

ORIGINAL

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of General Sessions

The Hon. Lawton McIntosh, Circuit Court Judge

RECEIVED  
JUN 11 2014  
SC Court of Appeals

Case No. 2013-000817

The State. . . . . Respondent.

v.

Charles Cain . . . . . Appellant.

RECORD ON APPEAL

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**INDEX**

Transcript of Trial .....1

    Pretrial .....4

    Openings .....29

    State’s Witness Kyle

        Direct by Solicitor Holliday.....36

        Cross Examination by Ms. Hall .....46

        Cross Examination by Mr. Hall .....48

    State’s Witness Wilbanks

        Direct by Solicitor Holliday.....53

        Cross Examination by Ms. Hall .....60

        Cross Examination by Mr. Hall .....62

    State’s Expert Witness Stuart

        Direct by Solicitor Holliday .....69

        Voir Dire by Mr. Hall .....98

        Direct by Solicitor Holliday .....102

        Cross Examination by Mr. Hall .....104

        Cross Examination by Ms. Hall .....107

    Motions .....116

    Defense’s Witness Fowler

        Direct by Mr. Hall.....123

        Cross Examination by Ms. Hall .....128

        Cross Examination by Solicitor Holliday .....128

    Closings .....141

    Verdict .....183

Transcript of Sentencing .....190

Trial Exhibits 1-24 .....195

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
TRIAL EXHIBITS 1 – 24 (PHOTOGRAPHS)**

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**INDEX**

Transcript of Trial .....1

    Pretrial .....4

    Openings .....29

    State’s Witness Kyle .....36

    State’s Witness Wilbanks .....53

    State’s Expert Witness Stuart .....69

    Motions .....116

    Defense’s Witness Fowler .....123

    Closings .....141

    Verdict .....183

Transcript of Sentencing .....190

Trial Exhibit 1-24 .....195

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) COURT OF GENERAL SESSIONS

3  
4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
5 PLAINTIFF, ) OF  
6 vs. ) RECORD  
7 CHARLES ALLEN CAIN AND TIPHANI )  
8 M. PARKHURST, ) 2012-GS-42-3135  
9 DEFENDANTS. ) 2012-GS-42-2547

10  
11 February 28<sup>th</sup> and March 1st, 2013  
12 Spartanburg, South Carolina

13 B E F O R E :  
14 THE HONORABLE R. LAWTON MCINTOSH, Judge, and a jury.

15 A P P E A R A N C E S :  
16 HAYES HOLLIDAY  
17 ASSISTANT SOLICITOR  
18 Attorney for the State

19 ROBERT HALL  
20 ASSISTANT PUBLIC DEFENDER  
21 Attorney for the Defendant

22 CLAIRE HALL  
23 ASSISTANT PUBLIC DEFENDER  
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Seventh Judicial Circuit

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18  
19  
20  
21  
22  
23  
24  
25

I N D E X   O F   W I T N E S S E S

WITNESSES

PAGE

Motions 7

Jury Selection 13

Motions 32

Opening by The Court 50

Opening by Sol. Holliday 59

Opening by Mr. Robert Hall 63

Opening by Ms. Claire Hall 65

KEVAN KYLE

Direct examination by Sol. Holliday 66

Cross-examination by Ms. Claire Hall 76

Cross-examination by Mr. Robert Hall 78

CHRIS WILBANKS

Direct examination by Sol. Holliday 83

Cross-examination by Ms. Claire Hall 90

Cross-examination by Mr. Robert Hall 92

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	BETH STUART	
4	Direct examination by Sol. Holliday	99
5	Cross-examination by Mr. Robert Hall	128
6	Direct examination by Sol. Holliday	132
7	Cross-examination by Mr. Robert Hall	133
8	Cross-examination by Ms. Claire Hall	137
9		
10	Motions	146
11		
12	LEON FOWLER, SENIOR	
13	Direct examination by Mr. Robert Hall	153
14	Cross-examination by Ms. Claire Hall	158
15	Cross-examination by Solicitor Holliday	158
16		
17	Closing by Mr. Robert Hall	171
18	Closing by Ms. Claire Hall	177
19	Closing by Solicitor Holliday	181
20	Charge by the Court	188
21	Question from the Jury	209
22	Verdict	213
23	Certificate	219
24		
25		

1 PROCEEDINGS

2  
3 (WHEREUPON, the following takes place outside the  
4 presence of the jury panel.)

5 THE COURT: All right. Gentlemen, I don't know whether  
6 the jury is here or not -- I mean the entire pool. I've  
7 asked our bailiffs. They're about four people are missing.

8 Okay. We got them.

9 Okay. Before we bring them in here let's go over a  
10 couple just housekeeping matters I guess. My understanding  
11 is that there's some pretrial motions in this matter.

12 MR. ROBERT HALL: Yes, sir, Your Honor.

13 MS. CLAIRE HALL: Yes.

14 THE COURT: Okay. And without getting into those now,  
15 I'm just thinking scheduling --

16 MR. ROBERT HALL: Yes, sir.

17 THE COURT: -- what if we go ahead and pick a jury, let  
18 them go, bring them back after lunch, and start opening  
19 statements and trial at that, that point?

20 That sound reasonable?

21 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

22 MR. ROBERT HALL: Yes, sir.

23 MS. CLAIRE HALL: Yes, sir.

24 THE COURT: Okay. We'll see how long it takes them.  
25 We'll kind of figure it out.

1           How long do you think these pretrial motions will last?

2           MR. ROBERT HALL: I don't think they'll be very long,  
3 Your Honor. Along the lines of what we addressed in  
4 chambers, just on the charge, and that's---

5           THE COURT: And, and just for the record, we had a  
6 brief conversation about the case in chambers, two matters.  
7 I think the codefendants have not appeared. But I assume  
8 that the bonding documents tell them if they don't appear  
9 they'll be tried in their absence, is that correct?

10          MR. ROBERT HALL: Yes, sir, and I'm assuming. I've not  
11 seen their actual bonds. But, Your Honor, they were told  
12 by -- I know I told my client that he had to be here or he  
13 would be tried in his absence.

14          THE COURT: All right. And they actually appeared here  
15 Monday. So --.

16          MR. ROBERT HALL: They were here Monday, and I've  
17 spoken with each of the two clients over the past two days.

18          THE COURT: Well maybe -- do you see any reason why we  
19 shouldn't go ahead and strike a jury even with them not  
20 being here at this stage?

21           I'm glad to give them a little time. That break may  
22 give them sufficient time to get here if they are intending  
23 to come.

24          MR. ROBERT HALL: Yes, sir.

25          THE COURT: Okay. But the other part of our meeting

1 was that the State intends to have a fairly novel approach  
2 to this case in that they're gonna establish trafficking  
3 through extrapolation from the aggregate components to say  
4 that a yield would of been more than the trafficking amount.

5 Is that correct?

6 SOLICITOR HOLLIDAY: Well put, Your Honor, yes, sir,  
7 and, judge, for that purpose we would simply rely on the  
8 plain language of the trafficking statute.

9 THE COURT: Okay. Do you have a copy of that in front  
10 of you so---

11 SOLICITOR HOLLIDAY: Yes, sir.

12 THE COURT: I don't have mine in here with me.

13 SOLICITOR HOLLIDAY: Yes, sir, I've got it.

14 THE COURT: I did look at it, and let me ask you this,  
15 Mr. Holliday.

16 It's right, it's Mr. Holliday?

17 SOLICITOR HOLLIDAY: Yes, sir.

18 THE COURT: I'm sorry. I'm getting everybody straight  
19 over here.

20 SOLICITOR HOLLIDAY: No problem, Your Honor.

21 THE COURT: Doesn't the statute require the drug or a  
22 mixture containing the drug?

23 SOLICITOR HOLLIDAY: Your Honor, I believe that the  
24 statute talks about attempt to manufacture, and I think  
25 that's what we would be to --.

1 THE COURT: But when you get into the measurement of  
2 the drug?

3 SOLICITOR HOLLIDAY: Yes, sir, the---

4 THE COURT: I mean I see --.

5 SOLICITOR HOLLIDAY: Yes, sir.

6 THE COURT: And I can understand the components being  
7 there.

8 SOLICITOR HOLLIDAY: As far as the weight to meet the  
9 10-gram minimum, we would have to establish that the  
10 defendants could produce the drug or a combination of the  
11 drug and other elements. But the weight of the final  
12 product would have to exceed 10-grams, and I believe we have  
13 evidence to establish that.

14 THE COURT: Okay. Well, let me just tell you this.  
15 I'm gonna hear your argument, and after we pick the jury---

16 SOLICITOR HOLLIDAY: Yes, sir.

17 THE COURT: ---I would like to take that under  
18 advisement. So, we'll just go forward and let me think  
19 about it and read up on it. I am informed -- at least I  
20 think my law clerk may be on the way. So, we'll have some  
21 assistance. But any kind of research you could give to me  
22 with regard to that, just looking at the plain meaning of  
23 the statute, correct?

24 SOLICITOR HOLLIDAY: Yes, sir.

25 THE COURT: Okay. And I believe you're under the

1 impression that this is fairly novel in South Carolina?  
2 SOLICITOR HOLLIDAY: Yes, sir, I believe this might be  
3 the appearance or the first impression.  
4 THE COURT: So, for purposes of this case, I believe  
5 everybody agrees the strikes are five, five and five, is  
6 that correct?  
7 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.  
8 MR. ROBERT HALL: That's correct.  
9 MS. CLAIRE HALL: Yes, sir.  
10 THE COURT: And do we want to have an alternate?  
11 MR. ROBERT HALL: Yes, sir.  
12 THE COURT: Let's go ahead and have just one.  
13 MS. CLAIRE HALL: Yeah.  
14 THE COURT: So, I guess each side, on the defense,  
15 would have two strikes on the alternate. State would just  
16 have one.  
17 SOLICITOR HOLLIDAY: Yes, sir.  
18 MR. ROBERT HALL: Yes, sir.  
19 THE COURT: All right. Is that right?  
20 Y'all agree with that?  
21 MS. CLAIRE HALL: Yes, sir.  
22 MR. ROBERT HALL: That's my understanding, yes, sir,  
23 Your Honor.  
24 THE COURT: Any reason we can't go ahead and bring the  
25 jury in now?

1 MR. ROBERT HALL: No, sir.  
2 SOLICITOR HOLLIDAY: No, sir, Your Honor.  
3 MR. ROBERT HALL: while they're bringing them around,  
4 I'll go take one more look.  
5 THE COURT: Okay.  
6 SOLICITOR HOLLIDAY: Indictments, Your Honor?  
7 THE COURT: Yes, sir. What I was gonna do is have you  
8 call your case --  
9 SOLICITOR HOLLIDAY: okay.  
10 THE COURT: Then hand that to me --  
11 SOLICITOR HOLLIDAY: Absolutely, yes, sir.  
12 THE COURT: -- if that's okay.  
13 SOLICITOR HOLLIDAY: Absolutely.  
14 THE COURT: which subsection is this case under?  
15 SOLICITOR HOLLIDAY: Subsection C would be what the  
16 State would present it as a trafficking.  
17 THE COURT: C -- and what is it?  
18 C and --  
19 SOLICITOR HOLLIDAY: Subsection C(1), 10-grams or more,  
20 but less than 28-grams.  
21 THE COURT: Is this a first?  
22 SOLICITOR HOLLIDAY: Yes, sir, for both. Both.  
23 MR. ROBERT HALL: Your Honor, upon reviewing the, my  
24 witnesses records, I knew his name sounded familiar, and I  
25 use to sit at the other table. In 1989, I was a much

1 younger prosecutor, and I was the attorney, actually the  
2 attorney that prosecuted the case. He's got in -- I just  
3 noticed, from the 1989 conviction, but I don't see any  
4 problem with that. He's just here to testify about a few  
5 things about the house and all on their part. But---

6 THE COURT: Does anybody see any problem?

7 I don't necessarily see a problem.

8 MR. ROBERT HALL: I just find it rather interesting.

9 SOLICITOR HOLLIDAY: No, sir.

10 (WHEREUPON, the following takes place within the  
11 presence of the jury.)

12 THE COURT: All right. Good morning, ladies and  
13 gentlemen.

14 Can you hear me okay?

15 (Jurors nod affirmatively.)

16 THE COURT: All right. If you can't hear during  
17 anytime, please raise your hand.

18 My name is Lawton McIntosh. I'm a resident circuit  
19 judge from Anderson County. It has been my pleasure and it  
20 still is my pleasure to be with you this week here in  
21 Spartanburg.

22 Number one, let me thank you for being here. I  
23 understand it is a inconvenience and I know that you've been  
24 working kind of hard coming back and forth. But I was  
25 checking with the clerk today, and as of today, I think,

1 because of your willingness to participate in the system,  
2 we've disposed of roughly 200 cases or matters this week.  
3 So, just to let you know that.

4 We're about to begin another case in Criminal Court.  
5 Solicitor, would you call your case please, sir?

6 SOLICITOR HOLLIDAY: Sure, Your Honor.

7 This is the case of the State versus Charles Allen  
8 Cain. Indictment 2012-GS-42-3135 charged with trafficking  
9 in methamphetamine.

10 State versus Tiphani Parkhurst. It's Indictment  
11 2012-GS-42-2547. Also charged with trafficking in  
12 methamphetamine.

13 THE COURT: Very good.

14 Would you pass those forward?

15 (Solicitor complies.)

16 THE COURT: Thank you.

17 All right. Ladies and gentlemen, we're about to try,  
18 begin a case against the State of, the matter of The State  
19 versus Charles Allen Cain, and State versus Tiphani M.  
20 Parkhurst.

21 Did I pronounce that correctly?

22 MS. CLAIRE HALL: Your Honor, it's Tiphani.

23 THE COURT: Tiphani.

24 MS. CLAIRE HALL: Tiphani. Thank you.

25 THE COURT: Okay. Both of whom have been charged with

1 motions in the Cain and Parkhurst, Parkhurst---

2 MR. ROBERT HALL: Parkhurst.

3 THE COURT: Parkhurst case.

4 MR. ROBERT HALL: Yes, sir.

5 THE COURT: I'll get it right before the end of the  
6 day. I promise you.

7 MR. ROBERT HALL: If it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 MR. ROBERT HALL: On the part of Charles -- on behalf  
10 of Charles Allen Cain, Indictment 12-GS-42-3135 alleges  
11 trafficking in methamphetamine under 44-53-375. There -- as  
12 I understand it, no meth, methamphetamine found. This is a  
13 theoretical yield based on the, either items seized at the  
14 property, and, Your Honor, the statute does, I think, in  
15 Section D say that having the means is prima facie case of  
16 manufacturing. But I don't think there's anything in this  
17 statute or in South Carolina law that says you can take a  
18 theoretical yield based on the evidence found and make it  
19 into a trafficking case.

20 There are statutes that do deal with specific amounts  
21 of drugs, combinations, and that type thing. But duplicitas  
22 in that is an actual having something to test and measure  
23 and say this is 4-grams of this or this is 3.3 grams.

24 THE COURT: Well, let me ask you this. Since I don't  
25 the facts of this case, I think I understand what you're

1 telling me is that, that the components were found at the  
2 scene.

3 MR. ROBERT HALL: Yes, sir.

4 THE COURT: However, there was no -- they not gone into  
5 the process of actually making the methamphetamine.

6 MR. ROBERT HALL: There were bottles I think, other  
7 things they're alleging that were used in manufacturing.  
8 There's empty blister packs of -- based on---

9 THE COURT: Sudafed or something along those lines.

10 MR. ROBERT HALL: Sudafed. There's other things. I  
11 think torn batteries, cold pacs, those type of things used  
12 in the manufacturing.

13 SOLICITOR HOLLIDAY: They had the flour, the sugar, and  
14 the butter, but they hadn't made the cookies yet.

15 THE COURT: All right. I told both of you -- I told --  
16 let me just say I told y'all at the beginning of this,  
17 especially when we were in chambers, that I certainly don't  
18 know the answer to this question. I tried to look it before  
19 I came in here, and I have not found any cases on it.

20 I will tell you that I've seen cases that says the drug  
21 or a mixture containing the drug, and, and another thought  
22 that came across my mind, certainly without ruling, is that  
23 unless there's plain unambiguous language of the statute  
24 that I need to reply, that this is a penal statute. So,  
25 it's strictly construed against the State.

1           Okay. So, if you would, Mr.---

2           SOLICITOR HOLLIDAY: Holliday.

3           THE COURT: Holliday, I will get that right. I  
4 apologize.

5           SOLICITOR HOLLIDAY: No problem, Your Honor.

6           THE COURT: Would you point me to the plain language of  
7 44-53-375 which allows the state to pursue this case in the  
8 method that it intends to.

9           SOLICITOR HOLLIDAY: Yes, sir, Your Honor. It would be  
10 under subsection of C of the statute, Your Honor, stated --  
11 and, judge, I would just rely on the portion where it says  
12 knowingly attempt -- or I'm sorry. Did knowingly sells,  
13 manufactures, delivers, purchases, brings into the State, or  
14 otherwise aids, abets, or attempts to manufacture. And,  
15 judge, in this case we would argue that they are attempting  
16 to manufacturing methamphetamine and the attempt to  
17 manufacture more than, a theoretical yield of more than  
18 10-grams in this case, the maximum theoretical yield is just  
19 about 17-grams.

20           So, their attempt to manufacture falls directly within  
21 the statute, and if you take the statute based on the plain  
22 meaning, and apply that to the facts of this case, I believe  
23 that a charge of trafficking would be appropriate. And,  
24 Your Honor, I passed up previously a case and it's 778 NW2d  
25 218. It's an Iowa case. State of Iowa versus Douglas Ray

1 Napp.

2 The case was---

3 THE COURT: Mr. Hall, you have that case?

4 MR. ROBERT HALL: We were given it a few minutes ago.  
5 I skimmed it and gave it to Ms. Hall to look at also.

6 THE COURT: Okay. So, let me, let me stop you there,  
7 Mr. Holliday.

8 SOLICITOR HOLLIDAY: Yes, sir.

9 THE COURT: Looking at Subsection C, you're asking me  
10 to read it as follow. A person who knowingly attempts to  
11 manufacture ten or grams of methamphetamine or cocaine base,  
12 et cetera, et cetera.

13 That's the way you want me to read the language?

14 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

15 THE COURT: Okay. Mr. Hall.

16 MR. ROBERT HALL: Your Honor?

17 THE COURT: That certainly is the plain language of  
18 that statute.

19 MR. ROBERT HALL: Well, the -- in this case, Your  
20 Honor, they have things that they're alleging have been used  
21 to manufacture. I would read intent as you have the things  
22 to manufacture and the, the implementation to do it. You  
23 have the Sudafed. You have the batteries. You have the  
24 other things and the vessel to do it in.

