The State must prove
11 beyond a reasonable doubt that the Defendant knowingly or
12 intentionally possessed both the oxycodone and diazepam.
13 Knowingly means with knowledge, consciously, not
14 accidentally. Intentionally means willfully, intending the
15 result which actually occurs, not accidentally or
16 involuntary. Intent may be shown by acts of conduct of the
17 Defendant and other circumstances from which you may
18 actually and reasonably infer intent. To prove possession
19 the State must prove beyond a reasonable doubt that the
20 Defendant had the power, knowledge of the drugs, and intent
21 to control the disposition or use of the diazepam and
22 oxycodone. Possession may be either actual or constructive.
23 Actual possession means that the oxycodone or diazepam was
24 in the actual physical custody of the Defendant.
25 Constructive possession means that the Defendant had

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1 dominion and control or the right to exercise dominion or
2 control either the oxycodone or the diazepam itself or the
3 property on which the diazepam or oxycodone was found.

4 Mere presence at the scene where the drugs were found
5 is not enough to prove possession. The Defendant's
6 knowledge and possession may be inferred when a substance is
7 found on the property under the Defendant's control.
8 However, this inference is simply an evidentiary fact to be
9 taken into consideration by you along with the other
10 evidence in the case and to be given the weight you decide
11 it should have. Two or more persons may have joint
12 possession of a drug. Possession of oxycodone or diazepam
13 is a crime unless the oxycodone or diazepam was obtained
14 directly from or through a valid prescription or order of a
15 practitioner acting in the course of professional practice.
16 A practitioner is a physician, dentist, veterinarian,
17 podiatrist, scientific investigator, pharmacy, hospital or
18 other person or institution licensed, registered or
19 otherwise committed to distribute, dispense, conduct,
20 research with respect to or administer a controlled
21 substance in the course of professional practice of research
22 in this state.

23 Manufacturer means the production, preparation,
24 propagation, compound and conversion or processing of a
25 controlled substance either directly or indirectly by

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1 extraction from substances of natural origin or
2 independently by means of chemicals synthesis, or by a
3 combination of extraction and chemical synthesis, and
4 includes any packaging or repackaging of a substance or
5 labeling or relabeling of its container, except this term
6 does not include the preparation or compounding of a
7 controlled substance by an individual for his own use, or
8 the preparation, compounding, packaging or labeling of a
9 controlled substance by a practitioner as an incident to his
10 administering or dispensing of a controlled substance in the
11 course of his professional practice, or by a practitioner or
12 by his authorized agent under his supervision for the
13 purpose of or as an incident to research, teaching, or
14 chemical analysis and not for sale.

15 Manufacturer means any person who packages, repackages,
16 or labels any container of any controlled substance except
17 practitioners who dispense or compound prescription orders
18 for delivery to the ultimate consumer.

19 Now, the Defendant is charged also with possession with
20 intent to distribute methamphetamine. The State must prove
21 beyond a reasonable doubt that the Defendant possessed
22 methamphetamine with the intent to distribute. To prove
23 possession the State must prove beyond a reasonable doubt
24 that the Defendant had both the power and intent to control
25 the disposition or use of the methamphetamine. Possession

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1 may be either actual or constructive. Actual possession
2 means that the methamphetamine was in the actual physical
3 custody of the Defendant. Constructive possession means
4 that the Defendant had dominion and control or the right to
5 exercise dominion or control over either the methamphetamine
6 itself or the property on which the methamphetamine was
7 found. Mere presence at the scene where the drugs were
8 found is not enough to prove possession. The Defendant's
9 knowledge and possession may be inferred when a substance is
10 found on the property under the Defendant's control.
11 However, this inference is simply an evidentiary thing to be
12 taken into consideration by you along with the other
13 evidence in the case and to be given the weight you decide
14 it should have. Two or more persons may have joint
15 possession of a drug.

16 The State must also proof beyond a reasonable doubt
17 that the Defendant intended to distribute the
18 methamphetamine. Distribute means to deliver other than by
19 administering or dispensing a drug. Intent may be shown by
20 acts and conduct of the Defendant and other circumstances
21 from which you may naturally and reasonably infer intent.
22 In determining whether the Defendant had the intent to
23 distribute the methamphetamine you may consider the
24 circumstances surrounding the Defendant's alleged
25 possession. You may consider the amount of the substance

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1 alleged to have been possessed, the manner in which it was
2 allegedly possessed, the place it was allegedly possessed
3 and other factors which you consider to be important. You
4 must find that the Defendant did not intend to have the
5 methamphetamine solely for his own use.

6 Possession of one or more grams of methamphetamine
7 creates an inference that the Defendant possessed the
8 methamphetamine with intent to distribute. This inference
9 does not relieve the State from proving beyond a reasonable
10 doubt that the Defendant had the intent to distribute. It
11 is simply an evidentiary fact to be taken into consideration
12 by you along with the other evidence in the case and to be
13 given the weight you decide it should have.

14 Madame Forelady and ladies and gentlemen of the jury,
15 if you find that the State has failed to prove beyond a
16 reasonable doubt that the Defendant is guilty of possession
17 with intent to distribute methamphetamine you may consider
18 whether the State has proved beyond a reasonable doubt that
19 the Defendant is guilty of simple possession of
20 methamphetamine. Simple possession does not require an
21 intent to distribute the methamphetamine. The State must
22 prove beyond a reasonable doubt that the Defendant knowingly
23 or intentionally possessed methamphetamine. Knowingly means
24 with knowledge, consciously, not accidentally.
25 Intentionally means willfully, intending the result which

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1 actually occurs, not accidentally or involuntary. Intent may
2 be shown by acts of conduct of the Defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent.

5 I charge you it is unlawful for a person to knowingly
6 caused to be disposed any waste from the production of
7 methamphetamine or knowingly assist, solicit or conspire
8 with another to dispose of methamphetamine waste. Knowingly
9 means with knowledge, consciously, not accidentally.
10 Intentionally means willfully, intending the result which
11 actually occurs, not accidentally, or involuntary. Intent may
12 be shown by acts of conduct of the Defendant and other
13 circumstances from which you may naturally and reasonably
14 infer intent. Dispose of means to get rid of.

15 Now, Madame Forelady and ladies and gentlemen of the
16 jury, there are 12 possible verdicts which you may find in
17 this case, and there's no significance whatsoever in the
18 order in which I state these possible verdicts. It simply
19 means that one must be stated first.

20 Now, let me just show you the verdict form and I'll try
21 to go through it with you. I know you can't see it from
22 here. But -- and it's listed one, two, three all the way
23 down. One concerns the charge of manufacturing
24 methamphetamine. Okay? And you either find guilty or not
25 guilty. And again, the order of placing guilty first over

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1 not guilty, there's no significance to that. You make a
2 determination on that indictment. And then the next
3 indictment deals with possession with intent to distribute
4 methamphetamine, and you make a determination as to that.
5 Now, with respect to that charge the verdict form says if
6 you find the Defendant guilty of possession with intent to
7 distribute methamphetamine then you would move to question
8 number four. But if you find the Defendant not guilty of
9 possession with intent to distribute methamphetamine then
10 you may consider the -- what we call the lesser included
11 charge of simple possession of methamphetamine which is
12 number three. Okay? And then it goes on to the unlawful
13 disposal of methamphetamine waste which is number four and
14 you make a determination there. Guilty or not guilty. And
15 then number five is possession of a controlled two substance
16 and number six is possession of schedule four controlled
17 substance.

18 Now, your verdict on each one of the indictments must
19 be unanimous. All 12 of you must agree as to each of the
20 charges. And what we will do is once you have reached your
21 verdict, Madame Forelady, you will sign on page two of the
22 verdict form. You'll place your signature on there. It's
23 already dated for you. And then you would notify the
24 Bailiff of the fact that you have reached your verdict.

25 Now, at this time I'm going to send you back to your

1 jury room. Do not start your deliberations yet. I'll need
2 to discuss a few matters with lawyers. When Mr. Bolt brings
3 you the evidence in the case, the indictments and the
4 verdict form, once he makes that delivery to you in your
5 jury room, then at that time, Madame Forelady, then you can
6 start the process of your deliberations in this case.

7 Now, I don't know if lunch is ready yet. That will be
8 delivered to you whenever it gets here. Certainly you have
9 every right to have your deliberations going on at the same
10 time as you eat lunch. That's going to be your decision.
11 Okay? So I'm going to ask that you now retire to your jury
12 room. Do not begin your deliberations until Mr. Bolt makes
13 the delivery to you.

14 (Whereupon, the jury exited the courtroom at 1:09 p.m.)

15 THE COURT: Okay. Other than what was noted previously
16 concerning the court's charge, any additional objections or
17 exceptions from the State?

18 MR. NEELY: None from the State, Your Honor.

19 THE COURT: Any additional exceptions or objections
20 from the Defense?

21 MR. WISE: Just want to note that the use of the word
22 inference on pages 10, 12, 15 and 17 of the charge we
23 contend violates Article 5, Section 21 of the Constitution
24 of the State of South Carolina.

25 THE COURT: I think that was part of your argument

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1 previously.

2 MR. WISE: I forgot to put the constitutional provision
3 in.

4 THE COURT: Okay. All right. So noted. All right.
5 We will be at ease.

6 (Whereupon, the jury began deliberations at 1:17 p.m.)

7 (Whereupon, the court was in recess until 2:45 p.m.)