25 THE COURT: May I ask you something please?

1 MR. ROBERT HALL: Yes, sir.

2 THE COURT: Under Title 44 Chapter 53, is there a  
3 definitional section contained in that?

4 MR. ROBERT HALL: I would have to look, Your Honor.

5 THE COURT: In other words, do these -- does the -- are  
6 these terms used in the statute terms of art or do we know  
7 them by their regular meaning?

8 SOLICITOR HOLLIDAY: Your Honor, I believe it's  
9 44-53-110 provides the definitions.

10 THE COURT: Does it define attempt?

11 SOLICITOR HOLLIDAY: I'll look, Your Honor.

12 (Pause.)

13 SOLICITOR HOLLIDAY: Judge, I don't believe it defines  
14 attempt.

15 THE COURT: Okay. What's that section, 44-53-110?

16 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

17 THE COURT: Okay. All right. Gentlemen --.

18 MR. ROBERT HALL: But manufacturing is defined, Your  
19 Honor.

20 THE COURT: Okay. I cut you off, Mr. Hall, and I  
21 apologize.

22 MR. ROBERT HALL: No, Your Honor. I just, I just think  
23 that, that in that plain meaning of attempt that is you have  
24 the components. Not that you have done it. They're based  
25 on not -- given the Sudafed they have, given the other

1 components, they could have manufactured this much. That  
2 would be attempt.

3 This is a theoretical yield saying we have the empty  
4 blister packs, we have these other things in the trash that,  
5 if you look at all that, they could have manufactured this  
6 much.

7 THE COURT: Well, let me ask you a question.

8 MR. ROBERT HALL: Yes, sir.

9 THE COURT: And I'm sorry I keep on doing this to you.

10 MR. ROBERT HALL: That's fine.

11 THE COURT: Take away the, the weight.

12 MR. ROBERT HALL: Yes, sir.

13 THE COURT: Okay. would the possession of the  
14 components that the State says they have qualify as an  
15 attempt?

16 Not, not necessarily the weight. would it be an  
17 attempt to manufacture?

18 MR. ROBERT HALL: I think the -- in Subsection D it  
19 says, of 44-53-375 -- let me back down to it, Your Honor.

20 THE COURT: I don't have D with me.

21 MR. ROBERT HALL: Your Honor, she can -- Ms. Hall has  
22 the, the code.

23 MS. CLAIRE HALL: would you like to read it to me, to  
24 you, I'm sorry, or bring it up.

25 THE COURT: Please do. I'm pretty much more visual.

1 But go ahead. I'll try my best.

2 MS. CLAIRE HALL: No, I, I'll bring it up. It's  
3 Section D right there.

4 THE COURT: Thank you.

5 MS. CLAIRE HALL: Uh-huh. (Affirmative).

6 well, that would answer the question, wouldn't it?  
7 Wouldn't that fall---

8 MR. ROBERT HALL: Yes, sir.

9 THE COURT: D would mean that the possession would be  
10 intent, attempt.

11 MR. ROBERT HALL: Yes, sir.

12 THE COURT: Okay.

13 MR. ROBERT HALL: I, I -- yeah, I think the -- in  
14 subsection D, it says having these things is prima facie  
15 evidence of --.

16 THE COURT: Intent to manufacture?

17 MR. ROBERT HALL: Yes, sir.

18 THE COURT: All right. So, then the question that you  
19 properly point out to me is whether or not he could  
20 theoretical yield that amount?

21 MR. ROBERT HALL: Yes, I, I don't -- well, we, we feel  
22 that the statute's not clear on that, that having the things  
23 is prima facie evidence of attempt to manufacture or to  
24 manufacture. But it does not address an or trafficking. It  
25 doesn't include that. The Legislature couldn't of --.

1 THE COURT: Oh, manufacture is defined as a weight?

2 MR. ROBERT HALL: That's right.

3 THE COURT: That's the distinction?

4 MR. ROBERT HALL: well, I think it gets to the penalty,  
5 Your Honor. The -- when the Legislature crafted this law  
6 and then they added the trafficking and all that, I'm not  
7 sure when that was put in. But they could have gone in  
8 these sections and say, and added, you know, a way that it  
9 could be trafficking. It just says manufacturing, and  
10 that's, that's the lower rung of this, and---

11 THE COURT: So, manufacture is, is, as worded in  
12 Subsection D, is defining the weight?

13 MR. ROBERT HALL: No, sir, I don't think it defines  
14 weight.

15 THE COURT: You mean manufacturing in the sense that we  
16 know manufacturing is to produce?

17 MR. ROBERT HALL: Yes, sir, that's, that's what I --  
18 the way I read it.

19 THE COURT: Okay. It's---

20 MR. ROBERT HALL: It's simply possession of equipment  
21 or paraphernalia use in the manufacture of methamphetamine  
22 is prima facie evidence of intent to manufacture.

23 THE COURT: Okay.

24 MR. ROBERT HALL: And -- but it doesn't address  
25 trafficking. So, I think that reading that plainly then---

1 THE COURT: Well, that's where I'm getting confused  
2 with your argument you made, and, and it's probably cause  
3 I'm a little bit slow. But the, the -- you know, my  
4 understanding of the statute is when you use the term  
5 manufacture, that's a designated weight area or range.

6 MR. ROBERT HALL: Oh, yes, sir. Oh, yeah. I'm sorry.

7 THE COURT: And then trafficking is a designated weight  
8 and range, correct?

9 MR. ROBERT HALL: Yes, sir.

10 THE COURT: So, when you're -- it's your argument,  
11 under Subsection D, not -- you're saying it doesn't mean as  
12 defined in Subsection D, a designated weight range. It's  
13 just the, the act of producing the drug.

14 MR. ROBERT HALL: Yes, sir.

15 THE COURT: Would you agree?

16 MR. ROBERT HALL: Yes, sir.

17 THE COURT: Okay. You agree with that, Mr. Holliday?

18 SOLICITOR HOLLIDAY: I'm sorry, Your Honor.

19 THE COURT: Do you agree that Subsection D is not  
20 intended to define weight?

21 It's more the, the act of producing the --.

22 SOLICITOR HOLLIDAY: Yes, sir, that's what  
23 subsection -- that's my interpretation of Subsection D.

24 THE COURT: I agree with that.

25 All right. I'm sorry. I keep doing it to you.

1 MR. ROBERT HALL: No, sir. No, sir, that's all right.  
2 I just think that if the case would go forward it would go  
3 forward as a manufacturing as opposed to a trafficking case.  
4 There's not -- I don't think there's a statute that fits it  
5 as nicely as the Subsection D there, and certainly there's  
6 no case law on this.

7 THE COURT: Okay. Thank you, gentlemen. I'm gonna  
8 take that under advisement.

9 SOLICITOR HOLLIDAY: Yes, sir.

10 THE COURT: I'm gonna read up on it and go ahead.

11 SOLICITOR HOLLIDAY: Yes, sir, judge. I was also  
12 handed another case from the Eighth Circuit. It's a United  
13 States federal case on that. I'll hand that up as well.

14 MS. CLAIRE HALL: Your Honor, I just wanted to put on  
15 the record, on behalf of Ms. Parkhurst we join with  
16 Mr. Hall's motion that he made for Mr. Cain.

17 THE COURT: I assume that when, for the purposes of the  
18 record, that the motions are being made jointly by the  
19 defendants in this matter.

20 All motions, is that correct?

21 MS. CLAIRE HALL: Yes, Your Honor.

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

23 All right. Any other motions other than the motion to  
24 dismiss I assume is what it is?

25 MR. ROBERT HALL: Yes, sir, that would be---

1 THE COURT: would you hand Ms. Hall her book back?

2 Thank you.

3 MS. CLAIRE HALL: Thank you.

4 SOLICITOR HOLLIDAY: Your Honor, just to clarify the  
5 motion, the motion to dismiss or a motion to amend the  
6 indictment from the charges?

7 MR. ROBERT HALL: It's a motion to dismiss that what  
8 happens after that.

9 SOLICITOR HOLLIDAY: I believe we could, according on  
10 Your Honor's ruling, we could still go forward on the lesser  
11 included of manufacturing.

12 THE COURT: well, he hadn't been indicted on it, has  
13 he?

14 SOLICITOR HOLLIDAY: No, sir, he's been indicted---

15 THE COURT: He would have to waive presentment.

16 SOLICITOR HOLLIDAY: But I believe trafficking or  
17 manufacturing would be a lesser included of the offense of  
18 trafficking.

19 THE COURT: But if I -- if you amend the indictment,  
20 don't you have to reindict him?

21 MR. ROBERT HALL: On that, given the fact situation---

22 THE COURT: Or he waives presentment.

23 SOLICITOR HOLLIDAY: Or he can---

24 MR. ROBERT HALL: I don't have -- hopefully I'll have a  
25 client I can address that with later, Your Honor, but---

1 THE COURT: I know that a lot of times when you're here  
2 and you're doing pleas and you have somebody who's pleading  
3 down to a lesser charge---

4 SOLICITOR HOLLIDAY: Yes, sir.

5 THE COURT: ---we do a waiver at that point because it  
6 is a lesser, and you amend the indictment. At that point I  
7 mean I think that would be technically improper if he  
8 objected to going forward with it. Now, if he didn't  
9 object, then I think you can waive presentment.

10 MR. ROBERT HALL: Yes, sir, but in this case, this is  
11 a -- in most of the other cases, not all of them, but most  
12 of them that's either -- it's either a waiver or you're  
13 actually talking about the weight. You have 10.5-grams you  
14 plead down to possession, to possession with intent to  
15 distribute, which is actually weight, but we don't have  
16 any -- we have the theoretical weight here. Not a natural  
17 weight here.

18 THE COURT: Well, let me ask you this.

19 It seems to me -- and, again, I'm not ruling on it.  
20 I'm gonna look at it.

21 MR. ROBERT HALL: Yes, sir.

22 THE COURT: But the statute pretty plainly says, if you  
23 take out the other language in it, a person who knowingly  
24 attempts to manufacture methamphetamine, et cetera, et  
25 cetera, et cetera. Then you have subsection D, which we all

1 have agreed means to produce.

2 MR. ROBERT HALL: Yes, sir.

3 THE COURT: There's a, there's prima facie evidence  
4 that he has these component parts that that's what he  
5 intends to do. So then it would seem to me that it would be  
6 a question of fact for the jury to determine whether or not  
7 the amount was 10-grams or not or over, and maybe send them  
8 a special interrogatory to the jury for them to make that  
9 call.

10 MR. ROBERT HALL: I had not thought of it in that  
11 angle, Your Honor, quite frankly.

12 THE COURT: I don't either. I'm just, I'm just telling  
13 you -- thinking out loud. But that seems to be a reasonable  
14 and plain application of the statute.

15 MR. ROBERT HALL: Well, I, I think that the statute  
16 says manufacturing this stuff is evidence of manufacturing,  
17 and it -- the Legislature is amended this statute, in just  
18 my career, several times and they did not add that. They,  
19 they went through and did all the things about possessing  
20 Sudafed and Pseudoephedrine, excuse me, and -- but they  
21 didn't go back and change this part---

22 THE COURT: Okay.

23 MR. ROBERT HALL: ---the manufacturing.

24 THE COURT: All right. I will look that up over  
25 lunchtime.

1           what -- other motions on behalf of the defense?  
2           MR. ROBERT HALL: None from Mr. Cain.  
3           MS. CLAIRE HALL: None from Ms. Parkhurst.  
4           THE COURT: Okay. Motions from the State?  
5           SOLICITOR HOLLIDAY: Yes, sir, just briefly.  
6           For the record, I have copies of the signed, certified  
7 copies of the signed bail forms from the defendants.  
8           THE COURT: Signed what?  
9           SOLICITOR HOLLIDAY: Signed bail forms, Your Honor.  
10          THE COURT: It has where they had been informed that  
11 they would have a trial in their absence?  
12          SOLICITOR HOLLIDAY: Yes, sir, and I ask to make them  
13 Court Exhibits.  
14          THE COURT: That will be good. Will you make both --  
15 that's for both defendants?  
16          SOLICITOR HOLLIDAY: Yes, sir, Your Honor.  
17          THE COURT: Very good.  
18          MR. ROBERT HALL: There's no objection, Your Honor.  
19          MS. CLAIRE HALL: No objection.  
20          THE COURT: And I believe counsel both, counsel for  
21 both defendants stated that they advised their clients that  
22 a trial would be had in their absence if they didn't appear,  
23 is that correct?  
24          MR. ROBERT HALL: That's correct, Your Honor.  
25          THE COURT: Okay. Is that correct, Ms. Hall?

1 MS. CLAIRE HALL: Yes, sir.

2 (WHEREUPON, the two bond sheets were marked as Court's  
3 Exhibit Nos. 1 and 2 for identification purposes only at  
4 this time.)

5 THE COURT: All right. Anything further before we  
6 break for lunch?

7 SOLICITOR HOLLIDAY: Not from the State, Your Honor.

8 MR. ROBERT HALL: Not from the defense.

9 THE COURT: All right. Thank you, guys. I  
10 appreciate -- I'll look at this.

11 SOLICITOR HOLLIDAY: Yes, sir.

12 THE COURT: If I didn't, if I didn't have anything to  
13 do at lunch I do now.

14 SOLICITOR HOLLIDAY: Yes, sir, judge.

15 THE COURT: All right.

16 (WHEREUPON, Court was in recess for the lunch hour.)

17 THE COURT: All right. For the record, Bishop, Number  
18 14, is our foreperson.

19 I was reading those cases, that case over the break.  
20 I -- quite frankly, my law clerk just got here. So, I let  
21 him do a little bit of work. I'll tell you that I am  
22 leaning towards going to the jury, letting it go forward and  
23 not dismissing your case, and I'm not ruling on that. It's  
24 still under advisement, but sending a special interrogatory  
25 to the jury as to the weight.

1 MR. ROBERT HALL: Well, Your Honor, I had a little bit  
2 of time to look at it. I think with the federal case, we've  
3 got apparently a specific statute, as I recall, that lays it  
4 out and it's dealing with manufacturing.

5 THE COURT: Sir, it's a federal case that says it's a  
6 manufacturing case. It's not trafficking.

7 MR. ROBERT HALL: I believe it says---

8 SOLICITOR HOLLIDAY: It does, Your Honor. But the  
9 penalties are based on theoretical yield. So, that's what  
10 we rely on in our case.

11 THE COURT: Well, I think we're gonna have to -- seems  
12 to me -- it's not necessarily a question of law as much as  
13 it is a question of fact for the jury if they believe your  
14 theoretical yield theory yields more than ten, less than  
15 28-grams, then I guess they can find him guilty of  
16 trafficking. If they -- but it seems -- you're gonna come  
17 up with a theoretical argument or are you just gonna do  
18 theoretical---

19 SOLICITOR HOLLIDAY: Well---

20 THE COURT: You don't have to tell me. You don't have  
21 to tell. Excuse me. I saw your ears perking up over here.

22 All right. Is everybody ready to start?

23 MR. ROBERT HALL: Yes, sir, I came back through a few  
24 minutes earlier and went through the courthouse. I did not  
25 see our clients.

1 THE COURT: Okay. They've been given ample notice, and  
2 as pointed out earlier, it's in the bonding papers, right?

3 MR. ROBERT HALL: Yes, sir.

4 SOLICITOR HOLLIDAY: Yes, sir.

5 THE COURT: Everybody ready then?

6 SOLICITOR HOLLIDAY: Yes, sir.

7 (WHEREUPON, the following takes place within the  
8 presence of the jury.)

9 THE COURT: Okay. You're Mrs. Bishop?

10 FORELADY: Yes, sir.

11 THE COURT: You've been with us all week?

12 FORELADY: Yes, sir.

13 THE COURT: Mrs. Bishop, and Mrs. Finley, I'm gonna ask  
14 both you sit in the seats that you're staying in right now  
15 throughout this trial, each time we come in and out of the  
16 courtroom. It just helps myself and other Court personnel  
17 keep up with some administrative matters we have to.

18 The rest of you are free to sit where you'd like when  
19 you go in and out.

20 Does everyone have a pad and pen who chooses to use  
21 them?

22 (Jurors nod affirmatively.)

23 THE COURT: Very good.

24 All right. Madam Clerk, will you swear the jury?

25 (WHEREUPON, the jury was placed under oath at this

1 presence of the jury.)

2 THE COURT: Thank you, sir.

3 State ready to proceed?

4 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

5 THE COURT: Defense ready to proceed?

6 MR. ROBERT HALL: Yes, Your Honor.

7 MS. CLAIRE HALL: Yes, Your Honor.

8 THE COURT: Mr. Holliday.

9 SOLICITOR HOLLIDAY: Please the Court?

10 THE COURT: Yes, sir.

11 SOLICITOR HOLLIDAY: Ladies and gentlemen, this is a  
12 case about methamphetamine or what's more commonly referred  
13 to as a meth lab.

14 On January 17<sup>th</sup> of 2012, two Spartanburg County  
15 sheriff's deputies, Deputy Kyle and Deputy Wilbanks, both  
16 seated over there in the first row, went to an address at  
17 371 Dakota Street to serve a bench warrant, and a bench  
18 warrant is just when someone doesn't show up for court, a  
19 court will issue a warrant for their arrest to make them  
20 show up for court. It's the court's power to bring people  
21 to court.

22 So, they show up at this house to serve a bench warrant  
23 on an individual, which doesn't happen to be either of the  
24 two defendants. It just happens to be for the same address.

25 So, they knock on the door and Charles Cain and Tiphani

1 Parkhurst open the door, and they tell them that they're  
2 here to serve this arrest warrant and they want to look  
3 inside, and they ask for their ID, and they check their ID,  
4 and, you know, that's who they are. At first, they don't  
5 want to let them and they say well, we have this warrant it  
6 says we can come in. So, they come in and they start  
7 searching the house for this other person.

8 well, the defendants, you know, they go into their  
9 bedroom, look for them. They say oh, we're just tenants of  
10 this house and we just rent this bedroom. So, they go and  
11 they look in their bedroom, look under the bed trying to  
12 find this guy who didn't show up for court.

13 so, you know, they figure well, these two people are  
14 okay. You know, they don't have any warrants or anything  
15 against them. And, so, they're, you know, they're just  
16 normal citizen. So, we're just gonna search the rest of  
17 this house and look for this guy we have this warrant for.