8 THE BAILIFF: All rise and come to order, please.

9 THE COURT: Thank you very much. Have a seat. Okay.
10 We're ready to -- I understand there's a verdict and are we
11 ready to bring the jury out and receive the verdict? The
12 State?

13 MR. NEELY: Certainly, Your Honor.

14 THE COURT: Defense?

15 MR. WISE: Ready, Your Honor.

16 THE COURT: Okay. Mr. Bolt, if you'd bring the jury
17 out, please.

18 (Whereupon, the jury enters the courtroom at 2:46 p.m.)

19 THE BAILIFF: All present, Your Honor.

20 THE COURT: Thank you, Mr. Bolt. Be seated. Madame
21 Forelady, I understand that the jury has reached a verdict.

22 FORELADY: Yes, sir.

23 THE COURT: Is the verdict unanimous?

24 FORELADY: Yes, sir.

25 THE COURT: If you'll hand the verdict form to the

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1 Bailiff and he'll hand it to me. Madame Clerk, will you
2 publish the verdict. Would you please stand.

3 THE CLERK: Your Honor, in the case of the State of
4 *South Carolina versus John William Dobbins, Jr.*, as to
5 indictment 2012-GS-30-208, the charge of manufacturing
6 methamphetamine, we the jury find the Defendant guilty.

7 As to indictment 2012-GS-30-209, the charge of
8 possession with intent to distribute methamphetamine, we the
9 jury find the Defendant guilty.

10 As to indictment 2012-GS-30-210, the charge of unlawful
11 disposal of methamphetamine waste, we the jury find the
12 Defendant guilty.

13 As to indictment 2012-GS-30-211, the charge of
14 possession of a schedule two controlled substance, we the
15 jury find the Defendant guilty.

16 As to indictment 2012-GS-30-212, the charge of
17 possession of a schedule four controlled substance, we the
18 jury find the Defendant guilty.

19 I certify this decision was the unanimous decision of
20 the jury, signed Diane L. Wyatt, Foreperson, dated September
21 11th, 2013.

22 Ladies and gentlemen, if that is your verdict please
23 indicate by raising your right hands.

24 (Whereupon, jury raises their right hands.)

25 THE CLERK: Thank you.

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1 THE COURT: Thank you, Madame Clerk. Anything from the
2 State?

3 MR. NEELY: Not from the State, Your Honor.

4 THE COURT: From the Defense?

5 MR. WISE: We'd request the jury be polled.

6 THE COURT: Okay. Madame Clerk.

7 THE CLERK: Yes, sir. Ladies and gentlemen, the verdict
8 I have just published was the verdict you reached in the
9 jury room. I asked you was it your verdict then and is it
10 your verdict now. As I call your name please answer yes or
11 no. Diane Wyatt.

12 MS. WYATT: Yes.

13 THE CLERK: Heather Cribbs.

14 MS. CRIBBS: Yes.

15 THE CLERK: Frank Bradley.

16 MR. BRADLEY: Yes.

17 THE CLERK: Benjamin Landford?

18 MR. LANDFORD: Yes.

19 THE CLERK: Edna Williams.

20 MS. WILLIAMS: Yes.

21 THE CLERK: Cindy Price.

22 MS. PRICE: Yes.

23 THE CLERK: Danita Franklin.

24 MS. FRANKLIN: Yes.

25 THE CLERK: Andy Young.

1 MR. YOUNG: Yes.

2 THE CLERK: Jennifer Mann.

3 MS. MANN: Yes.

4 THE CLERK: David Welch.

5 MR. WELCH: Yes.

6 THE CLERK: Megan Valentine.

7 MS. VALENTINE: Yes.

8 THE CLERK: Gary Colter.

9 MR. COLTER: Yes.

10 THE COURT: Thank you, Madame Clerk.

11 Madame Forelady and ladies and gentlemen of the
12 jury, I want to take this opportunity to extend to you our
13 sincere appreciation for your service on this jury. As I
14 told you at the beginning of all this, serving on a jury is
15 considered by many to be the second most important civic
16 responsibility that we all have second only to serving in
17 the military to defend our country. But we do appreciate
18 your service. I noticed throughout the entire trial during
19 the lawyers' closing arguments you all were very attentive
20 and that's so absolutely essential and necessary to perform
21 affective jury service. So again, I do think you so very,
22 very much. Now, with all that said, you are now at liberty
23 to discuss this case with anybody that you wish to. Now,
24 there may be some folks that want to talk to you and you may
25 not want to talk to them about the case. That's totally up

1 to you. You can make that decision as you deem fit. Now --
2 and I'm not anticipating this would happen, but if someone
3 wants to talk to you about this case and your verdict and
4 you don't want to talk to them and they continue to -- I'm
5 going to use the word hound you to talk about it, then you
6 notify this court. We can certainly -- we can certainly
7 take care of that. We want to -- we want to protect our
8 juries and certainly we'll protect you.

9 Now, the last thing I need to tell you is that we still
10 have a couple of days left in this week and we have one more
11 trial scheduled that we're anticipating, Solicitor, starting
12 sometime tomorrow, correct?

13 MR. NEELY: Yes, Your Honor.

14 THE COURT: Okay. And so we have instructed the other
15 members of the panel to be here at 9:00 --

16 THE CLERK: At 10:00.

17 THE COURT: At 10:00. So with that said, I will need
18 for you to be back and join the other members of the jury
19 panel who were not selected with you on this jury at 10:00
20 here in the courtroom. So again, you're free to leave for
21 today. And I hope you have a good afternoon.

22 (Whereupon, the jury exited the courtroom at 3:00 p.m.)

23 THE COURT: We're going to take about 10 minutes before
24 we proceed into the sentencing phase. Everybody be at ease.

25 (Whereupon, the court took a brief recess until 3:10

1 p.m.)

2 THE COURT: Okay. Mr. Wise, you want to bring your
3 client up, please.

4 MR. WISE: I'm going to put some motions on the record
5 first.

6 THE COURT: Yeah, let's deal with that. I'm sorry.
7 Solicitor, if you maybe would --

8 MR. NEELY: Certainly.

9 THE COURT: -- so we can have a clear shot. Yeah, I'd
10 be glad to hear from you, Mr. Wise.

11 MR. WISE: Your Honor, I would first ask for a new trial
12 on the grounds that the evidence in this matter should have
13 been suppressed and on the issue that there was an unlawful
14 search of his residence and that there were no exigent
15 circumstances to justify the search. A lot of -- there was
16 some testimony at the pretrial hearing it's obvious, I
17 think, from the rest of the trial, that this was a camper
18 with a front porch affixed to it and the ability of it to
19 quickly leave was just virtually nonexistent. And
20 therefore, there were no exigent circumstances to justify
21 that search.

22 THE COURT: Of course, I just would point out that when
23 the pretrial motion was made concerning suppression there
24 was no evidence as to the condition of the camper. Only
25 that it was a camper.

1 MR. WISE: Right.

2 THE COURT: It was in the course of the trial that was
3 brought out something about a porch or something on there.
4 But just to point that out. Go ahead.

5 MR. WISE: Okay. Secondly, of course, the issues
6 involving quashing the indictment. I don't think you can
7 put a substantive crime and a conspiracy in the same -- same
8 indictment and that's some of what they did here in three of
9 the five indictments.

10 Also the charge to the jury as I mentioned earlier.
11 The charge to the jury that defined constructive possession
12 as dominion and control over the property on which the
13 oxycodone and diazepam was found, in my opinion, in essence
14 directed a verdict against the Defendant because they
15 basically told the jury if he owned the trailer he owned the
16 drugs and I don't think that's the law. You went on to, I
17 consider, confusing the jury a little bit and said that the
18 Defendant's knowledge and possession may be inferred when a
19 substance is found on the property under the Defendant's
20 control. And, of course, we contend that that inference
21 violates Article 5, Section 21 of the Constitution of the
22 State of South Carolina in that it is a charge on the facts.
23 The same issues were raised on page 12 and 15 of the charge
24 and we would renew those same objections.

25 On page 17 of the charge, the charge to the jury that

1 they could infer possession with intent to distribute from
2 possession of more than a gram, we also contend violations
3 Article 5, Section 21 of the Constitution of the State of
4 South Carolina in that that is a charge on the facts. I
5 think that's been clearly established in the case I've cited
6 earlier, which I do not have up on my computer now. But
7 that old railroad case clearly established that given the
8 word inferences they charge on the facts. Secondly -- or
9 lastly, I'd ask for a new trial on the grounds, I think,
10 taking the evidence in a light most favorable to the State.
11 There's no substantial evidence by which it can be concluded
12 that Mr. Dobbins knowingly and intentionally possessed these
13 drugs. I think it's a question of who did possess it
14 between two people who were in the house, and obviously the
15 State entered some -- to me not produced sufficient evidence
16 to prove either one or both of them possessed it or what it
17 is. So I would also ask for a new trial on that ground.

18 THE COURT: Okay. Thank you very much, Mr. Wise. Any
19 response from the State?

20 MR. WISE: Well, I need to --

21 THE COURT: You got something else?

22 MR. WISE: I forgot the order of the closing argument
23 also was --

24 THE COURT: Right.

25 MR. WISE: -- was a ground that would necessitate a new

1 trial at this time.