18 so, they leave them in the bedroom and then they walk  
19 through the rest of the house, and low and behold they walk  
20 into the room and they find a meth lab. They see bottles  
21 with tubes and it doesn't look like the clean chemistry set  
22 you would see in a high school laboratory. It's a make  
23 shift, and fortunately we've got some pictures that, later  
24 on in the trial, we'll get you to look at. It kind of  
25 explains what a meth lab is. But albeit, the officers have

1 been trained on this and they knew this was a meth lab.

2 So, at that point they turn back around to go talk to  
3 the defendants, Mr. Cain and Ms. Parkhurst. However, the  
4 defendants have locked their bedroom door and barricaded it.  
5 So, when the deputies tried to get in, they couldn't open  
6 the door. So, eventually they broke down the door and low  
7 and behold, the defendants had fled the scene, gotten in  
8 their car, and driven off.

9 Well, at that point the officers realized that they had  
10 a big mess on their hands. So, they called the Spartanburg  
11 County Sheriff's Office narcotics unit who typically  
12 responds to drug calls, meth labs, and what have you. Then  
13 they called the stand-by chemist who typically comes to  
14 clean up meth labs and does all that sort of deal, and they  
15 got a search for the house because, you know, if you're  
16 gonna keep looking for things, you probably want to do it  
17 the right way. So, they got a search warrant and they went  
18 and looked at the house.

19 What they found was a big mess, and one of the problems  
20 with meth lab cases is that juries like to see evidence.  
21 They like to see drugs. They like to see guns. Whatever  
22 the crime is, they want, they want to be able to see and  
23 touch something.

24 But the problem with meth labs though is they're so  
25 dangerous that, in the interest of public safety, we

1 actually have to clean them up and get rid of everything.  
2 So, there's no chemistry set that I can bring into Court to  
3 show you. There's no tubing that we have because it's all  
4 dangerous and it's all volatile and Beth Stuart, the chemist  
5 who was on the scene, can explain that to you, but why  
6 that's disposed of and the way it is.

7         But what we do have are the officer's testimony, and  
8 we've got pictures of the lab. So, we can explain to you  
9 what was there and she can basically tell you what a meth  
10 lab is because, before I started doing this job, I didn't  
11 know what a meth lab was and I didn't know how meth was  
12 made, you know, and, so, we'll try to help you understand  
13 that.

14         But part of this charge, and you probably heard the  
15 judge say it or me say it, this is a trafficking charge.  
16 This is very serious offense. Not only are we alleging that  
17 the defendants, Mr. Cain and Ms. Parkhurst, were  
18 manufacturing methamphetamine, but they were making so much  
19 methamphetamine that it rose to the level of trafficking.  
20 And the way we're gonna prove that is we actually didn't  
21 find any meth on the scene, but we did find all of the  
22 ingredients or ingredients that are used to manufacture it.

23         And what the chemist did is she took those ingredients  
24 like you would for baking cookies. You know, your butter,  
25 your flour, your sugar, Pseudoephedrine, Lithium ions, and,

1 and all those sort of things that go together to make meth,  
2 and she took those and she puts them into a formula, and she  
3 says okay, if I've gotten this much Pseudoephedrine, then I  
4 can make this much meth. And, so, she's gonna get up here  
5 and explain to you how that works.

6 And what we're alleging is, based on the amount of  
7 Sudafed they had, they could make more than 10-grams of  
8 methamphetamine. Matter of fact, if they did it perfectly,  
9 they could make almost 17-grams of methamphetamine. And,  
10 so, at the end of this case I'm gonna come back and I'll ask  
11 you to find the defendants guilty of trafficking in  
12 methamphetamine. But to get there we're gonna have to  
13 explain to you a little bit, and that's what we'll do,  
14 through the testimony of the deputies and the chemist.

15 So, I just ask that you pay attention. That's kind of  
16 the road map that we're gonna go down, and at the end of the  
17 trial I'd ask you to come back with a verdict of guilty.

18 THE COURT: Ms. Hall.

19 MS. CLAIRE HALL: May it please the Court?

20 THE COURT: Yes, ma'am.

21 MS. CLAIRE HALL: Thank you, Your Honor.

22 I'm Ms. Hall, no relation to Mr. Hall, but we're both  
23 here today representing our clients. I represent Tiphani  
24 Parkhurst, and I just want to point out to you the law in  
25 South Carolina for trafficking in methamphetamine requires

1 that a person knowingly do these things, whether that's  
2 knowingly sell, manufacture, conspire to sell or manufacture  
3 10-grams or more of methamphetamine.

4 So, I ask you to keep that in mind during this trial  
5 whether or not Tiphani Parkhurst knowingly was trafficking  
6 in methamphetamine, and I think the judge gave you an  
7 excellent definition of what is reasonable doubt, and that  
8 is when a reasonable person hesitates to act. And I think  
9 you'll see several things during this case that may cause  
10 you to hesitate to act as in to hesitate to find Ms.  
11 Parkhurst guilty of trafficking methamphetamine.

12 Mr. Holliday just stated to you in his opening that  
13 when the officers came to serve a bench warrant on someone  
14 at this address they walked into a bedroom. They came in  
15 from an outside door, walked into a bedroom, and that Mr.  
16 Cain and Ms. Parkhurst told them we're renting this room of  
17 this house. There is where we're staying, and they opened  
18 another door and allowed them to go into the rest of the  
19 house to look for the individual who was listed on this  
20 warrant.

21 I want you to look at and question where were the items  
22 that allegedly are used in manufacturing methamphetamine  
23 found in this house.

24 Did Ms. Parkhurst or Mr. Cain even have control over  
25 those parts of the house and where these things were found?

1           Also, how long were these two individuals even in this  
2 home?

3           And another reason you may hesitate to act is reviewing  
4 the physical evidence. Mr. Hall and I pointed out that they  
5 don't actually seize these drugs or items used in creating  
6 methamphetamine because of the dangers. Whether they've  
7 said there are photos and certainly there will be testimony  
8 about it.

9           I just ask that you keep in mind the standard that the  
10 State must prove to you is beyond a reasonable doubt, and I  
11 think I'm confident in this case that you will find evidence  
12 that will cause you to hesitate to act and that you will  
13 return with a verdict of not guilty.

14           Thank you.

15           MR. ROBERT HALL: Please the Court?

16           THE COURT: Yes, sir.

17           MR. ROBERT HALL: Counsel, solicitor.

18           Madam Forelady, ladies and gentlemen of the jury, as  
19 they told you, my name is Robert Hall. I represent Charles  
20 Allen Cain. It's my duty to represent his interest here in  
21 this Court.

22           And as the solicitor said, this is a very serious  
23 charge. It's a very serious charge.

24           I'm not gonna go into the facts. I think you got an  
25 overview of what's going on. But we have a case where two



Kevan Kyle - Direct examination  
by Solicitor Holliday

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR HOLLIDAY:

4 Q Thank you, Deputy Kyle.

5 Could you state your name for the record please?

6 A My name is Deputy Kevan Kyle.

7 Q And you work at the Sheriff's Office?

8 A Yes, sir, Spartanburg County Sheriff's Office.

9 Q Can you tell us what your job is there?

10 A I'm on uniform patrol.

11 Q Okay. So, what does that mean?

12 A I'm responsible for answering 9-1-1 calls is my primary  
13 duty as well as serving warrants, making traffic stops,  
14 among other things.

15 Q Okay. How long have you been doing that?

16 A I been with the sheriff's office since October 2007.  
17 So, about five and a half years.

18 Q And on January 17<sup>th</sup>, 2012, did you happen to  
19 encounter the defendants, Mr. Charles Cain and Ms. Tiphani  
20 Parkhurst?

21 A Yes, sir, I did.

22 Q And where did you come to find them?

23 A I was at the address of 371 Dakota Street.

24 Q Okay. What were you doing there?

25 A I was there trying to serve a Family Court bench

Kevan Kyle - Direct examination  
by Solicitor Holliday

1 warrant for a Travis Kirby, and I was checking the house for  
2 him.

3 Q Okay. When you went to the door, what happened?

4 A While we knocked on the back-door, because there was a  
5 car parked right in front of that door, we went to that door  
6 and both subjects came to the door.

7 Q When you say both subjects you mean --?

8 A Ms. Parkhurst and Mr. Cain.

9 Q Okay.

10 A But they answered the door. I explained to them why  
11 I'm there, that I was looking for Travis Kirby, and I asked  
12 if they knew him. I asked for their identification to make  
13 sure I knew who they were.

14 Q So, you checked the driver's license?

15 A Yes, sir, we did.

16 Q Okay. What did they tell you?

17 A They stated that they didn't know -- they stated to me  
18 they didn't know Travis Kirby and they didn't know if anyone  
19 else was in the house. They told me, at that time, that  
20 they were renting the bedroom from the owner of the house,  
21 and that was the only area they went in, which is just that  
22 one bedroom, and they had nothing else to do with the rest  
23 of the house.

24 Q Did they want you to look inside the house?

25 A No, at that time they were both nervous, making furtive

1 gestures, but they did not seem inclined to let us look  
2 through the house, which, to me, is an indicator, when I'm  
3 looking for someone with a warrant, that that person is in  
4 the house. So, that just led me to believe they may have  
5 knowledge if he's in the house and they were familiar with  
6 him and was trying to hide him.

7 Q At that point in time did you begin a search of the  
8 house for Mr. Kirby?

9 A After I showed them the warrant, showed them the  
10 address on the warrant, and I explained to them that we had  
11 the right to search a house if we have a reason to believe  
12 someone's in the house, they agreed to let us search the  
13 house. We began in the bedroom. That was after we had  
14 checked their identification, make sure they didn't have any  
15 warrants themselves. But we didn't find Mr. Kirby in there.  
16 As we proceeded through the rest of the house, we actually  
17 found their dog that they had shut in the rest of the house  
18 shut off in their bedroom while we were talking to them.

19 Q How did you know it was their dog?

20 A I believe they said that they had a dog.

21 Q And where, where did you find the dog or was he roaming  
22 around or --?

23 A He was running loose in the house. He came up to us  
24 while we were walking down the hallway.

25 Q And where did they lock the dog up?

Kevan Kyle - Direct examination  
by Solicitor Holliday

1 A well, it -- they had just put him in the rest of the  
2 house.

3 Q Okay.

4 A Yeah, they had just shut their door to their bedroom so  
5 their dog couldn't come in that room.

6 Q Did you search the rest of the house looking for Mr.  
7 Kirby?

8 A I did. We conducted a search of the whole house.

9 Q And what did you find?

10 A Well, the way we came in, we searched the house, their  
11 bedroom was in one corner of the house and as we proceeded  
12 through the rest of the house, what we found, what I  
13 recognize to be a meth lab was in the far corner of the  
14 house.

15 Q Have you---

16 A It was---

17 Q I'm sorry.

18 A When I looked into a bathroom I immediately saw a  
19 bottle resting on a counter and it had tubing coming from  
20 the top. The tubing ran up to a window that was open at the  
21 top, and the opening of the tubing was actually out into the  
22 air, the outside, and that's one of the indicators that I  
23 recognize that is common with meth labs or active math labs  
24 is that gassing out process that they vent it so it's not  
25 dangerous to them.

1 I saw that and decided it was -- that was sealed off in  
2 that one room. I wasn't gonna go in there. I did a  
3 courtesy check. It was obvious no one was in there.

4 I proceeded to the last couple of rooms to make sure  
5 Mr. Kirby was not in the house. In the living room is where  
6 I found the rest of what I recognize to be manufacture or  
7 meth lab. It was several bottles with multicolored pellets,  
8 which is common in a one pot meth lab, coffee filters which  
9 is used to strain the meth out of liquids in the meth lab,  
10 tin foil, batteries.

11 Q So, how did you know it was a meth lab?

12 A I have had training in meth lab recognition. I went to  
13 a clandestine lab class in Meridian Mississippi. That's a  
14 week long class.

15 (WHEREUPON, 24 photographs were marked as State's  
16 Exhibit Nos. 1 through 24 for identification purposes only  
17 at this time.)

18 Q Okay. I'm gonna ask you to take a look at these  
19 photographs here and ask if you can identify those.

20 A Yeah.

21 Q Take, take your time and look at them and see if you  
22 know what they are.

23 A Right. I recognize all these.

24 Q And what are those photographs of?

25 A These first two are photographs of the bottle I found

Kevan Kyle - Direct examination  
by Solicitor Holliday

1 with the tubing coming out in the, the window.

2 Q You can keep going.

3 A Okay. And actually at the end of the, the incident,  
4 these next pictures are photographs of what we found after  
5 we exited the house after Ms. Parkhurst and Ms. Cain had  
6 departed after sealing us in the rest of the house. But  
7 when we walked out on the front porch, which is immediately  
8 in front of the room, the exterior door they use to come and  
9 out of the house, I noticed what appeared to be the contents  
10 of a one pot or meth lab, the multicolored pellets had been  
11 poured out over the grass and on the concrete itself and it  
12 was fresh and it was wet.

13 Q Deputy Kyle, once you found the meth lab, did you try  
14 to go ask the defendants about it?

15 A Well, once we determined that Mr. Kirby was not in the  
16 house, we had recognized and made a decision to back out of  
17 that, we went to go speak with them. So, we came out the  
18 way we came in, which was gonna be through their bedroom.

19 when we got to the bedroom door, Deputy Wilbanks was in  
20 front of me, he found the door was not able to be moved. He  
21 was able to force it open enough to look around, and several  
22 boards or a board had been placed against the door to prop  
23 it to keep it from opening basically to seal us into the,  
24 the house, and, the defendants, they were no longer on  
25 scene. They had gotten into her car, which had been parked

Kevan Kyle - Direct examination  
by Solicitor Holliday

1 right in front of the door, and they had left.

2 Q So they left?

3 A Uh-huh. (Affirmative).

4 Q Those pictures I asked you to take a look at.

5 A Yes, sir.

6 Q Are those a fair and accurate representation of what  
7 you saw that day?

8 A Yes, sir. And just so -- you asked, these last two are  
9 the front of the house.

10 Okay. Your Honor, at this time the State would move  
11 Exhibits 13, 15, 14, 4, 3, 2, and 1 into evidence.

12 THE COURT: Any objection?

13 MR. ROBERT HALL: No objection, Your Honor.

14 THE COURT: From Mr. Cain?

15 MS. CLAIRE HALL: No objection.

16 SOLICITOR HOLLIDAY: Admitted without objection.

17 (WHEREUPON, State's Exhibit Nos. 1 through 4 and 13  
18 through 15 were received into evidence at this time.)

19 SOLICITOR HOLLIDAY: And permission to publish to the  
20 jury, Your Honor?

21 THE COURT: Yes, sir. Would you refer to them by  
22 exhibit number for me please, sir?

23 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

24 Q Deputy Kyle, this is Exhibit No., State's Exhibit 1.  
25 To be easier on you I'm gonna use a laser pointer if you

Kevan Kyle - Direct examination  
by Solicitor Holliday

1 need to point up there.

2 Is this, is this the house that y'all went to?

3 A Yes, sir, that's the, that's the address right there,  
4 371. It's covered up the seven, but it's actually there.

5 Q Okay. This is State's Exhibit No. 2.

6 Is that the same house?

7 A Yes, sir, it is.

8 Q Okay. Where's the defendant's bedroom door?

9 In that it in that picture?

10 A No, they're on the other side of the house.

11 Q Yeah, this is just a picture of the front of the house?

12 A Yes, sir.

13 Q Okay. You mentioned you saw tubing going up a window.

14 A Yes, sir.

15 THE COURT: And what exhibit number please?

16 SOLICITOR HOLLIDAY: On, I'm sorry, Your Honor. It's  
17 State's Exhibit No. 3.

18 Q Is that the tube you saw going up the window?

19 A Yes, sir, that's, that's the first indicator that maybe  
20 believe there may be a meth lab or an active meth lab. As  
21 you see, there's the bottle and the, the tubing is sealed  
22 right here, and then it runs up, and it was actually tucked  
23 up into the top of the window, which had been pulled down  
24 about an inch.

25 Q And this is State's Exhibit 4.

Kevan Kyle - Direct examination  
by Solicitor Holliday

1 A That -- yes, that's the same bottle.

2 Q Okay. You said when you, when you exited the house  
3 following where the defendants left, you saw something on  
4 the ground?

5 A Yes, sir.

6 Q What did you see?

7 A Well, it, it appeared to be the same contents of the  
8 bottles I saw on the living room, the multicolored pellets.

9 Q Okay. This is State's Exhibit 14.

10 A It's -- this is where it's in the grass. You can see  
11 it's here and this clump here. But that's, that's some of  
12 the, where it's wet around the edge from the liquid inside.

13 Q And this is State's Exhibit 15.

14 A Yes, sir, that's, that's more of the splatter. This is  
15 actually on the concrete, which is their porch. You can see  
16 the dark around all the pellets is from the liquid flowing  
17 out from the pellet.

18 Q And State's 13.

19 A Yeah, that's, that's more of it right there, the  
20 pellets.

21 Q Okay. Please answer any questions defense attorney may  
22 have.

23 A Yes, sir.

24 SOLICITOR HOLLIDAY: No further questions at this time,  
25 Your Honor.

Kevan Kyle - Cross-examination  
by Ms. Claire Hall

- 1 THE COURT: Cross-examination please.
- 2 MS. CLAIRE HALL: May it please the Court?
- 3 THE COURT: Yes, ma'am.
- 4 CROSS-EXAMINATION
- 5 BY MS. CLAIRE HALL:
- 6 Q Officer Kyle, you said the first door you went to was a  
7 back-door?
- 8 A Yes, ma'am.
- 9 Q Okay. Is that the only door you went in and out of?
- 10 A Yes, ma'am.
- 11 Q Were there other doors to this home on the outside?
- 12 A There were two other exterior doors.
- 13 Q Okay. So, the door you walked in was a bedroom?
- 14 A Yes, ma'am, it was a bedroom.
- 15 Q Okay. Now, you said you found a dog in the other part  
16 of the house?
- 17 A Yes, ma'am.
- 18 Q You know it was the defendant's dog?
- 19 A They claimed to have a dog.
- 20 Q Claimed to have a dog.  
21 Did you make a report in this case?
- 22 A My report was a supplemental to the report that---
- 23 Q Uh-huh. (Affirmative).
- 24 A ---other officer, Investigator Schafer, when he did his  
25 search warrant.

Kevan Kyle - Cross-examination  
by Ms. Claire Hall

1 Q Okay. Did you mention anything about a dog or the  
2 defendants having a dog in the home?

3 A I didn't.

4 Q Okay. When you tried to exit the home, after they  
5 allowed you to go through, how did you get out if they  
6 sealed you in?