2 THE COURT: Thank you very much. Any response from the
3 State?

4 MR. NEELY: Your Honor, I think you've heard our
5 position on all of these positions. There is certainly
6 enough evidence to convict. I think that there was
7 certainly exigent circumstances to the entry. I think Your
8 Honor ruled correctly on that at the beginning of trial, and
9 I don't believe the Defendant is entitled to a new trial in
10 any way, shape or form.

11 THE COURT: All right. Thank you very much. The
12 motion for a new trial, and I assume your last -- or next to
13 the last point was more of a judgement NOV as to your
14 directed verdict. All that is denied.

15 MR. WISE: Well, I don't think you really do an NOV in
16 criminal court, so that will --

17 THE COURT: Well, I know. I know.

18 MR. WISE: - new trial, Your Honor. Same principle.

19 THE COURT: Because viewing the evidence -- I don't
20 view the evidence in light most favorable to the State on a
21 motion for new trial. I do on a directed verdict, so...

22 MR. WISE: Thank you.

23 THE COURT: We know where each are coming from, don't
24 we, Mr. Wise?

25 MR. WISE: We communicated.

1 THE COURT: All right. Thank you very much. Okay.

2 Solicitor, Mr. Wise, if you'd bring your client up.

3 (Whereupon, Defendant and Counsel approach the bench.)

4 MR. NEELY: These are certified copies of prior drug
5 convictions.

6 THE COURT: Okay. Mr. Wise, have you had an opportunity
7 to review the documentation handed to me?

8 MR. WISE: I haven't reviewed that documentation. I've
9 reviewed his record from what they gave me. I think they're
10 --

11 THE COURT: Well, I'll tell you what. I think --

12 MR. WISE: -- they're all possession charges, if my
13 memory is correct.

14 THE COURT: Right. We'll just take a look at it.
15 Everybody be at ease for just a moment. Off the record and
16 give Mr. Wise an opportunity to review that documentation.

17 (Pause)

18 THE COURT: Okay. It appears that the prior record
19 related to drug offenses in 2008, possession of crack
20 cocaine received a suspended one year sentence, 18 months
21 probation. And then in December of '09 there were three
22 separate indictments for possession of meth which he got one
23 year straight -- straight up sentence.

24 MR. NEELY: Your Honor, I believe the indictments were
25 actually for distribution of meth and they were pled down to

1 possession of meth.

2 THE COURT: Okay. All right. Mr. Wise, I'll be glad
3 to hear from you first, and then I'll be glad to hear from
4 the State concerning sentencing.

5 MR. WISE: Your Honor, one of the unfortunate parts of
6 the case is that, you know, they've changed the law somewhat
7 on prior records but didn't change it to benefit him that
8 much in this case because it is prior possession of
9 methamphetamine or crack cocaine. If you add up all the
10 drugs involved in all those indictments and this one you're
11 yet to get to an ounce. That's one thing I want to point
12 out to the court. He has a long history of drug use, and it
13 shows in front of the court. I think if you look at this
14 particular case, to be frank with you, even though the jury
15 took a different position, he's in a camper with his
16 girlfriend. Not a big lifestyle. Again, a relatively small
17 amount of methamphetamine. You know, what can you say. He's
18 53 years old. He has a son who's here in the courtroom.
19 His parents are also here in the courtroom. I've gotten to
20 know him over the past two years or so I've been
21 representing him. I think Johnny is kind of a likeable
22 fellow. I've got to -- you know, when he works, he works
23 hard. Unfortunately he got involved with this meth years
24 ago and never got away from it obviously. You know, you
25 look back at some of the sentences and think maybe the judge

1 had been a little harsher on him and sentenced to a couple,
2 three years maybe that would have changed him. I don't
3 know. But he is, as I say, 53. He has worked his entire
4 life. He works in construction, brick mason and stuff like
5 that, and has been a hard worker. He has unfortunately
6 gotten involved with meth and just could not get away from
7 it. I understand the minimum sentence in this case is going
8 to be 10 years over the, you know, manufacturing meth
9 charge, but I think something in that range he'd be close to
10 63 when he gets out.

11 The other thing I want to point out to the court before
12 you consider it. He has spent about 18 months in jail in
13 Greenwood on an alleged murder charge over in Greenwood that
14 it now appears after he -- I was not representing him on it.
15 Carson Henderson was. It's not likely he's ever going to be
16 convicted of that from what Carson has uncovered. And I
17 think that was the comment that Judge Addy made when he made
18 a bond request last week, but Judge Addy's delayed the bond
19 request pending this trial obviously.

20 He's never going to -- you know, if they later convict
21 him of murder they can always get that 18 months back. If
22 you give him credit for the 18 months on this at least it
23 would help him a little bit and -- you know, so he can get
24 some -- salvage some of that 18 months. But he has been
25 over there for the past 18 months and, you know, my frank

1 opinion is that they realize that that case wasn't going
2 anywhere and it looks like it really isn't, and they came
3 over here with this charge. I still think it should have
4 been a possession charge. The jury disagreed with me. But
5 he's certainly not out there making money off of meth. I can
6 -- I think I can assure the court of that.

7 THE COURT: Let me just comment very briefly and then
8 I'll allow you to continue on. I don't want to cut you off.
9 But concerning the matter in Greenwood. I heard the bond
10 hearing on the co-defendant. Now, I do understand that
11 there are some allegations out there that possibly someone
12 else was involved and not those who are charged. I don't
13 think -- and I know whatever information you have stated to
14 the court you got from another source. But I don't think
15 Judge Addy ever said there's -- very unlikely that there's
16 not going to be a conviction involving your client. I don't
17 think Judge Addy ever said that. But I was made aware, and
18 Judge Addy was made aware when he heard his bond hearing,
19 when I heard the co-defendant's bond hearing, that there's
20 certainly some allegations out there that -- I know that
21 everybody's working real hard to try to sift through --

22 MR. WISE: Right.

23 THE COURT: -- and figure out what all has happened.
24 So -- but in any event, I'd be glad to hear from you further
25 if there's anything else you'd like to --

1 MR. WISE: That's basically it, Your Honor. That's
2 basically what we've got here is to say -- you know, I've
3 dealt with him for over -- you know, right at two years now.
4 A little over two years. And not a -- I don't think there's
5 a mean bone in his body. That's the only way to put it.
6 His record is primarily just filled with possession and one
7 little, I think, third degree burglary charge years ago.
8 But there's no -- you know, there's no robbery charges, no
9 assault and battery of a high and aggravated nature charges,
10 you know. I think there's one CDV from years and years and
11 years ago. But that's basically it. He's just -- I've
12 never seen in him what I'd call a mean person, the times I
13 have.

14 THE COURT: All right. Thank you, Mr. Wise.
15 Solicitor, I'd be glad to -- do any family members want to
16 speak on his behalf? I'm not saying they have to but you
17 alluded to the fact that -- and I know that there's been
18 some folks here from the beginning and I'd be glad to hear
19 from them if --

20 MR. WISE: Right. That's his son who testified.

21 THE COURT: Right. I remember him testifying
22 yesterday.

23 MR. WISE: His mother and his father. And his first
24 cousin.

25 THE COURT: Okay. Solicitor, I'd be glad to hear from

1 you.

2 MR. NEELY: Thank you, Your Honor. Your Honor, as you
3 know, and as the jury has agreed with us, that we do believe
4 that Mr. Dobbins was selling methamphetamine, not only from
5 the amount but from the current making of it as he had over
6 2.5 grams in his camper. We have, you know, four prior
7 distribution charges that were pled down to possession
8 charges. One of crack, three of meth. Clearly has not
9 learned his lesson. He has other charges. In 1987 he has a
10 CDV. He had a fraud check. In 1995 he has a failure to
11 stop. In 1999 he has another CDV. And in 2001 another CDV.
12 2005 a petty larceny. And in 2011 we have a breach of peace
13 and a burglary charge, I believe, Your Honor. If it's okay,
14 I'm going to let the officers speak to that.

15 THE COURT: Certainly. Let me just -- on the breach of
16 trust and the burglary charge, you say that was 2011?

17 MR. NEELY: Yes, sir.

18 THE COURT: Okay. Do you have what he received on
19 that?

20 MR. NEELY: No.

21 MR. WISE: There's not a conviction on that.

22 THE COURT: Well, I don't know. I'm asking.

23 MR. NEELY: I'm sorry, Your Honor. That's just a
24 breach of peace in 2011.

25 MR. WISE: Yeah.

1 THE COURT: Was it -- all right. Conviction on breach
2 of peace?

3 MR. NEELY: That's correct.

4 MR. WISE: Correct.

5 MR. NEELY: There's a burglary charge. Not a
6 conviction on that.

7 THE COURT: Okay.

8 MR. WISE: And I think there's an old burglary charge
9 from years and years ago.

10 THE COURT: Okay. All right. Both officers wish to
11 speak?

12 MR. NEELY: Yes, sir, Your Honor.

13 THE COURT: Okay. I'll be glad to -- whoever wants to
14 go first.

15 OFFICER HODGES: Your Honor, due to Mr. Dobbins'
16 previous history, I've dealt with him several times with me
17 working in his area, I do not believe he is capable of
18 stopping in the manufacturing of methamphetamine or any
19 other drugs. I do believe he is a danger to society,
20 whether it would be him -- I'm not sure of his violent
21 history. I haven't dealt with that. But as far as his drug
22 activity, whether he's making that stuff and it's getting
23 into the air or the environment around him, it's certainly
24 harmful to himself as well as the members of the community,
25 and I do believe that he should serve the maximum sentence,

1 in my opinion. That's all I have to say.