7 A Well, like I said before, Deputy Wilbanks was able to  
8 get the door ajar enough to see behind it and saw there was  
9 a board and he was able to reach through and get the board  
10 out.

11 Q Okay. You didn't try any of the other three doors?

12 A No, ma'am.

13 Q Now, you mentioned that the defendants didn't want to  
14 allow you into the rest of the house to search for  
15 Mr. Kirby?

16 A That was my belief at the time, yes, ma'am.

17 Q But they had told you already that they were just  
18 staying in this one bedroom, right?

19 A Yes, ma'am.

20 Q Okay. So, you -- we don't know that they had any  
21 control over the rest of the house or access to it or  
22 suppose to have access to it?

23 A Well, the only thing I can think of is -- no, they -- I  
24 can't say they did.

25 Q Okay. And that -- you said the defendants left while

Kevan Kyle - Cross-examination  
by Ms. Claire Hall

1 you were searching the remainder of the home.

2 Did you tell them to stay there?

3 A No, ma'am.

4 Q They weren't under arrest?

5 A No, ma'am, they were not under arrest.

6 MS. CLAIRE HALL: Okay. One moment please.

7 (Pause.)

8 MS. CLAIRE HALL: I have no further questions.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. ROBERT HALL:

12 Q All right. Just -- I want to clear up a few things.

13 The first thing, I got a lot of dogs at my house.

14 What kind of dog was this in the house?

15 A It was like a pit bull mix. Looked like a bull dog or  
16 a pit bull mix.

17 Q Kind of grayish looking one or black or white?

18 A It was tan in color.

19 Q Okay. Aggressive?

20 A No, sir.

21 Q Pit bulls can be friendly, can't they?

22 A They can.

23 Q And there's some friendly pit bulls.

24 So, we understand this house at 371 -- well, first let  
25 me say.

Kevan Kyle - Cross-examination  
by Mr. Robert Hall

- 1           was there anything else on this property, appeared to  
2 be on this property, any other structure?
- 3 A    Yeah, the lot is a, is a long lot and there's a trailer  
4 behind the house.
- 5 Q    Are you aware if it has a separate address from the --?
- 6 A    It, it does.
- 7 Q    Okay. If it -- with the warrant you had, if it had  
8 three -- if that trailer was just 371 also, you could of  
9 searched it too, couldn't you?
- 10 A   If it was part of the address, yes, sir.
- 11 Q    Yeah.
- 12       Okay. So, it had a separate address?
- 13 A    Yes, sir, it did.
- 14 Q    All right. The house that is at 371 Dakota, how many  
15 doors does it have?
- 16 A    Exterior doors?
- 17 Q    Yeah.
- 18 A    Three.
- 19 Q    Three?
- 20 A    Yes, sir.
- 21 Q    Okay. Are you certain of that?
- 22 A    That's my recollection.
- 23 Q    There's two front doors, is that correct?
- 24       The picture you saw, we saw just a few minutes ago, it  
25 had two front doors?

Kevan Kyle - Cross-examination  
by Mr. Robert Hall

- 1 A It does.
- 2 Q There's a door that you said they let you in to a  
3 bedroom off of a porch in the back?
- 4 A Yes, sir.
- 5 Q Okay. And, so, that's a, a back corner?
- 6 A Yes, sir.
- 7 Q All right. Now, when you pull up the driveway, you  
8 pulled into the back of the house?
- 9 A We pulled up the driveway basically to the side of the  
10 house, but I pulled up parallel with where they had parked  
11 their car.
- 12 Q Okay. So then -- so, you -- did you stop beside the  
13 house or come to the back?
- 14 I'm a little confused.
- 15 A I stopped at the side of the house.
- 16 Q Okay.
- 17 A I walked---
- 18 Q All right.
- 19 A ---to the back-door.
- 20 Q And then how was their car parked cause I just assumed  
21 they pulled in?
- 22 A Yeah, it's as if they had pulled up the driveway and  
23 then pulled across.
- 24 Q So---
- 25 A So theirs was -- they had actually driven to the back.

Kevan Kyle - Cross-examination  
by Mr. Robert Hall

1 Q So, you would of been more or less perpendicular and  
2 not parallel to their car?

3 A Parallel with the level of their car. It was on the  
4 property.

5 Q Oh, okay. I understand.

6 Now, you sure you didn't pass another door before you  
7 got to that door with the porch?

8 A Yes, sir, there was another door there.

9 Q So, there's four exterior doors?

10 A Yes, sir, I forgot about the other front door.

11 Q Now, did you have any reason to believe that you were  
12 walking into a meth lab?

13 A No, sir.

14 Q All right. Your intent, when you got there, was to  
15 find Mr. Kirby?

16 A Yes, sir.

17 Q Right?

18 Now, do you recall, once you're in the room, you looked  
19 for Mr. Kirby?

20 A Yes, sir.

21 Q Now, did you see anything that alerted you to a meth  
22 lab there?

23 A In the bedroom?

24 Q Yes, sir.

25 A Not -- no, not at that time.

Kevan Kyle - Cross-examination  
by Mr. Robert Hall

1 Q Okay. And do you recall how you got from that room to  
2 the rest of the house?

3 Did you go through an open, a closed -- a door that had  
4 to be opened or anything?

5 A It, it was a door that had to be opened.

6 Q Okay. So, when you walked in there, that door to the  
7 rest of the house was at least closed?

8 A At that time, yes, sir.

9 Q Do you remember if it was blocked or barricaded in  
10 anyway?

11 A No, sir.

12 Q All right. But it would have moved, opened into the  
13 room?

14 A Yes, sir.

15 Q Okay. All right. Now, the -- where's the bathroom  
16 located in the house where you found the bottle?

17 A It's up next to the main front door. Not the one off  
18 to the side.

19 Q Okay. If I'm going from the back of the house to the  
20 front, to the right---

21 A If you turned into the door that led into the house,  
22 you would go to the hallway that stretches the length of the  
23 house and turns left, walk up into a common area, which is  
24 a -- to your left was a dining room/kitchen. To your right  
25 was a bathroom and a short hallway with a laundry room and a

Kevan Kyle - Cross-examination  
by Mr. Robert Hall

1 living room for that.

2 Q Okay. So, it's in the front of the house?

3 A Yes, sir.

4 Q Okay. All right. Were you part of the search warrant  
5 or had you withdrawn at that point?

6 A No, sir, I was not part of the search warrant.

7 Q Okay. And you saw the things that called your  
8 attention, that your attention was called to made you call  
9 the narcotics division in the rest of the house?

10 A Yes, sir.

11 MR. ROBERT HALL: All right. All right. No further  
12 questions.

13 THE COURT: Redirect?

14 SOLICITOR HOLLIDAY: No redirect, Your Honor.

15 THE COURT: May this officer be excused?

16 SOLICITOR HOLLIDAY: Yes, sir, Your Honor. I would  
17 request that.

18 MR. ROBERT HALL: No objection.

19 MS. CLAIRE HALL: No objection.

20 THE COURT: Thank you, sir. You may be excused.

21 WITNESS: Yes, sir.

22 THE COURT: Call your next witness please.

23 SOLICITOR HOLLIDAY: State calls Deputy Chris Wilbanks.

24 CHRIS WILBANKS, being first duly  
25 sworn, testified as follows:

Chris Wilbanks - Direct examination  
by Solicitor Holliday

1 DIRECT EXAMINATION

2 BY SOLICITOR HOLLIDAY:

3 Q Thank you, deputy.

4 Could you please give us your full name for the record?

5 A It's Chris Wilbanks.

6 Q And how long -- you work at the Sheriff's Office --

7 A Yes, sir.

8 Q -- by your uniform?

9 How long, how long have you worked there?

10 A Since February of 1998. So, 15 years.

11 Q 1998.

12 Okay. And what is your job at the Sheriff's Office?

13 A I'm assigned to uniform patrol.

14 Q So, the same as Deputy Kyle?

15 A Yes.

16 Q And were you with Deputy Kyle on the, on

17 January 17<sup>th</sup>, 2012?

18 A Yes, I was.

19 Q So, you were part of that -- y'all were there to serve

20 a bench warrant on Mr. Kirby, Travis Kirby?

21 A Yes.

22 Q Okay. When you went to the house, did you suspect

23 anything, any legal activity going on in the house or what

24 was your state of mind when you were walking in the door?

25 A We went there attempting just to locate Mr. Kirby.

1 Q Did you speak with the defendants, Mr. Cain and Ms.  
2 Parkhurst?

3 A Yes.

4 Q Did you ask for their identification?

5 A Either me -- I don't recall whether it was me or  
6 Officer Kyle, but one of us had, and they presented us with  
7 their South Carolina ID's.

8 Q Did you, at that point, walk through the house to look  
9 for Mr. Kirby?

10 A Not at that moment. When they presented us with ID's,  
11 while Deputy Kyle stayed and spoke with them at the  
12 back-door on the porch, I went back to my patrol car and  
13 checked their ID's in our system to make sure they were  
14 indeed who they said they were and make sure they weren't  
15 wanted or anything along those lines.

16 Q Okay. And once you checked to make sure they weren't  
17 wanted, were you very concerned with them?

18 A No, they, they had no -- they were clear for our  
19 purposes.

20 Q Why did you go to the back of the house?

21 A That's where the car was parked at. It -- the car was  
22 parked close enough to this back porch that, where we had  
23 made contact with them. It was obvious they were using that  
24 as an entry point into the house based on where the car was  
25 parked at.

Chris Wilbanks - Direct examination  
by Solicitor Holliday

1 Q And 371 Dakota Street, are you familiar with that part  
2 of Spartanburg County?

3 A I am. That's the area I work.

4 Q And, so, as part of your routine patrol in Spartanburg  
5 County, you, you went to that address?

6 A Yes.

7 Q Are you familiar with any other individuals who may  
8 reside on that property?

9 A I'm familiar with the property owner.

10 Q And who is that?

11 A It's Leon Fowler, Senior.

12 Q Okay. Was he present at this home at that time?

13 A Not at this home, no.

14 Q After you checked the defendant's ID's, did you walk  
15 through the house?

16 A Yes, we did.

17 Q And what did you see when you walked through the house?

18 A The door we had knocked on, which was the door they had  
19 answered, led directly into a bedroom. It was obvious, just  
20 from looking at it, that was apparently where they stay at  
21 inside the house. We had spoke to them about Travis Kirby.  
22 They denied, they denied knowing him at all.

23 And once they were -- we were, we were going to search  
24 the house. Mr. Cain had to open a door that led to the rest  
25 of the house. From that point we moved through their

Chris Wilbanks - Direct examination  
by Solicitor Holliday

1 bedroom. We checked their bedroom simply for somewhere a  
2 person could hide. That's what we were there looking for.  
3 It was obvious the bedroom and its contents, there, there  
4 was no other person there other than them two in the  
5 bedroom. So, at that point, he actually opened -- Mr. Cain  
6 opened the door which allowed us entry into the rest of the  
7 house.

8 Q Did the bedroom have a kitchen in it?

9 A No.

10 Q Did the bedroom have a bathroom in it?

11 A No.

12 Q Did the bedroom have any sort of typical things that  
13 one would keep in their home, pots, pans, spoons,  
14 silverware?

15 A Not that I recall.

16 Q Where was the bathroom located again?

17 A From the point we entered in the back, the bathroom  
18 would be the front right corner.

19 Q So, they would have to go through the house to go to  
20 the bathroom, through the house to go to the kitchen?

21 A Yes.

22 Q So, they weren't just living just in this one room?  
23 They, they had access to the rest of the house?

24 A Yes, sir.

25 Q Did you see -- you saw the exhibit earlier of the

Chris Wilbanks - Direct examination  
by Solicitor Holliday

1 tubing and that sort of thing. I believe it was State's  
2 Exhibit, State's 3.

3 A Yes, sir.

4 Q When you saw that, what did -- what, what came to your  
5 mind?

6 A At that moment it was, you know, from training, it was  
7 obvious it was an active meth lab.

8 Q And is that in the bathroom?

9 A That is.

10 Q How many bathrooms were in the house?

11 A Just one that I recall.

12 Q Once y'all were looking at this meth lab, did you want  
13 to go back and speak with the defendants, Mr. Cain and Ms.  
14 Parkhurst?

15 A We did.

16 Q And were you able to speak with them?

17 A No, as we -- once we had identified there was clearly  
18 no other people inside the house, we began to back back out  
19 the hallway, which led back to the bedroom which we had  
20 entered through. We got to the door that we had come  
21 through. I attempted to open it. It wouldn't open. And I  
22 actually made the comment to Deputy Kyle, I asked him, I  
23 said this is the door we came through and he said yes.

24 At that time I was able to force on the door. It came  
25 opened enough for me to tell it had been barricaded from the

1 bedroom side. At that time I kicked it the rest of the way  
2 opened. We then went back in the bedroom we had initially  
3 started at, and we realized the vehicle was gone along with  
4 Ms. Parkhurst and Mr. Cain.

5 Q Do you think it's kind of strange that the defendants  
6 would barricade the door that they came or separated you and  
7 them?

8 A Yes.

9 Q Do you think it strange that they would get in their  
10 car and just leave?

11 A Yes.

12 Q Would they have known that you had saw the meth lab?

13 A Yes, it's -- the picture that, right there is looking  
14 through a doorway from a hall pretty much. It's very  
15 visible. It's no intent to hide it once you're inside that  
16 portion of the house.

17 Q On your way back out did you see anything on the  
18 ground?

19 A Yeah, on the, the cement patio, which was also one of  
20 the pictures was shown, that's -- that picture of the  
21 contents of the, of what Officer Kyle referred to as a one  
22 pot bottle was on the cement of the porch we had initially  
23 stood on to knock at that door.

24 Q This is State's Exhibit 14.

25 This is what you're referring to --

Chris Wilbanks - Direct examination  
by Solicitor Holliday

1 A Yes, sir.

2 Q -- as material on the cement?

3 A That, that would be right outside the door we initially  
4 knocked on to make contact with Mr. Cain and Ms. Parkhurst.

5 Q Okay. And when you discovered that there was, you  
6 believed, a meth lab present, what did you and Deputy Kyle  
7 do?

8 A After ensuring there was no one else in the house,  
9 what -- we cleared it and got outside the residence due to  
10 the simple dangers of what the meth lab could cause inside  
11 the house.

12 Q Did you call anyone?

13 A Yes, we noted -- Deputy Kyle notified dispatch for our  
14 narcotics division, which, in turn, notified the chemist to  
15 begin the process.

16 Q Please answer any questions defense may have.

17 THE COURT: Cross-examination.

18 MS. CLAIRE HALL: May it please the Court?

19 THE COURT: Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MS. CLAIRE HALL:

22 Q Officer Wilbanks, do you know if the power or the water  
23 was on in this house?

24 A It was not.

25 Q Okay. So, if there was no water, they couldn't -- the

Chris Wilbanks - Cross-examination  
by Ms. Claire Hall

1 toilets can't be flushed and the sinks can't be run?

2 A They may of been able to. I say it was not on to that  
3 house. They were what I would refer to as illegally  
4 supplying the house with power and water by running what  
5 appeared to be drop cords and hose pipe from Mr. Fowler's  
6 residence.

7 Q Where did you see the hoses go to?

8 A They went just into the residence. I didn't look to  
9 see where they were going. They were just running from one  
10 house to the other.

11 Q Okay. Let's see. You told solicitor Holliday that the  
12 defendants had access to the rest of the house.

13 Is this based on an assumption because there was no  
14 kitchen or bath in the bedroom that you came into?

15 A No, I based it on when we asked to search the  
16 residence. Mr. Cain opened the door for us.

17 Q Okay.

18 A So, he gave us access to it. So, I know he would have  
19 access as well.

20 Q Were you both in uniform?

21 A Yes.

22 Q And you told him that we have a, an arrest warrant, a  
23 bench warrant for somebody that allows us to search the rest  
24 of this house?

25 A Yeah, Deputy Kyle told him that.

Chris Wilbanks - Cross-examination  
by Ms. Claire Hall

1 MS. CLAIRE HALL: Okay. One moment please.

2 (Pause.)

3 MS. CLAIRE HALL: No further questions.

4 THE COURT: Okay.

5 CROSS-EXAMINATION

6 BY MR. ROBERT HALL:

7 Q Do you remember the dog?

8 A Yes.

9 Q A nice pit bull?

10 A Yes.

11 Q Were you just -- were you a little apprehensive when  
12 you first saw him?

13 A The reason I know it's Mr. Cain's dog is that when I  
14 actually went down the hall the dog came running up and I  
15 made the comment that I may have to shoot, and Mr. Cain  
16 spoke up, after hearing my comment, cause we just made it to  
17 the hallway, don't shoot my dog, hold on, let me get him.

18 Q All right. But a friendly dog?

19 Didn't bother you at all?

20 A Very friendly dog.

21 Q Now, you say you're familiar with Leon Fowler. You  
22 got -- I think you got to be a little more specific than  
23 that, don't you?

24 There's more than one Leon Fowler?

25 A Yeah, there's -- just from my job experience, I

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

1 actually know his son. He's Little Leon. That's what  
2 people on the street refer to them as Big Leon and Little  
3 Leon.

4 Q And are you assuming that -- which one do think owns  
5 this property?

6 A I assume Big Leon.

7 Q Okay. And you see Mr. Fowler sitting here?

8 A Yes, sir.

9 Q Okay. That's who we agree is Leon Fowler, Senior.  
10 Now, you said you assumed they went into the rest of  
11 the house cause there's no kitchen and facilities in the,  
12 that little bedroom they were in, is that correct?

13 A He had access. It was access.

14 Q Yeah.

15 A Access to -- he had access to the house I believe.

16 Q Okay. But they answered from that -- well, let me make  
17 it clear. The -- when we refer to the porch, we got one  
18 picture. I think we got a couple of porches on the front.

19 Do you remember how this porch was on the back of the  
20 house?

21 A It's, it's a cement pad that sits basically up against  
22 the rear door---

23 Q Okay. But---

24 A ---that led into the bedroom.

25 Q Did -- all right. I can't describe it any other way,

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

1 but is a porch like you take a corner of the house and open  
2 it up, a porch like that or a porch that extends out?

3 A If I remember correctly it would be the corner.

4 Q Okay. Now, this is a -- in the picture you say cinder  
5 blocks and then you say particle board.

6 A Yes, I believe.

7 Q Okay.

8 A That's --

9 Q Did it look like maybe it's an old cinder block house  
10 and somebody's adding on to it?

11 A That I'm not sure. It's having construction work done  
12 to it. So --.

13 Q Okay. It wasn't -- it has four doors. Two front  
14 doors, two back doors.

15 It wasn't a duplex, was it, or was it?

16 A No.

17 Q Okay.

18 A That's not what I would consider a duplex at all.

19 Q It's not split in half?

20 A No.

21 Q All right. How long were you there?

22 A From the initial time we arrived, for the entire course  
23 of this investigation, hours.

24 Q Uh-huh. (Affirmative).

25 A I --.

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

1 Q Well, most of your time was spent outside of the house  
2 or---

3 A From, from the time we arrived until we searched the  
4 house, located the meth lab, and then backed out, 15  
5 minutes.

6 Q Okay. So, you didn't notice whether or not it looked  
7 like it's, this is a house that's been added onto?

8 A No, I wasn't looking for anything like that, no.

9 Q Okay. When the pictures they give us, I don't see a  
10 picture of that door that goes to the bedroom where Cain and  
11 Parkhurst were, but do you remember if it was cinder  
12 blocked, walls, exterior walls, or if they were particle  
13 board---

14 A No, I don't.

15 Q ---or siding?

16 A I don't recall.

17 Q Okay. As far as you can tell though, the house had no  
18 power or water, but---

19 A Correct.

20 Q Except for---

21 A It had---

22 Q You said illegal means like a drop cord?

23 A Well, yeah, it was being run from a drop cord.

24 Q Okay. If -- and going from the trailer or from where?

25 A From, from the trailer.

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

1 Q Okay. And you agree that the trailer's like 369  
2 Dakota?

3 A Yes, sir.

4 Q Okay. Did anybody go to that trailer to knock on it  
5 to -- if you, if you assume that this all belongs to  
6 Mr. Leon Fowler, did anybody check that place to see if  
7 Mr. Kirby was there or anything else?

8 A I can't say for sure. But I, I think I did, but I  
9 can't say for sure that I did.

10 Q Okay. All right. Now, how -- like I said, I don't  
11 think we've got a -- is there a picture of showing us how  
12 deep this house is?

13 I hope I can do this right.

14 THE COURT: What exhibit number please, sir?

15 MR. ROBERT HALL: This is Exhibit No. 2, State's  
16 Exhibit No. 2.

17 Q Now we'll -- this looks like -- is this, excuse me, in  
18 here there's cinder block and cinder block?

19 A Yes.

20 Q It looks like it's got some stripping for nailing up  
21 and there's some particle board?

22 A Yes.

23 Q And we got cinder block at least over here.

24 Okay. But this is the front of the house, correct?

25 A Correct.

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

1 Q Did y'all ever go around to the front?

2 A When we first got there, if I remember correctly, I  
3 actually knocked on the back-door and Deputy Kyle stood at  
4 the back corner to see if anyone were to run from the front.  
5 That's pretty standard when two officers show up to serve a  
6 warrant.

7 Q Like flushing quail?

8 A Yes, sir.

9 Q All right. Thank you.

10 Well, I guess -- this shows a little better. This  
11 is -- you can clearly see the, more clearly see the cinder,  
12 cinder block and then the particle board?

13 THE COURT: What exhibit number please?

14 MR. ROBERT HALL: This is Exhibit No. 1, State's  
15 Exhibit No. 1.

16 Q Did you know if anybody ever checked to see if these  
17 other doors operated properly or if they were nailed shut  
18 or---

19 A No.

20 Q ---anything?

21 All right. Thank you.

22 Now, do you -- you say -- you remember where the power  
23 cord or whatever and the hose that went from the trailer to  
24 the house where they went into the house?

25 A No, at -- the power cord into the bedroom.

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

- 1 Q Okay.
- 2 A The hose, I don't, I don't recall ever looking to, you  
3 know, even try to determine where it was going.
- 4 Q All right. But you remember the hose going towards the  
5 house or --?
- 6 A Yes.
- 7 Q All right. Did -- I can't see the pictures very well.  
8 Was there any food in the bedroom where Ms. Parkhurst  
9 and Mr. Cain were in if you recall?
- 10 A Yeah, it's -- I think I do remember there being food  
11 and, and drinks --
- 12 Q Okay.
- 13 A -- in there.
- 14 Q You say drinks like sodas?
- 15 A Sodas. Like bottles of sodas and so forth.
- 16 Q Fast food, sandwiches, or what -- I mean what kind of  
17 food?
- 18 A I don't recall. I just -- I do remember seeing that it  
19 appeared they had been living---
- 20 Q Okay.
- 21 A ---in the bedroom.
- 22 Q Were there any dishes or anything in there?
- 23 A I don't recall.
- 24 Q Okay. And the purpose of going there was to find  
25 Mr. Kirby --

Chris Wilbanks - Cross-examination  
by Mr. Robert Hall

1 A Yes, sir.

2 Q -- not a meth lab?

3 But when you exited back out and pushed through the  
4 door and back in the bedroom, you, at that time, you knew  
5 you had a meth lab?

6 A Yeah. well, we -- at that point, we were getting out  
7 of the house because of the meth lab.

8 Q Okay.

9 A And had Ms. Parkhurst and Mr. Cain still been there we  
10 would of been you, wanting to speak with them about it.

11 Q But nobody told them they couldn't leave?

12 A No, at that point we had no reason to detain them.

13 MR. ROBERT HALL: All right. No further questions.

14 THE COURT: Redirect?

15 SOLICITOR HOLLIDAY: No redirect, Your Honor.

16 THE COURT: May he be excused?

17 SOLICITOR HOLLIDAY: No objection.

18 MR. ROBERT HALL: No objection.

19 MS. CLAIRE HALL: No objection.

20 THE COURT: Thank you, sir.

21 WITNESS: All right.

22 SOLICITOR HOLLIDAY: Your Honor, State calls Beth  
23 Stuart.

24 BETH STUART, being first duly sworn,  
25 testified as follows:

Beth Stuart - Direct examination  
by Solicitor Holliday

1 DIRECT EXAMINATION

2 BY SOLICITOR HOLLIDAY:

3 Q Ms. Stuart, could you give us your name for the record?

4 A Okay. It's Mary Elizabeth Stuart. Everybody just  
5 calls me Beth.

6 Q And where -- do you work at the Sheriff's Office?

7 A I do. I work for the Spartanburg County Sheriff's  
8 Office.

9 Q And on January 17<sup>th</sup>, 2012, what was your job?

10 A Forensic chemist.

11 Q And what does a forensic chemist do?

12 A I'm responsible for all drug analysis, fire debris  
13 analysis, poison analysis, and also the breaking down or  
14 making safe of methamphetamine labs or clandestine labs.

15 Q How long have you -- how long on, at this point in  
16 time, on January 17<sup>th</sup>, 2012, how long have you been a  
17 chemical analyst?

18 A About eight and a half years.

19 Q Did you have to go through any special classes or have  
20 any degrees or anything to do that?

21 A Yes, my -- a little bit of my background, I have a  
22 Bachelor's of Science in Chemistry, and a Bachelor's of  
23 science in Biochemistry from the college of Charleston. I  
24 have a Master's Degree in Chemistry from the University of  
25 South Carolina.

Beth Stuart - Direct examination  
by Solicitor Holliday

1 I've been to the police academy. I've been to the DEA,  
2 which is our federal government organization, for drugs.  
3 I've been to their forensic chemist school. I've also been  
4 to their clandestine lab school.

5 I'm also a member of the Clandestine Lab Investigating  
6 Chemist Association. It's an international chemist  
7 association so that once a year all chemist from all over  
8 the world can get together and discuss current issues and  
9 problems and cases and what we see involving clandestine  
10 labs.

11 I'm also certified by the American Board of  
12 Criminalistics in all areas for forensic science. It's a  
13 national certification. Every year I have to do forty hours  
14 of continuing training in all of my areas of forensics and  
15 then I also have to do a recertification course in  
16 clandestine labs.

17 Q All tolled, how many hours of education and training do  
18 you have?

19 A I have no earthly idea.

20 Q More than a hundred?

21 A I am for sure it's more than a hundred.

22 Q Have you ever testified in Court before?

23 A I have, 34 times.

24 Q Have you ever been qualified as an expert before?

25 A Everytime.

Beth Stuart - Direct examination  
by Solicitor Holliday

1 SOLICITOR HOLLIDAY: Your Honor, at this time we would  
2 move to qualify this witness as an expert in chemical  
3 analysis.

4 THE COURT: Any voir dire?

5 MR. ROBERT HALL: As a forensic chemist, no objection,  
6 Your Honor.

7 THE COURT: Ms. Hall.

8 MS. CLAIRE HALL: I have no objection to her  
9 qualification as a chemist.

10 THE COURT: Are you trying to have her expertise in the  
11 field of forensic chemistry?

12 SOLICITOR HOLLIDAY: Forensic chemistry and chemical  
13 analysis, Your Honor.

14 THE COURT: And chemical analysis.

15 Any objection to each of those fields?

16 MS. CLAIRE HALL: No objection.

17 MR. ROBERT HALL: No objection, Your Honor.

18 THE COURT: Okay. Ladies and gentlemen of the jury,  
19 most of the time witnesses are limited in their testimony to  
20 what they see, they hear, they smell, that kind of thing,  
21 their senses. However, a person, because of their expertise  
22 or their education and experience, may become an expert in a  
23 particular area. In that event, they're allowed to give  
24 their opinion, and the reasons for their opinions.

25 Expert testimony is like any other testimony in this

Beth Stuart - Direct examination  
by Solicitor Holliday

1 Court. You can accept it and you can reject it or give it  
2 as much weight as you think it should have.

3 Ms. Stuart will be declared an expert in the field of  
4 chemistry, forensic chemistry and chemical analysis.

5 All right. Mr. Holliday.

6 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

7 Q Ms. Stuart, were you called to 371 Dakota Street on  
8 January 17<sup>th</sup>, 2012?

9 A I was.

10 Q And what was the nature of that call?

11 A Received a call from dispatch there was a possible meth  
12 lab at this address.

13 Q As part of your job as a forensic chemist, as a  
14 forensic chemist, do you typically respond to meth labs?

15 A A lot of them.

16 Q Can you just give us an idea, what -- when you say meth  
17 lab, what do you mean?

18 A A methamphetamine lab is, is basically where a persons  
19 or person are manufacturing methamphetamine, a known drug,  
20 by taking normal household products and putting them  
21 together in order to make it. And, so, there would be what  
22 we call chemicals around, but they're gonna look like normal  
23 household products to the general eye. But, to us, when  
24 they're put in a certain order or done in a certain way,  
25 those chemicals, those household products are actually the

Beth Stuart - Direct examination  
by Solicitor Holliday

1 chemicals that will produce this drug.

2 Q Okay. How many meth labs have you responded to would  
3 you say?

4 A Probably 150 in my time at the Sheriff's Office.

5 Q Okay. I'm gonna hand you what's been marked as State's  
6 Exhibits 1 through 24.

7 Can you take a look at those and see if you can tell  
8 what those are?

9 A Sorry. There's a lot of pictures.

10 Q Take your time.

11 A These are all pictures of this residence, 371 Dakota  
12 Street, where I was.

13 Q And are those pictures all fair and accurate  
14 representations of what you saw that day?

15 A Yes, they were actually taken in my presence, the  
16 pictures were.

17 SOLICITOR HOLLIDAY: Your Honor, at this time we would  
18 move to have Exhibits 1 through 24 all into evidence.

19 MR. ROBERT HALL: I would like to see them. I've seen  
20 some of them. We haven't seen seven.

21 (Pause.)

22 MR. ROBERT HALL: No objection, Your Honor.

23 MS. CLAIRE HALL: No objection.

24 THE COURT: Thank you, ma'am. One through 24 will be  
25 admitted without objection.

1 (WHEREUPON, State's Exhibit Nos. 5 through 12 and 16  
2 through 24 were received into evidence at this time.)

3 Q Now, there's, there's a lot of pictures?

4 A There are.

5 Q Why is it that we, when we have pictures, we don't have  
6 the actual components of the meth lab here in Court today?

7 A The components used in a meth lab, once they're mixed  
8 together -- I'll just give you an example. They actually,  
9 in order to make meth, they need Lithium strips, and it's a  
10 metal, and they'll cut open batteries to get the Lithium out  
11 of it. Well, that Lithium, when it's exposed to air or  
12 water, it's actually a fire hazard. It will just catch on  
13 fire in air and water once it gets moisture on it. Metals,  
14 pure metals are prone to do that. So, there is exposed  
15 Lithium down in these reaction bottles.

16 Also, they will put, like muriatic acid, which you  
17 would typically use as a drain cleaner, they will put it  
18 into a bottle with salt, and what that actually produces is  
19 an acid gas, and that acid, acid gas -- and you know all  
20 your bottles have warnings about it will burn your skin, and  
21 it will burn your throat, well that acid gas is extremely  
22 caustic and it will burn you.

23 well, that's not something I'm transporting back to my  
24 lab or back to my Sheriff's Office and possibly hurting  
25 myself or the other deputies or anyone. So, all that stuff

Beth Stuart - Direct examination  
by Solicitor Holliday

1 is taken outside, separated into categories, and we have a  
2 company that comes in, picks it up, and hauls it off. It's  
3 just way too dangerous to bring back in the Sheriff's  
4 Office, store it in evidence, bring it here to the  
5 courtroom, and expose all of y'all to it. So, we don't do  
6 it. We're not gonna do it.

7 Q Do you typically fingerprint the labs or anything like  
8 that?

9 A We do not fingerprint the labs.

10 Q And why don't you do that?

11 A For the same reason. When you go in there, it's very  
12 fun. You watch the TV shows and you see going into meth  
13 labs or whatever and they're wearing their plain clothes.  
14 We suit up. We're suited up in a suit. We have masks on.  
15 I don't want that stuff on me. We don't want to breathe it  
16 in.

17 Well, it's the same thing. If I take my fingerprint  
18 kit in there, use my fingerprint brush, and that's gonna  
19 have to be thrown away every time. Also, because they're  
20 pouring liquids, they don't exactly take all the safety  
21 precautions in the world. The, the liquid has spilled over  
22 the sides of the bottles. Any fingerprints that might have  
23 been on there would be gone. It's, it's not worth the time  
24 or contaminating everything or possible hazard of doing it.

25 Q Let's go through some of these pictures here. You can

Beth Stuart - Direct examination  
by solicitor Holliday

1 kind of explain, as we go along, what you're looking at.

2 A It's -- I'm gonna scoot over a little bit.

3 Q Yeah, sure, yeah.

4 A This actually blocks the---

5 Q You can come down and stand here if you want and point  
6 if you need to.

7 A However y'all will let me do it best. Just so I can---

8 Q You can stand up. You can stand up there.

9 A Okay. Just so I can see the screen good. I won't get  
10 in y'all's way either.

11 Q Matter of fact, I'll just let you -- if you just want  
12 to go through and explain these pictures and go over it with  
13 them here.

14 A Okay.

15 Q What are we looking at here.

16 A That's fine.

17 THE COURT: Ms. Stuart, if you would, just announce the  
18 exhibit number on the back of that at this time so that  
19 we'll have a record of it please, ma'am.

20 WITNESS: Sure. No problem.

21 When I got there and went in to actually start doing  
22 the dismantling of the lab, the officers had mentioned to  
23 me, first off, that they had seen the bottle in the bathroom  
24 and the tubing running out of the window. Well, to me that  
25 starts sending off triggers of danger, danger. If they've

Beth Stuart - Direct examination  
by Solicitor Holliday

1 got tubing running out of the window, obviously they don't  
2 want to smell it. And, so, we don't either.

3 And, and my job, when I go in there, is to find all the  
4 components, break it down, get it out into an open air or  
5 make it safe where it's doing the least harm. I don't want  
6 something to catch on fire, you know, possibly causing the  
7 neighbor's harm or anything. So, I actually went straight  
8 into the bathroom to assess this bottle.

9 So, I'm gonna throw that picture up there if I can find  
10 it. They're kind of all mixed up in here. It's not in  
11 here.

12 Q And these are all photographs previously admitted into  
13 evidence, Exhibits 4, 14, 3, 13, 15, 2, and 1.

14 A Okay. In the bathroom -- and you can look in the door  
15 from the hallway and see into the bathroom, and this is --.

16 THE COURT: Would you give us the exhibit number  
17 please?

18 WITNESS: I will. I'm so sorry, sir.

19 THE COURT: That's okay.

20 A It's Exhibit 3.

21 Q You can use this pointer if you need to.

22 A Okay. So when I went in there I saw this bottle  
23 sitting on the table and the tubing running out. Of course,  
24 you know alarms are going off in my head, right. They don't  
25 want to smell it.

Beth Stuart - Direct examination  
by Solicitor Holliday

1           So, what I do, I'm all geared up, and, you know, I've  
2 got a mask on. I will actually unscrew it a little bit, the  
3 lid a little bit, and stick pH paper down into it, and that  
4 gives me if something's acidic or basic. You know, if  
5 something's acidic, it's caustic, it will burn you. Basics  
6 on the end, other end of the spectrum.

7           This was actually acidic, which is typical when someone  
8 is what we call in the gassing out phase of the  
9 methamphetamine at the very end, and I'll explain the whole  
10 process for you from the beginning. So, this was the first  
11 thing that I, the other officer with me took pictures of for  
12 me, and I wrote it down, and we got this out of the house  
13 automatically, and this is a closer up picture of the  
14 bottle.

15 Q       And the exhibit number on that?

16 A       Is -- that's gonna be my archenemies apparently.  
17 Exhibit 4.

18           Down in this bottle it would actually be, and we pH'd  
19 it to get a reading of the acidity, would be an acid like  
20 muriatic acid or drain cleaner or something you would buy,  
21 and then they would put salt down in there too. Like I  
22 said, this produces an acid gas which would come up through  
23 the tubing that they would put onto the reaction at the very  
24 end.

25           After I had removed this, I felt the immediate dangers

Beth Stuart - Direct examination  
by Solicitor Holliday

1 were out of the house, and then I would go through doing a  
2 thorough research. At that point we moved on into the  
3 living room, and this is Exhibit No. 16, and this is the  
4 living room, and how it would be, if I remember correctly,  
5 you would leave out of the bathroom kind of into a hallway  
6 and off to your right was a living room. This hallway went  
7 a long ways and then cut right back to that bedroom that  
8 y'all keep hearing about.