2 THE COURT: Okay. Thank you, Officer. Yes, sir,
3 Sergeant.

4 SERGEANT VEAL: Judge, just to reiterate what Mr.
5 Hodges said. I've dealt with Mr. Dobbins going on four
6 years now in narcotics. Every time you turn around his name
7 is being brought up with the manufacturing process. I've
8 had him on INPLEx watch for Sudafed purchases going on
9 almost four years. I mean, he's been on my radar,
10 distributing, manufacturing methamphetamine. He's a problem
11 and I think we need to make a statement today saying, you
12 know, that the manufacturing in Laurens County needs to
13 cease to exist.

14 THE COURT: Okay. Thank you, sir. Anything further
15 from the State?

16 MR. NEELY: No, sir.

17 THE COURT: Anything further from the Defense?

18 MR. WISE: Nothing further.

19 THE COURT: All right. Everybody be at ease for just a
20 moment. I've got several sentencing sheets to complete. So
21 everybody -- you can step away and I can bring you back up
22 to the bench.

23 (Pause)

24 THE COURT: Come back up. Solicitor.

25 (Whereupon, Defendant and Counsel approach the bench.)

1 THE COURT: Okay. First of all, on the record I would
2 commend the attorneys involved in this case for your
3 excellent representation of your respective clients. I know
4 you worked extremely hard. The court appreciates it very
5 much.

6 The court is greatly concerned with the meth problem
7 that Laurens County has. I was in Lexington court several
8 weeks ago and it was even told to me that the meth problem
9 originating in Laurens County now is moving down that way.
10 And then I even heard somebody told me that Laurens County
11 is the number one county in the state for methamphetamine
12 problems. That's a sad, sad commentary on society and
13 society in Laurens County. Certainly we don't want to be
14 ranked number one in any area that is illegal.

15 All right. On indictment 12-GS-30-212 and 211, which
16 are the two possession of controlled substance, Schedule II
17 and Schedule IV, sentence of the court is that Mr. Dobbins,
18 John William Dobbins, Jr., be confined in the State
19 Department of Corrections for a period of one year.

20 On indictment 12-GS-30-210, which is the disposal of
21 methamphetamine waste, sentence of the court is that Mr.
22 Dobbins be committed to the State Department of Corrections
23 for a period of five years.

24 On indictment 12-GS-30-208, which is the manufacturing
25 of meth third offense, possession with intent to distribute

1 methamphetamine third offense, the sentence of the court is
2 on both Mr. Dobbins be confined to the State Department of
3 Corrections for a period of 25 years. And all those charges
4 will run concurrent. Good luck to you, sir.

5 MR. NEELY: Thank you, You Honor.

6 THE COURT: The court will be adjourned.

7 (Whereupon, the proceeding was concluded at p.m.)

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9 - - - END OF TRANSCRIPT OF RECORD - - -

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1 Certificate of Reporter

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3 I, the undersigned, Tara T. Scott, Official Court
4 Reporter for the Eighth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Circuit
9 Court for Laurens County, South Carolina, on the 9th-11th
10 day of September, 2013.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13

14

15



16

Tara T. Scott, CVR

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Circuit Court Reporter

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Eighth Judicial Circuit

19

March 9, 2014

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 **ORIGINAL**

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THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

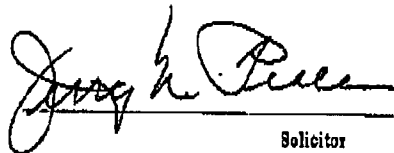
COUNTY OF LAURENS

MANUFACTURING METHAMPHETAMINE
44-53-375

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That John William Dobbins Jr, did in Laurens County, state aforesaid, on or about the 24th day of November, 2011 willfully, unlawfully and knowingly manufacture or otherwise aid, abet, attempt or conspire to manufacture Methamphetamine, in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended.

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

A handwritten signature in black ink, appearing to read "Joseph H. Preece", is written over a horizontal line.

Solicitor

WITNESSES

Jawarski Shelton
Laurens County Sheriff

WARRANT NUMBER

12-INFO-30-0231

True Bill

[Signature]

Foreman of the Grand Jury

Date: *2-24-12*

VERDICT

Guilty

Dianne L. Wyatt

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012

Indictment # 12GS30- *0208*

THE STATE

vs.