9       so, you'd come out of the bedroom, down a little  
10 hallway, up the small hallway, and then it would be like it  
11 would jet off to another bedroom which I didn't see anything  
12 in and we don't have any pictures of, into a bathroom, and  
13 then a living room that went off to the kitchen. And this  
14 is in the living room. All these trash bags were laying in  
15 the floor. It's hard to tell from the pictures, but right  
16 off the bat you start seeing like some coffee filters in it,  
17 and maybe like a blister pack, and so I know now I've got to  
18 tear open all these trash bags and see what's in there.

19       So, this is Exhibit No. 17, and this is where I've torn  
20 open, torn open the trash bags and then taken the picture,  
21 and you can -- you start seeing how there's Pseudoephedrine  
22 packet, and you've got a bottle with pieces in it, and some  
23 strippings of batteries in it, and my job, while I'm in  
24 there, is to separate all these things into their  
25 categories, try to get the good pictures of it, and make

Beth Stuart - Direct examination  
by Solicitor Holliday

1 sure they're safe.

2 So, as we go on through the bag, and I'm separating in  
3 categories, we see Exhibit 18, and we have face masks. Even  
4 people who manufacture meth don't always want to smell the  
5 bad smell. So, it is typical that we find either  
6 respirators or face masks or something of that sort inside  
7 the meth lab. Same goes for here.

8 Exhibit 19, this is all the blister packs, packs that  
9 we found in this area of the house, and everybody uses cold  
10 medicine. Okay. We all have it. We all may have a pack in  
11 our purse, a pack in our bathroom cabinet, a pack in our  
12 car, a pack in our office desk. That's typical. We want it  
13 where we have it. One of our main indicators of a meth lab  
14 is a large abundance of cold medicine. It's not typical for  
15 a family to have 15, 20 boxes of cold medicine laying around  
16 the house. So, that's an indicator of a meth lab for us.

17 Also what we found, and this is Exhibit 20, are these  
18 battery pieces and we all have Lithium batteries in our  
19 house. Like I said, it's normal household products used in  
20 the manufacture of methamphetamine. Now I don't cut mine  
21 open.

22 So, another indicator of meth labs are cut open Lithium  
23 batteries. They'll be sheered open with wire cutters,  
24 copper cutters that you use for copper wiring, and this is  
25 where we found the open, open Lithium batteries.

Beth Stuart - Direct examination  
by Solicitor Holliday

1           what we also found that has to do with the Lithium  
2 batteries, and this is Exhibit 21, is this -- we found all  
3 the wrappings, and put them down into the bucket, of the  
4 Lithium batteries. If you strip open a Lithium battery,  
5 what you have in there is a long sheet, and this is the  
6 backing on that sheet, and on top of that backing, backing  
7 is the Lithium, the actual metal Lithium, and in order to  
8 manufacture methamphetamine, they peel that Lithium off and  
9 put it into their reaction.

10           And as you look down into the bottom of this bucket  
11 you'll see some tiny Lithium pieces that they actually  
12 didn't break up yet. The reason we separate out that  
13 separate is, like I said before, it's very air and water  
14 reactive. We want to get all that Lithium stuff, the  
15 wrappings, the small Lithium pieces that may be left, into a  
16 bucket and outside away from us. We don't want any kind of  
17 fire thing going while we're in there.

18           What we also found in the living room, this is Exhibit  
19 24, and this was a bottle that we found in the living room,  
20 and I'm sorry. I can't get them on this projector right,  
21 and I pH'd this bottle also with my pH paper and found this  
22 to also pH acidic. So, likewise, it would be an acid that  
23 would be used in the last step of manufacturing, and then  
24 one other thing we found in the living room were these  
25 bottles, and they're two liter bottles.

Beth Stuart - Direct examination  
by Solicitor Holliday

1 Q What's the exhibit number?

2 A Oh sorry. Exhibit No. 23.

3 Two litter bottles. I think this one was a liquor  
4 bottle, but what you see, and I know it's hard to tell on a  
5 projector, but as you look at these pictures by yourself or  
6 back in the jury room or whatever, take notice inside of  
7 here there's pink little pellets and white pellets all mixed  
8 into the bottom together, and you can see little black specs  
9 in there too.

10 In the process of making methamphetamine, what you have  
11 to do in order to manufacture it is you take your  
12 Pseudoephedrine and crush it up. Now, anybody that's taking  
13 cold medicine, the tablets are typically red when you pop  
14 them out of the blister packs. So, that's the pink pellets  
15 that you see in there. So, they crush that up and they put  
16 it down into the bottle. Then they take a cold pack, which  
17 I haven't showed you a picture of that yet, but we'll get to  
18 it in just a few minutes, the cold pack, you know the ones  
19 you go buy in the store that you pop them together and you  
20 put them on your boobos or whatever to make them feel  
21 better, they take those, but they don't need the water  
22 portion of it. They discard that.

23 what's in the, what's in the other pack, the white  
24 little pills that you see is actually ammonia pellets, they  
25 need those to produce ammonia gas in their reaction to get

Beth Stuart - Direct examination  
by Solicitor Holliday

1 the reaction to go. So, they take the Pseudoephedrine, put  
2 it in the bottle, they take those ammonia pills and put it  
3 in the bottle, and then they pour what I call an organic  
4 solvent over the top, and all an organic solvent is it like  
5 Coleman fuel, lighter fluid, something like that that they  
6 pour over the top of it. Then they'll cut open their  
7 Lithium batteries, take the little Lithium pieces, put it  
8 down into the bottle too.

9 Now, they -- you want that organic in there, the  
10 Coleman fuel in there before they put the Lithium cause what  
11 did I tell you about Lithium?

12 It's water and air reactive, and if you can get that  
13 covered up with that Coleman fuel it's a little less  
14 reactive. They do that and then take lye, which is basic,  
15 and put it in the bottle too.

16 So, now they've mixed Pseudoephedrine, the ammonia  
17 pills, the Lithium from the batteries, and the lye in this  
18 bottle together with the organic solvent, Coleman fuel,  
19 poured on top of it.

20 Okay. You're gonna see a little bit of a reaction  
21 going on, a little bubbling. That's really not enough force  
22 and they really want it to go fast and strong. So, they  
23 usually top it off with water. Okay. Now, Lithium's water  
24 reactive, remember I told you, and it gets a reaction going.

25 So, what's gonna happen when they mix all that stuff

Beth Stuart - Direct examination  
by Solicitor Holliday

1 together, that little bit of water, it's gonna be what they  
2 call rolling. Rolling and bubbling kind of like what you  
3 would notice if you, when you pour your drain cleaner in the  
4 sink and add water, and you see the smoke and the rolling  
5 and the bubbling. It's kind of that kind of same thing.

6 So, that happens, and in about an hour, they have  
7 what's called meth base. Okay. It's a basic form of meth.  
8 It is not ingestible by the body in that form, but it still  
9 is meth.

10 Okay. So what they have to do next is that organic  
11 liquid I told you about, the Coleman fuel, they have to pour  
12 it off of that bottle into some sort of jar. Well, when  
13 they pour that off, that bottle, what's left are bottles  
14 like these with all that solid down in there, but the meth  
15 is gone.

16 Okay. So, I found three of those in the living room.  
17 This is all that stuff I told you they combined in there,  
18 but they've poured the liquid off of it.

19 Okay. Just to go on with the process in manufacturing,  
20 once they pour the liquid off of it, they take that liquid  
21 and they create what's called an acid gas generator.  
22 Remember the picture I showed you of the thing in the  
23 bathroom that I said pH acidic. They make that acid gas  
24 generator with the tube running out, and they take that  
25 bottle, that's the gas and gas generator with the tube, and

Beth Stuart - Direct examination  
by Solicitor Holliday

1 they run tube into their liquid that they poured off of  
2 their reaction. When they do that, that acid gas makes that  
3 meth fall of that solution into this white powder on the  
4 top.

5 That white powder on top is what's digestible by the  
6 body. That's what put in, what they smoke, snort, shoot-up,  
7 whatever they want to do with it, and that's how it's  
8 manufactured. So, three of these left over one pots, as we  
9 call them, were found in the living room.

10 Q As you leave the living room and go down the hallway  
11 towards the, the bedroom that we keep talking about, we  
12 found this. It's one of those cold packs I told you about  
13 that you're gonna take the ammonia prills out of.

14 Okay.

15 Q You have the exhibit number on that?

16 A I'm very sorry. Exhibit 7.

17 Okay. what we also found going down that hallway --  
18 there's two different pictures of it. This is, this is like  
19 a, the top of -- I don't even remember what this piece of  
20 furniture was. It's some sort of piece of furniture. I'm  
21 kind of one track mind when I'm in there. I'm looking at my  
22 meth lab stuff making sure I'm keeping everybody safe. So,  
23 I don't remember what this furniture was. But on top of it  
24 was a funnel.

25 Q And that was Exhibit Number?

Beth Stuart - Direct examination  
by Solicitor Holliday

1 A It is Exhibit No. 8, and this one is Exhibit No. 9, and  
2 some aluminum foil.

3 Now, why is aluminum foil important?

4 We all have aluminum foil in our house. Well, that  
5 acid gas generator I talked about, to make that reaction a  
6 little more violent when they mix the salt and the acid  
7 together, they might get little chards of aluminum foil in  
8 there. Also, aluminum foil is typically how we see meth  
9 addicts smoke their meth. They'll take a little piece of  
10 aluminum foil and put their meth in it and then they light  
11 the bottom of it, and that's how they smoke their meth.

12 So, that's -- we, we always find aluminum foil and the  
13 funnel.

14 Why is the funnel important?

15 I didn't mention a funnel when I'm talking about  
16 manufacturing.

17 Well, at the end where I told you how they, they made  
18 the white solid fall out solution. Well, that white solid  
19 is sitting on top of the liquid, right, and they got to have  
20 some way. So, they'll put a coffee filter down into a  
21 funnel, do kind of like how you make coffee, you know what I  
22 mean, and then they'll pour the liquid through and now their  
23 white solid will be in the coffee filter.

24 So, we often time find coffee filters and a lot of  
25 times we'll find coffee filters, not in this case, but that

Beth Stuart - Direct examination  
by Solicitor Holliday

1 other meth lab, we'll find coffee filters with solid in it.  
2 Now, we did not in this case, but in other times we have.  
3 So, that's why you'll find coffee filters at the scene and  
4 funnels and things like that.

5       Okay. So, you're going down this, the hallway, and you  
6 go down the hallway and if, if you're kind of walking into  
7 the picture, this is a view from that hallway looking into  
8 that bedroom that we keep talking about where the two people  
9 were that answered the door. I just wanted you to see this  
10 view into their bedroom where they had -- and this appears  
11 to be a couch and things like that, and it is a door and it  
12 does open up into the bedroom. It was opened when I got  
13 there. So --.

14       And then inside---

15 Q     What exhibit number -- I'm sorry.

16       What exhibit number is that?

17 A     Oh, I'm sorry. That was Exhibit 5 and this one is  
18 Exhibit 6. Inside the bedroom, as part of my part, you  
19 know, the only thing of significance I found as far as a  
20 meth lab was they actually had a piece of the aluminum foil  
21 here. That's in the shape of how that you would smoke meth.

22 Q     Okay.

23 A     And I was in that particular bedroom.

24       Okay. The door that the officers keep talking about  
25 that they were standing at when they got there talking to

Beth Stuart - Direct examination  
by Solicitor Holliday

1 the people, right outside that door was a trash can, and I  
2 took a picture of the trash can before I dumped anything out  
3 and that's the picture of the trash can. So, you walk out  
4 their door that they used to enter and exit their bedroom to  
5 the outside, and this is what you see. Right off the bat I  
6 already told you how to manufacture meth.

7 What do you see?

8 You see the wall fed packs for the Pseudoephedrine.  
9 You see the Lithium battery packs. You see some rolled up  
10 pieces of coffee filters, things like that. So, once again,  
11 I know I'm gonna have to dump out this trash and make it  
12 safe and make sure there's nothing---

13 Q That was exhibit number?

14 A That was Exhibit No. 10.

15 So, just to show you what was in the trash, I have some  
16 pictures of what I found in that trash. This is one of the  
17 pictures of what we found in the trash. Once we---

18 Q And what's the exhibit number?

19 A It is Exhibit No. 11. Thank you for continuing to  
20 remind me. Appreciate it.

21 We found needles. Very common cause a lot of times  
22 people will shoot up the meth. We found the  
23 Pseudoephedrine, the blister packs, and the packets, the  
24 Lithium battery cases, and then miscellaneous garbage too.

25 But then also we found, and I'm sorry this picture is

Beth Stuart - Direct examination  
by Solicitor Holliday

1 blurry, and it's Exhibit No. 12, three more of those what I  
2 explained to y'all earlier were one pots, and I know it's  
3 hard to see on the protector, but when you look at the  
4 pictures closer you'll be able to tell. It's -- they're  
5 very pink from that, where the Pseudoephedrine was crushed  
6 up in them. But we also found what was a bottle that pH'd  
7 acidic. So, it too had the acid in it, and then in this  
8 bucket is Lithium pieces, and you can tell I've moved it  
9 away from where I was working over there with the other  
10 pile.

11 So, once again, it's more one pots where more  
12 reactions -- each one pot in a reaction that they've  
13 performed that they've left for us to find in the trash.

14 Also what we saw when we exited, and you've seen these  
15 pictures before.

16 Q What exhibit number is that?

17 A This is Exhibit No. 15, and y'all have seen these  
18 pictures before. This is the stuff on the ground, and, once  
19 again, when you look at the, the picture's closer up, you'll  
20 see -- the solid you see is pink. So, it appears to be  
21 dumped out of a, of a one pot bottle, and I'll just show you  
22 all those again.

23 This one is Exhibit 13. Once again, it's on the  
24 ground. These cases where things are dumped out, I'll try  
25 to neutralize it as much as possible or scoop up the solid.

Beth Stuart - Direct examination  
by solicitor Holliday

1 Q And that exhibit number is?

2 A This one is Exhibit No. 14, and this one was 13.

3 You've seen the pictures of the front of the house.

4 That was just to mark what house it was.

5 Q Okay.

6 A So, that's all the pictures.

7 Q Thank you very much. You may have a seat back up --.

8 A (Witness returns to the stand.)

9 Q So, Ms. Stuart, is it, is the manufacture of  
10 methamphetamine dangerous?

11 A Yes, sir.

12 Q Is it volatile?

13 Could things explode?

14 A Yes, sir.

15 Q would it be safe or recommended to live in a house  
16 where meth, where meth is being manufactured?

17 A No, sir.

18 Q Did you perform a -- well, first off, Pseudoephedrine,  
19 is that an important ingredient in manufacturing  
20 methamphetamine?

21 A It's the main ingredient in the manufacture of  
22 methamphetamine. There are many methods to manufacture  
23 methamphetamine. The one pot being one of them that I  
24 talked to y'all about today. But all of them use  
25 Pseudoephedrine even though they may use other things

Beth Stuart - Direct examination  
by Solicitor Holliday

1 besides Lithium, ammonia pills, they all use  
2 Pseudoephedrine.

3 Q Did you do an analysis to come up with a yield for the  
4 amount of, of methamphetamine that you found at this house?

5 A Yes. Now, just to be clear, I did not actually find  
6 any meth at the house like I could bring you in and show you  
7 in a bag hey, this is meth. Okay. But what I can do -- let  
8 me see if I can explain this to you.

9 There's an equation you can use. Let's say, as a  
10 chemist when I was in graduate school, we might want to make  
11 50-grams of a certain product. Okay. In order to make  
12 50-grams of that product, if I wanted 50-grams of it I had  
13 to know how much of the beginning thing I needed to start  
14 with. Kind of like cooking. If you want to make eight  
15 servings of a chicken dish, and your recipe calls for four  
16 servings of chicken, then you know you need to double the  
17 recipe to get your eight servings, right. I mean it's the  
18 same thing. If you know you want to end with a certain  
19 amount you got to know how much to start with.

20 well, a theoretical equation, what I can do is see how  
21 much starting stuff they had and work my way to how much  
22 product they could of made with that starting stuff or, for  
23 instance, you know you have six breasts of chicken, well  
24 then you only have enough to feed six people if you want --  
25 that's kind of the way that I look at it. It's an equation,

Beth Stuart - Direct examination  
by Solicitor Holliday

1 a real chemist, equation where you use the weights of all  
2 the different compounds in it to determine theoretical  
3 yield.

4 Q Okay. How much Pseudoephedrine did you find at the  
5 residence or empty packages of Pseudoephedrine---

6 A Okay.

7 Q ---that had been there at one time?

8 A Looking back on my notes, we found boxes that the  
9 blister packs would come out of and we find blister packs.  
10 Whenever we do that, I don't count both because, to me, the  
11 blister packs could of come out of the boxes. So, I'll just  
12 choose one thing to count.

13 well, on the meth lab I counted blister packs. So, all  
14 the boxes, I mean you saw them in pictures, but I just  
15 pushed them to the side, and I piled up all my blister  
16 packs, and what I'll do from the blister packs, you'll know  
17 from going to store, cold medicine comes in different  
18 amounts. Like you might buy a pack of 24 where the tablets  
19 are 30-milligrams a piece or you might buy a pack of ten  
20 where the dose is bigger in the tablet. So, I made them  
21 into these separate piles, and actually found 20 blister  
22 packs.

23 Q And blister packs are those things you got to punch  
24 them out?

25 A They're where you've got to pop the -- you know, you

Beth Stuart - Direct examination  
by Solicitor Holliday

1 see them in all medicines, and you pop your tablets out of  
2 the pack. They're called blister packs.

3 So, I actually found 20 of those blister packs that  
4 contained 24 tablets and each tablet had 30-milligrams of  
5 Pseudoephedrine in it, and then I found four blister packs  
6 that would have ten tablets in it, and each of those tablets  
7 would be a weight of 120-milligrams. So, the total  
8 milligram of Pseudoephedrine or starting material that I  
9 found on scene was 19.2 grams or 19,200 milligrams.

10 Q Okay. And if you were gonna take 19,200 milligrams of  
11 Pseudoephedrine --

12 A Uh-huh. (Affirmative).

13 Q -- and attempt to make or manufacture methamphetamine,  
14 through your attempt, how much methamphetamine could you  
15 make?

16 MR. ROBERT HALL: Your Honor, we're gonna object to her  
17 testifying to this. I think we may need to take up a  
18 matter.

19 THE COURT: I'm sorry?

20 MR. ROBERT HALL: We're gonna object to her making a  
21 conclusion here.

22 THE COURT: Just one second please, sir.

23 Madam Forelady, will you take your jury to the jury  
24 room please?

25 (WHEREUPON, the following takes place outside the

Beth Stuart - Direct examination  
by Solicitor Holliday

1 presence of the jury.)

2 MR. ROBERT HALL: Your Honor, we have stipulated that  
3 she's a chemist and she can do those analysis. This is  
4 something totally different. We're in new ground here. I  
5 think I---

6 THE COURT: What ground are we in?

7 MR. ROBERT HALL: That's she is -- this is into the  
8 theoretical yield. I don't know that -- she's not been  
9 certified as an expert in theoretical yield and how all that  
10 works. What I understand a forensic chemist does and  
11 analyst is they test things, and they say this is meth and  
12 this is how much it weighs or this is crack cocaine and this  
13 is how much it weighs. This is coming at something from a  
14 totally different area. They're saying theoretically this  
15 is what they could do. I don't know that we've got some  
16 learned treatise that says you plug these formulas in.

17 THE COURT: Well, let me just say this.

18 MR. ROBERT HALL: Yes, sir.

19 THE COURT: Mr. Holliday, will you lay additional  
20 foundation for her---

21 SOLICITOR HOLLIDAY: Absolutely, Your Honor.

22 THE COURT: ---establishing her criteria.

23 SOLICITOR HOLLIDAY: Absolutely, Your Honor.

24 THE COURT: Okay. I'm gonna overrule your objection---

25 MR. ROBERT HALL: Yes, sir.

Beth Stuart - Direct examination  
by Solicitor Holliday

1 THE COURT: ---subject to him laying the proper  
2 foundation.

3 MR. ROBERT HALL: Thank you, Your Honor.

4 THE COURT: Okay. Everybody ready to proceed?

5 I know we're going a little bit long, but I'm trying to  
6 get through with direct and then maybe we'll break.

7 Also, how many -- you have four witnesses?

8 SOLICITOR HOLLIDAY: Your Honor, I do not intend to  
9 call Investigator Schafer at this time. He may be a  
10 rebuttal witness.

11 THE COURT: Okay. Well, what I was thinking about is  
12 the potential of getting through as much testimony today as  
13 we can, and maybe run a little bit longer so we don't get  
14 stuck here tomorrow afternoon or late Friday. Whatever  
15 y'all want to do.

16 MR. ROBERT HALL: Yes, sir.

17 THE COURT: All right. Would you bring the jury in,  
18 please?

19 (WHEREUPON, the following takes place within the  
20 presence of the jury.)

21 THE COURT: Mr. Holliday.

22 SOLICITOR HOLLIDAY: Yes, sir, Your Honor. Thank you.

23 CONTINUED DIRECT EXAMINATION

24 BY SOLICITOR HOLLIDAY:

25 Q All right, Ms. Stuart. You said you had an

Beth Stuart - Direct examination  
by Solicitor Holliday

1 undergraduate and Master's degrees?

2 A I do.

3 Q What are your degrees in?

4 A Chemistry and biochemistry.

5 Q And as part of earning a Bachelor's Degree and a  
6 Master's Degree in Chemistry, do you ever -- did you ever do  
7 any equations?

8 A Yes, that's their first semester of chemistry in  
9 college.

10 Q Okay. And as part of those equations did you learn how  
11 to multiple and divide and take one item and another item  
12 and figure out, if you put them together, how much the end  
13 result will be?

14 A Entire sections in chemistry.

15 Q So, you've how -- how many courses would you say you've  
16 taken where you used equations to figure out the sum of  
17 multiple parts?

18 A Every chemistry course I've ever taken.

19 Q Have you ever been given a problem in class or in your  
20 course of employment where you had to figure out, if you  
21 took multiple ingredients and you were to combine them, how  
22 much of another ingredient they would yield?

23 A Yes, it's a, it's a core standard. Even if you're not  
24 a chemistry major and you have to take a science, your very  
25 first semester of chemistry, it's all about making equations

Beth Stuart - Direct examination  
by Solicitor Holliday

1 and determining if you put these things together in these  
2 amounts, what amount of your product you get, and how to set  
3 up the equations and reactions. It's a very standard  
4 principle in chemistry.

5 Q And earning a degree in chemistry, would, as a Master's  
6 level degree, would a person who receives that degree be  
7 qualified to give, you know, state how, yields and things of  
8 that such?

9 A Well, not only would I have done it on tests, but  
10 getting a Master's Degree means I had to do research and  
11 graduate work, and to do this research I would have to make  
12 and perform reactions of my own to make the chemicals I  
13 needed from my research, which meant I had to use these  
14 equations, theoretical yields, stoichiometry, in order to  
15 determine how much product I wanted and how much I needed to  
16 start with. So, I used it in actual research settings too.

17 SOLICITOR HOLLIDAY: Your Honor, at this time we would  
18 move to have the witness certified as an expert in chemistry  
19 and specifically in theoretical yield based on chemistry.

20 THE COURT: Any voir dire as to theoretical yields?

21 MR. ROBERT HALL: Yes, sir, Your Honor. Just---

22 THE COURT: Okay.

23 CROSS-EXAMINATION

24 BY MR. ROBERT HALL:

25 Q Did you ever do, produce math in your studies, meth in

Beth Stuart - Cross-examination  
by Mr. Robert Hall

1 your studies, methamphetamine?

2 A I have produced meth. In the DNA methamphetamine  
3 school we actually have to go through the reactions and  
4 methamphetamine and determine yields.

5 Q And how much -- I mean do you use one pill, 20 pills, a  
6 hundred pills when you do this?

7 A In our reaction we chose to do it small scale. I can't  
8 say what everybody does, but in our reaction we did small  
9 scale and used a half a box.

10 Q How much did that produce?

11 A I don't remember what milligram tablets we used. So,  
12 I'd have to go back and look at my math. But I could do --  
13 if you give me right now some milligrams and the number of  
14 tablets and want me to tell you a theoretical yield for it  
15 I'll be more than happy to.

16 Q That's not what I'm asking you. I said -- actually a  
17 lot of the formulas that you use are based on people  
18 performing, using these formulas to produce things, and  
19 that's how, you know, you take this much from -- to go to  
20 cooking, you take this much flour, this much milk, eggs,  
21 salt, some other things, it will make this much of, of a  
22 size of a cake.

23 A Uh-huh. (Affirmative).

24 Q Cause people have experimented to get that to give you  
25 a recipe.

Beth Stuart - Cross-examination  
by Mr. Robert Hall

1 A Okay. When you're producing methamphetamine there is  
2 an equation. It's Pseudoephedrine, plus Lithium, plus  
3 ammonia gas yields methamphetamine.

4 Okay. We call it a one-to-one more Stoikiometri ratio  
5 between Pseudoephedrine and methamphetamine. What that  
6 means is for every mole, which is a extremely scientific  
7 term, of Pseudoephedrine that you put into the reaction, you  
8 get one mole of methamphetamine out. It's a one-to-one mole  
9 reaction.

10 To determine the number of moles that you put in, and  
11 this is all science and chemistry, if you look at a periodic  
12 table, okay, everybody's seen one of those from some of your  
13 time in school, they have elements on there and the elements  
14 have what they call a mass, okay, and it's grams per mole if  
15 you remember that.

16 So, I can take the weight of Pseudoephedrine and do the  
17 math of its mass from the periodic table and tell you how  
18 many moles of Pseudoephedrine I have. I know it's a  
19 one-to-one molar ratio between Pseudoephedrine and  
20 methamphetamine from the equations of how to make meth.  
21 Okay. So then all I need to do is take that amount and do  
22 it times the mass of methamphetamine in order to get how  
23 much methamphetamine is made.

24 Q If I may go to what I'm, my question---

25 A Oh, I'm sorry, sir.

Beth Stuart - Cross-examination  
by Mr. Robert Hall

1 Q The lesson---

2 A I thought I was answering your question.

3 Q No.

4 A Then, sir, I'm sorry.

5 Q Did you start with an amount of Sudafed and other  
6 things and say I should get this much and go through it and  
7 get that much?

8 A You mean did I have one hundred percent yield?

9 Q Did you -- say, in doing the practical part where  
10 you---

11 A Uh-huh. (Affirmative).

12 Q ---start with the ingredients to be able to do the---

13 A I knew how much I started with. I knew how much I  
14 should of gotten, yes.

15 Q That's what I asked.

16 A Yes, sir.

17 Q That's what I was trying to get to.

18 A Yes, sir.

19 Q And how much was that?

20 Do -- you used small amounts. Do you remember what it  
21 was?

22 A Sir, that was years ago. I don't remember what the  
23 exact amounts we used and what I should of got back was, no,  
24 sir.

25 MR. ROBERT HALL: Your Honor, I think we've -- I have

Beth Stuart - Direct examination  
by Solicitor Holliday

1 no more voir dire. I understand what your ruling is, but  
2 still note for the record what our objections are.

3 THE COURT: Ms. Hall, you have any voir dire?

4 MS. CLAIRE HALL: I have no further questions. I just  
5 like to note that, on behalf of Ms. Parkhurst, we join in  
6 Mr. Hall's arguments.

7 THE COURT: Okay. Ladies and gentlemen of the jury,  
8 Ms. Stuart, Doctor Stuart will also be considered an expert  
9 in the field of chemistry to be able to give her opinion in  
10 the area of theoretical yields, and the same information by  
11 an expert. So, you apply that to every expert.

12 Okay. Go ahead.

13 SOLICITOR HOLLIDAY: Thank you, Your Honor.

14 CONTINUED DIRECT EXAMINATION

15 BY SOLICITOR HOLLIDAY:

16 Q All right. Now, if you take the 19,200 milligrams of  
17 either the Sudafed you found or the empty packets of Sudafed  
18 that had been there --

19 A Yes, sir.

20 Q -- and you were going to attempt to manufacture  
21 methamphetamine, and you got a one hundred percent yield --

22 A Uh-huh. (Affirmative).

23 Q -- how much methamphetamine could you manufacture?

24 A 17.67 grams.

25 Q 17.67 grams?

Beth Stuart - Direct examination  
by Solicitor Holliday

- 1 A Yes, sir.
- 2 Q And that's under laboratory conditions?
- 3 A Yes.
- 4 Q Okay. Let's say you only got an 80 percent yield.
- 5 A Okay.
- 6 Q How much methamphetamine could you manufacture?
- 7 A 14.13 grams.
- 8 Q How about a 75 percent yield?
- 9 A 13.25 grams.
- 10 Q How about a 70 percent yield?
- 11 A 12.36 grams.
- 12 Q what about a 65 percent yield?
- 13 A 11.48 grams.
- 14 Q Still more ten grams?
- 15 A Yes, sir.
- 16 Q So, if you, if you were going to get at least a
- 17 two-thirds return on what you put in, you would still
- 18 manufacture more than 10-grams?
- 19 A Yes.
- 20 Q Okay. I have no further questions at this time.
- 21 Please answer any questions defense has.
- 22 THE COURT: Cross-examination.
- 23 A Sure. No problem.
- 24 THE COURT: Cross-examination.
- 25 CROSS-EXAMINATION

Beth Stuart - Cross-examination  
by Mr. Robert Hall

1 BY MR. ROBERT HALL:

2 Q Okay. All right. Let me get something out of the way.  
3 You said, used the term they put, they want to make, they --  
4 you know, those -- they put things here, they did this.

5 You don't know who they is, do you?

6 A There were no suspects on scene when I arrived.

7 Q Okay. Now, let me ask you -- you assume we're gonna  
8 make, ask math questions and the solicitor's been asking  
9 them.

10 But at a 50 percent yield, what would it be?

11 A Sure. 8.83 grams.

12 Q And when you did your studies and you do your work, you  
13 have what would be termed like laboratory conditions?

14 A Yes, sir.

15 Q And there's a -- if you tell the jury what laboratory  
16 conditions would be.

17 A Sure. It means I'm using pure ingredients, pure  
18 chemicals, a hood, real glassware. All the real stuff you  
19 see in, you know, in chemistry labs.

20 Q Like when you use funnels, it's not a plastic funnel,  
21 those type things?

22 A Well, they're still plastic, but yeah.

23 Q This house, if it's a meth lab, it's a miss use of the  
24 word lab, wouldn't it be, in the context of laboratory  
25 conditions?

Beth Stuart - Cross-examination  
by Mr. Robert Hall

1 A Oh, yes, sir.

2 Q And there's no way to tell, from what you had there,  
3 how much they were actually getting from their work?

4 A As in percent yield?

5 Q Yeah.

6 A No, sir.

7 Q Now, if I can -- I don't know how to get all this stuff  
8 up. I'm gonna refer to some photographs. I appreciate it.

9 SOLICITOR HOLLIDAY: Yes, sir.

10 THE COURT: would you help him cut that on, Mr.  
11 Holliday?

12 SOLICITOR HOLLIDAY: Yes, sir, it should be coming up.  
13 Yeah, it's warming up.

14 Q I'm putting in here exhibits, State's Exhibit No. 12.

15 A Move it again. I'm sorry.

16 Q Yes, ma'am.

17 A So I can see it.

18 THE COURT: Come on around. You can step around.

19 WITNESS: Okay.

20 Q Okay. Do you recall which door this is?

21 I think we've established there's four doors in the  
22 house.

23 A If you're looking at the back of the house, I believe,  
24 if my memory serves me, this one is to the right of the door  
25 that they're talking about going in and out of that bedroom.

Beth Stuart - Cross-examination  
by Mr. Robert Hall

- 1 Q Okay. Just a moment.  
2 And number -- State's Exhibit No. 13.  
3 A Uh-huh. (Affirmative).  
4 Q What is this item here?  
5 A It -- a paper towel.  
6 Q Paper towel?  
7 A Yes, sir.  
8 Q Okay. Cause I -- it's just kind of hard to tell how  
9 close or far away they were when this, there's nothing to  
10 --.  
11 A Yes, sir.  
12 Q -- gauge the size.  
13 A Unfortunately, when we take a picture, we're all suited  
14 up trying to --.  
15 Q All right. Thank you, ma'am. That's all I have with  
16 this.  
17 A Thank you. Excuse me.  
18 (Witness returns to the stand.)  
19 Q Do you know if anybody did a property check to see who  
20 owns the house or anything when you went -- at any point in  
21 this investigation?  
22 A I don't have any knowledge of that.  
23 Q Okay. But I believe you testified you found no,  
24 nothing that you've tested that came out and said this is  
25 meth?

Beth Stuart - Cross-examination  
by Mr. Robert Hall

1 A No, I did not.

2 Q Okay. And, again, you don't know who the they is that  
3 did this stuff?

4 A There were no suspects on scene when I got there.

5 MR. ROBERT HALL: All right. I have no further  
6 questions.

7 THE COURT: Ms. Hall, cross-examination.

8 MS. CLAIRE HALL: May it please the Court.

9 CROSS-EXAMINATION

10 BY MS. CLAIRE HALL:

11 Q Ms. Stuart, I think we've established that a  
12 theoretical yield is what you would get in ideal laboratory  
13 conditions?

14 A Not necessarily. You can do percentages of theoretical  
15 yields. For instance, when I do the math, I can do it based  
16 on if you're gonna get a hundred percent or 50 or 85 like --  
17 cause they kept asking me well, what happens if you got 75  
18 percent yield or 50. So, theoretical yield is just  
19 basically how much you can get out depending on what  
20 percentage converts.

21 Q Okay. You're saying a hundred percent --

22 A Yes.

23 Q -- theoretical yield, the first number you gave us --

24 A Yes.

25 Q -- 17.67 grams --

Beth Stuart - Cross-examination  
by Ms. Claire Hall

1 A Yes.

2 Q -- is that assuming ideal laboratory conditions when  
3 you talked about the glassware and in a clean lab and so on?

4 A Yes, sir. Yes, ma'am, I'm sorry.

5 Q And with pure products, et cetera?

6 A Yes, sir.

7 Q Does that also assume the person who is doing the  
8 chemical conversion is a trained chemist like yourself?

9 A I guess, or a trained person.

10 Q In, in a lab, don't -- do you ever have wastes when  
11 you're creating a product, when you're combining different  
12 chemicals?

13 A Yes, there's always waste because, just because  
14 something converts into something doesn't mean you leave  
15 behind what -- like in a reaction, the Pseudoephedrine  
16 changes over, but in Pseudoephedrine tablets, there's -- in  
17 a Pseudoephedrine tablet, the amount of Pseudoephedrine is  
18 only 30-milligrams or 120-milligrams. If that was all that  
19 was in the tablet you couldn't even see it to swallow it.  
20 So, they have to put all kind of fillers and stuff in there,  
21 and the Lithium doesn't get converted. It's just used up  
22 and ammonia's just used up.

23 So, even if 100 percent of the Pseudoephedrine in the  
24 reaction converts to meth, you're still gonna have all that  
25 waste left over. You would in any setting, laboratory or

Beth Stuart - Cross-examination  
by Ms. Claire Hall

1 whatever.

2 Q Is it possible, when you're doing a chemical conversion  
3 or reaction, that not all of the various components react?

4 A You mean like not to make what you're looking for to  
5 begin with?

6 Q Perhaps some of the Pseudoephedrine does not react with  
7 the other ingredients.

8 A That would be possible if you don't put enough of the  
9 other stuff in there or you don't wash it enough times to  
10 get it all out.

11 Q Uh-huh. (Affirmative).

12 A There -- it is possible, yes, not to get a hundred  
13 percent conversion.

14 Q Okay. These -- in some of the photos, they're -- well,  
15 the one in the bathroom---

16 A Uh-huh. (Affirmative).

17 Q -- that was a Coke bottle --

18 A Uh-huh. (Affirmative).

19 Q -- that you said was in one of the final stages --

20 A Uh-huh. (Affirmative).

21 Q -- of off gassing?

22 A Uh-huh. (Affirmative).

23 Q That's definitely not a clean theory you would use in a  
24 lab, correct?

25 A No, but that has nothing to do with the conversion.

Beth Stuart - Cross-examination  
by Ms. Claire Hall

- 1 That's the final step. That doesn't have any  
2 pseudoephedrine or meth in it.
- 3 Q But if I wanted to make a small amount of  
4 methamphetamine in this bottle --
- 5 A Yeah.
- 6 Q -- I've drank all this Coke, but there's still a little  
7 bit in the bottom---
- 8 A Oh, yeah.
- 9 Q ---right?
- 10 A Yes, ma'am.
- 11 Q And would you say the ingredients in Diet Coke are  
12 fairly -- you could maybe, in layman's terms, the vernacular  
13 say chemical?
- 14 A Yes.
- 15 Q Okay. Do you know when these people are using  
16 containers such as this in a meth lab if they wash it out  
17 first or sanitize it?
- 18 A They've never invited me to watch them.
- 19 Q Okay.
- 20 A I wish they would and I would know, but they don't  
21 invite you.
- 22 Q It's not part of your training?
- 23 A No, no.
- 24 Q Okay. Let's see. Do you know how long it takes --
- 25 A Approximately---

Beth Stuart - Cross-examination  
by Ms. Claire Hall

1 Q -- from start to finish?

2 A Approximately an hour.

3 Q To get a product that you can actually use?

4 A You might -- well, some of that -- it takes an hour to  
5 get the meth base inside the original Coke bottle. Then  
6 they have to go back and filter that liquid off, set up the  
7 acid gas generator. So, we always say an hour. Now, how  
8 long they let it sit there before they pour off the liquid  
9 and use the acid gas generator to crash the meth out I can't  
10 tell you. But about an hour is usually what we say.