John William Dobbins Jr

INDICTMENT FOR

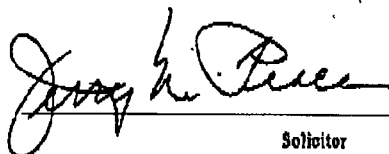
MANUFACTURING METHAMPHETAMINE
44-53-375

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR****COUNTY OF LAURENS****POSSESSION WITH INTENT TO DISTRIBUTE
METHAMPHETAMINE
44-53-375**

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That John William Dobbins Jr, did in Laurens County, state aforesaid, on or about the 24th day of November, 2011 willfully, unlawfully, and knowingly possess with intent to distribute, dispense, deliver, and/or otherwise aid, abet, attempt, or conspire to possess with the intent to distribute, dispense, or deliver methamphetamine, in violation of the provisions of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

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



Joseph H. Preece

Solicitor

WITNESSES

Jawaraki Shelton
Laurens County Sheriff

WARRANT NUMBER

J997716

True Bill
[Signature]
Foreman of the Grand Jury
Date: 2-24-12

VERDICT

Guilty
Dianne L. Wyatt
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012
Indictment # 12GS30-0209

THE STATE

vs.
John William Dobbins Jr

INDICTMENT FOR

POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE
44-53-375

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

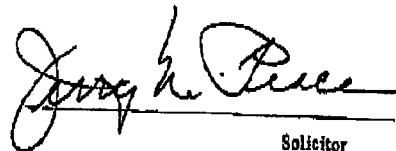
INDICTMENT FOR

UNLAWFUL DISPOSAL OF
METHAMPHETAMINE WASTE
44-53-376

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That John William Dobbins Jr, did in Laurens County, state aforesaid, on or about the 24th day of November, 2011 willfully, unlawfully and knowingly dispose of, or cause to be disposed of, any waste from the production of methamphetamine, and/or did knowingly assist, solicit, or conspire with another to dispose of methamphetamine waste, in violation of Section 44-53-376 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Jawarski Shelton
Laurens County Sheriff

WARRANT NUMBER

1997717

True Bill
[Signature]
Foreman of the Grand Jury
Date: 2-24-12

VERDICT

Guilt
Dianne R. Wyatt
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012
Indictment # 12GS30- 0210

THE STATE

vs.
John William Dobbins Jr

INDICTMENT FOR

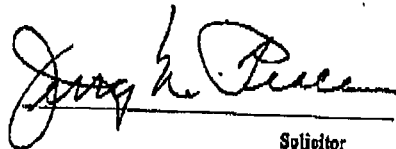
UNLAWFUL DISPOSAL OF
METHAMPHETAMINE WASTE
44-53-0376

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****POSSESSION OF CONTROLLED SUBSTANCE
44-53-0370**

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That John William Dobbins Jr, did in Laurens County, state aforesaid, on or about the 24th day of November, 2011 wilfully, unlawfully and knowingly possess a quantity of Oxycodone, a Schedule II controlled substance, in violation of the provisions of Title 44, Chapter 53, Article 3 of the South Carolina Code of Laws, 1976, as amended,

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

**Solicitor**

WITNESSES

Jawarski Shelton
Laurens County Sheriff

WARRANT NUMBER

1997719

True Bill

[Signature]

Foreman of the Grand Jury

Date: *2-24-12*

VERDICT

Guilty

Diane L. Wyatt

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012

Indictment # 12GS30- *0211*

THE STATE

vs.

John William Dobbins Jr

INDICTMENT FOR

POSSESSION OF CONTROLLED SUBSTANCE
44-53-0370

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

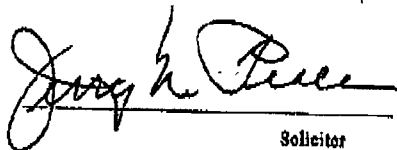
COUNTY OF LAURENS

POSSESSION OF CONTROLLED SUBSTANCE
44-53-0370

At a Court of General Sessions, convened on the 24th day of February, 2012 the Grand Jurors of Laurens County present upon their oath:

That John William Dobbins Jr, did in Laurens County, state aforesaid, on or about the 24th day of November, 2011 willfully, unlawfully and knowingly possess a quantity of Diazepam, a Schedule IV controlled substance, in violation of the provisions of Title 44, Chapter 53, Article 3 of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor

WITNESSES

Jaworski Shelton
Laurens County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2012
Indictment # 12GS30- 0212

WARRANT NUMBER

J997720

THE STATE

vs.
John William Dobbins Jr

True Bill
[Signature]
Foreman of the Grand Jury
Date: 2-24-12

VERDICT

Guilty
Diane L. Wyatt
Foreman

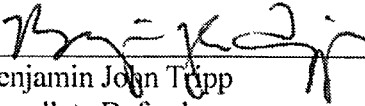
INDICTMENT FOR

POSSESSION OF CONTROLLED SUBSTANCE
44-53-0370

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."

September 30, 2014



Benjamin John Tipp
Appellate Defender

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

ATTORNEY FOR APPELLANT