11 Q Okay. Did you do any sketch of the floor plan of this  
12 house or the property?

13 A No, ma'am.

14 Q I apologize while I take a minute to go back to some of  
15 the photographs that you showed us.

16 Now, you said you used some acid, excuse me, pH  
17 paper---

18 A Yes, ma'am.

19 Q ---in at least a few bottles to test for, if they're  
20 acidic.

21 What did you -- what do you do with the pH paper after  
22 you quit?

23 A It goes into my pile of stuff to be hauled off to waste  
24 --

25 Q Okay.

Beth Stuart - Cross-examination  
by Ms. Claire Hall

- 1 A -- cause at that point it has an acid on it.
- 2 Q Let me see. When is it safe to take anything related  
3 to methamphetamine into evidence?
- 4 A I would say never.
- 5 Q You don't ever take a, the final product?  
6 Is it a powder or is it a white solid?
- 7 A We will take -- if we find a baggy of meth or if we  
8 find a filter paper on scene --
- 9 Q Uh-huh. (Affirmative).
- 10 A -- if we find a filter paper that's got solid it in, I  
11 will do cursory examinations on scene --
- 12 Q Uh-huh. (Affirmative).
- 13 A -- to determine a most likely what it is, a field test  
14 of what it is, and in my field tests, if I believe that to  
15 be a methamphetamine final product, I will take that back  
16 cause at that point it's completed its reactions.
- 17 Q And then it's, it's no longer dangerous to -- unless  
18 you're ingesting it.
- 19 Is that what you're saying or less dangerous?
- 20 A Less dangerous, yes.
- 21 Q Okay. This is State's Exhibit No. 11. It's the photo  
22 of I believe trash contents that were dumped, dumped on the  
23 ground outside the back-door, and you pointed out to us some  
24 batter packaging and blister packs. There also appears to  
25 be at least two prescription pill bottles.

Beth Stuart - Cross-examination  
by Ms. Claire Hall

1 A Uh-huh. (Affirmative).

2 Q Did you find out who those belonged to?

3 A I didn't.

4 Q Okay. Didn't look at the names on them?

5 A I didn't. I don't know if some -- I mean I wasn't the  
6 only investigator out there. But --.

7 Q And these -- this is State's Exhibit 12 where we have  
8 the photo of bottles looks like on the concrete slab/stoop  
9 outside the back-door where the officers initially entered  
10 that you had moved outside for safety?

11 A I think that's another door. That's not the one they  
12 entered because that's like on the other end of the house  
13 and we're kind of staging over there away from where we  
14 were, we were mainly.

15 Q Where, where did you find -- would you remind me where  
16 you found these bottles?

17 A Those were in that trash where---

18 Q They were in a trash can?

19 A The one right outside the bedroom door of the, the  
20 people who were living there.

21 Q Was that trash can outside -- do you mean in another  
22 part of the house or outside in that outdoors?

23 A No, you know the concrete patio that we keep talking  
24 about, the officers were standing on, and they're talking to  
25 the people, it's outside and it's like just a slab of

Beth Stuart - Cross-examination  
by Ms. Claire Hall

1 concrete and there's a door there. And when you open the  
2 door, you're looking into a bedroom, but you're standing  
3 outside, and that trash can was right there beside that  
4 door. So, it's on the outside of the house beside the door  
5 leading to the bedroom.

6 Q Now, were these blister packs, were they all still  
7 containing all the Pseudoephedrine pills?

8 A No, ma'am.

9 Q Were they empty?

10 A They were empty.

11 Q They were all empty?

12 A Yes, ma'am.

13 Q And you said you did not find any finished  
14 methamphetamine product?

15 A No, ma'am.

16 MS. CLAIRE HALL: Okay. Court's indulgence one moment.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 MS. CLAIRE HALL: I have no further questions.

20 THE COURT: Thank you, ma'am.

21 Redirect?

22 SOLICITOR HOLLIDAY: Nothing further, Your Honor.

23 THE COURT: May this witness be excused?

24 SOLICITOR HOLLIDAY: No objection.

25 MS. CLAIRE HALL: I have no objection.

1 MR. ROBERT HALL: No objection.

2 THE COURT: All right. Thank you, ma'am. You may be  
3 excused.

4 All right. Madam Forelady, would you take your jury  
5 back to the jury room?

6 I want to do some scheduling ideas, and while you're  
7 back there, I don't know how many witnesses we have, my idea  
8 was that maybe we work a little bit longer this evening so  
9 we can finish up within a reasonable hour tomorrow. If you  
10 would question your jurors and see if that's suitable. If  
11 it's not, that's certainly okay, and let me know, and if you  
12 just take your jury back to the jury room now please.

13 (WHEREUPON, the following takes place outside the  
14 presence of the jury.)

15 THE COURT: All right. How many more do you have?

16 SOLICITOR HOLLIDAY: Your Honor, that, that, that'd be  
17 it.

18 THE COURT: That's your case?

19 SOLICITOR HOLLIDAY: Yes, sir.

20 THE COURT: Okay. Puts you in a bind over there,  
21 doesn't it, buddy?

22 Not really. Excuse me. Oh, you have one?

23 MR. ROBERT HALL: Yes, sir.

24 THE COURT: That's right. I forgot.

25 Well, let me ask you, would you want to call your

1 witness now and get the testimony over unless your clients  
2 show tomorrow or do you want to go forward and I'm including  
3 you obviously, Ms. Hall.

4 MR. ROBERT HALL: I know he's -- as I referred to the  
5 Court before, I've known of him for a long time. I think  
6 he's got some health issues, and I don't intend for him to  
7 be long on our part.

8 THE COURT: Okay.

9 MR. ROBERT HALL: He's -- just to clear up a few  
10 things. He'll be a short witness.

11 THE COURT: All right.

12 MR. ROBERT HALL: Well, let's take up some motions now  
13 and then we'll go ahead and see what the jury says. If  
14 they're willing to go, let's go ahead and get it done.

15 MR. ROBERT HALL: Okay.

16 SOLICITOR HOLLIDAY: Your Honor, would -- we'll get to  
17 rest in front of the jury when we come back?

18 THE COURT: Sir?

19 SOLICITOR HOLLIDAY: I know I let you know the State  
20 rests its case, but we'll be able to do that in front of the  
21 jury?

22 THE COURT: Oh yeah.

23 MR. ROBERT HALL: All right. Your Honor, we'd make a  
24 motion for directed verdict. The testimony has been  
25 presented that there is some type of something going on in

1 this house, some ingredient in this house that has been  
2 identified as a meth lab with some yield. In optimal  
3 conditions, maybe, to be a little over 17-grams.

4 But the evidence we have has been presented is that  
5 people indicated that they had one room. There's nothing  
6 but maybe a piece of aluminum foil found in that room  
7 that -- there's just -- the nexus is not there connecting  
8 them to the rest of the house. We don't -- technically, at  
9 this point, we don't even know who owns the property, Your  
10 Honor.

11 So, I think the evidence that has been presented is, at  
12 this point, is not sufficient for at least trafficking I  
13 find for enough evidence, for a question for the jury. But  
14 it's certainly the -- it's too speculative to present the  
15 trafficking. So, if we don't have -- if we have enough to  
16 present to the jury, I submit we have -- it would be for  
17 manufacturing as opposed to trafficking.

18 THE COURT: Okay, sir. Ms. Hall.

19 MS. CLAIRE HALL: Your Honor, of course I would join in  
20 Mr. Hall's motion and arguments he's made, and just  
21 reiterate that there's no evidence of who actually owned  
22 this property. There's no evidence of Ms. Parkhurst or Mr.  
23 Cain having a lease on the entire house. We just know what  
24 the officers said that they told them was we live in this  
25 room. There's not -- the officers did not indicate in their

1 testimony that they had any idea or suspicion of a meth lab  
2 until they went into the rest of the house.

3 THE COURT: The officers or the defendants?

4 MS. CLAIRE HALL: The officers --

5 THE COURT: Okay.

6 MS. CLAIRE HALL: -- did not indicate to us in their  
7 testimony that they believed there was any meth lab until  
8 they went into the other part of the house. Your Honor, I  
9 would argue that that does not rise to the level of enough  
10 evidence to present to the jury that these clients were  
11 knowingly engaged in manufacturing or trafficking  
12 methamphetamine, and that merely being in the proximity of  
13 something that appears to be a meth lab is not enough.

14 THE COURT: Okay. Let me do this. Subject to my other  
15 matter I've taken under advisement with regard to the  
16 theoretical yield, I'm gonna deny your motion. I assume  
17 that each of you are adopting the other one's motion for  
18 directed verdict if there---

19 MR. ROBERT HALL: Yes, sir.

20 THE COURT: You're covered on both. One thing I would  
21 point out that, and I want -- I was gonna ask you to address  
22 at least as far as this theoretical yield is the case that  
23 was given to me by Mr. Holliday. It's United States of  
24 America versus Joseph Nelson, and they discussed theoretical  
25 yields. They also discussed the fact, and I'm not candidly,

1 but read it carefully. I've scanned it.

2 But they say that it indicates that even though there  
3 use no finished meth product, if based on the set-up they  
4 had, there was a substantial step, which is what was needed  
5 under the statute for an attempt.

6 MR. ROBERT HALL: Yes, sir.

7 THE COURT: And that's included in the wording of the  
8 statute.

9 would that not be a similar situation through what we  
10 have in our statute?

11 MR. ROBERT HALL: Well, Your Honor, I know there are  
12 some things that we have in South Carolina. We have  
13 diversion and anything federal. But other times in our laws  
14 we have accepted them, and I don't think---

15 THE COURT: Well, let me do this, Mr. Hall.

16 MR. ROBERT HALL: Yes, sir.

17 THE COURT: You just got this case today. Think about  
18 that --

19 MR. ROBERT HALL: Yes, sir.

20 THE COURT: -- and Ms. Hall. And let me just respond.  
21 Give me some arguments on that in the morning.

22 MR. ROBERT HALL: Okay.

23 THE COURT: Is that fair enough?

24 MR. ROBERT HALL: Yes, sir.

25 THE COURT: Okay. Now, anything further from the

1 defense before we bring the jury back in?

2 MR. ROBERT HALL: No, sir.

3 MS. CLAIRE HALL: No, sir.

4 THE COURT: From the State?

5 SOLICITOR HOLLIDAY: No, sir, Your Honor.

6 THE COURT: All right. Would you bring them in please?

7 MR. ROBERT HALL: Oh, Your Honor. I'm sorry. Just one  
8 second.

9 THE COURT: Hold the---

10 MR. ROBERT HALL: I think we need to clarify.

11 Can we wait?

12 THE COURT: Go ahead.

13 MR. ROBERT HALL: But -- I don't know if -- they,  
14 they've pulled the record of Mr. Fowler, and I don't know if  
15 we need to clear up his record before he testifies. As I  
16 inferred or said, stated, he had 1989 trafficking cocaine  
17 conviction that I was involved in, and -- but I think he --  
18 back then, there wasn't the 85 percent. He served 51  
19 percent of his sentence, maxed it out, and he was out. So,  
20 I don't think he's had anything since then.

21 THE COURT: Well, you know, under 609, a drug offense  
22 wouldn't qualify for impeachment purposes anyway.

23 MR. ROBERT HALL: Yes, sir.

24 THE COURT: I mean, based on Pleicones case, Justice  
25 Pleicones case where you have to have some element of

1 dishonesty for it to be probative.

2 SOLICITOR HOLLIDAY: That's correct, Your Honor.

3 There's nothing inside the last ten years or more than a  
4 year or so other than those offenses. I don't think there's  
5 anything we can use.

6 THE COURT: So, we clear?

7 Everybody agrees?

8 MR. ROBERT HALL: Yes, sir, I just wanted to make sure.  
9 I apologize for that.

10 THE COURT: No, no, I'm glad you did that. Thank you.  
11 Are we ready now?

12 MR. ROBERT HALL: Yes, sir.

13 MS. CLAIRE HALL: Yes, sir.

14 THE COURT: All right. Bring the jury in.

15 (WHEREUPON, the following takes place within the  
16 presence of the jury.)

17 THE COURT: All right. Madam Forelady, let me just  
18 tell you this. There -- the State is about to rest its  
19 case, and I'm gonna call that and make sure. But I  
20 anticipate we only have one witness from the defense, which  
21 will not be terribly long.

22 But what -- have you been able to square with your jury  
23 what they want to do as far as finishing up the testimony  
24 today or would you like to go ahead and break today?

25 Either way is fine.

1 FORELADY: I would say the general -- there was concern  
2 that it would be overly lengthy on either day.

3 THE COURT: Right. Let me just say this. I don't  
4 anticipate this is gonna be a very long witness. I would  
5 think we would probably be through, and I'm gonna ask the  
6 lawyers to tell me, but about 5:30 at the latest.

7 Do you disagree with that?

8 MR. ROBERT HALL: I don't think that would be any  
9 problem, Your Honor.

10 SOLICITOR HOLLIDAY: Your Honor, we'll try to keep it  
11 short.

12 THE COURT: If I assured you that we wouldn't extend  
13 past that, do y'all have a problem with that?

14 Does anybody have a problem with children or any other,  
15 other needs outside of this room?

16 And I don't want to put anybody on the spot. So, I  
17 mean really, it doesn't matter if you want to break.

18 FORELADY: If we're finished by 5:30 I think we're  
19 okay---

20 THE COURT: You okay?

21 FORELADY: ---and we can finish today.

22 THE COURT: Now, Mr. Holliday, I told the jury I  
23 thought that the State has ended its evidence.

24 Is that correct?

25 SOLICITOR HOLLIDAY: Yes, sir, Your Honor. At this

1 point in time the State rests its case in chief.

2 THE COURT: Okay. Thank you.

3 All right.

4 MR. ROBERT HALL: Your Honor, the defendant, Charles  
5 Cain, calls Leon Fowler, Senior.

6 LEON FOWLER, SENIOR, being first duly  
7 sworn, testified as follows:

8 THE COURT: All. Mr. Fowler, if you'd speak loudly  
9 please, sir.

10 WITNESS: All right, sir.

11 DIRECT EXAMINATION

12 BY MR. ROBERT HALL:

13 Q All right. You don't need to blow into the microphone,  
14 but if you'll get close to it so they can hear.

15 Tell the jury what your name is.

16 A Leon Fowler.

17 Q And where do you live, Mr. Fowler?

18 A 369 Dakota Street.

19 Q And that's here in Spartanburg?

20 A Yes, sir.

21 Q Is that the trailer that's---

22 A It's the trailer---

23 Q ---that's been referenced to here?

24 A ---behind my house that everybody's talking about.

25 Q Is the trailer and the house the same, part of the same

Leon Fowler - Direct examination  
by Mr. Robert Hall

- 1 property owned by the same person?
- 2 A It's owned by the same person, but it's two different  
3 lots.
- 4 Q Two different lots.
- 5 Okay. Who owns it?
- 6 A My son.
- 7 Q Is that Leon Junior?
- 8 A Yeah.
- 9 Q Okay. And do you recall when this happened back last  
10 year?
- 11 A I think it's been longer than that it seems.
- 12 Q I believe January of 2012?
- 13 A I really can't tell you cause --.
- 14 Q Okay.
- 15 A I've had a couple heart attacks and it's messed my  
16 memory around.
- 17 Q Yes, sir.
- 18 Did -- were you at home when the police were there and  
19 everything?
- 20 A Yes, sir.
- 21 Q Okay. Are you familiar with that house your son owned?
- 22 A Yes, sir.
- 23 Q Okay. And did you know if anybody was staying in the  
24 house at that time?
- 25 A Well, I knowed they was done there, yes.

Leon Fowler - Direct examination  
by Mr. Robert Hall

1 Q Okay. Was that the defendants in this case?

2 A Yes.

3 Q And do you know where in the house they were living,  
4 part of it, all of it?

5 A I thought they was living in that one room. I don't, I  
6 don't really know.

7 Q Was anybody else living in the house to your knowledge?

8 A Not as I know of.

9 Q And I made reference to the particle board and cinder  
10 block.

11 Do you know if -- what did the house start out as?

12 A Well, it was just a block house, and then -- so, he  
13 just added on to it and---

14 Q He -- I'm sorry.

15 A ---it got to---

16 Q Leon Junior?

17 A Yes, sir.

18 Q Little Leon?

19 A Okay. Is that why it had four doors?

20 A Yes, sir.

21 Q Okay. Now, the part that Ms. Cain, Mr. Cain and Ms.  
22 Parkhurst was staying in, is that the old part of the house  
23 or the new part?

24 A The old part.

25 Q The old part.

Leon Fowler - Direct examination  
by Mr. Robert Hall

- 1 All right. Now, you -- do you go into that house at  
2 all?
- 3 A No, sir.
- 4 Q Okay. Do you have a, the trailer behind it?
- 5 A Yes, sir.
- 6 Q All right. And you live there with who?
- 7 A I live there with my grandson most of the time.
- 8 Q Okay. Do you how long Ms. Parkhurst and Mr. Cain were  
9 at that house?
- 10 A Not really. But it wasn't very long. Maybe -- not  
11 over two or three weeks anyway. I really can't tell you.
- 12 Q Okay. Did they come to your trailer for anything?
- 13 A They come up there and asked me could they take a bath  
14 cause there wasn't no water down there, you know, and, of  
15 course, I let them. But I didn't even know them, you know.  
16 I just knowed they was my son's friend.
- 17 Q Okay.
- 18 A So sure.
- 19 Q As far as you know your son rented them that bedroom?
- 20 A Yes, sir.
- 21 Q All right. And as far as you know there was no running  
22 water?
- 23 A No, sir.
- 24 Q Did they have a power cord going to your house?
- 25 A I don't know. My son sometimes he, when he was working

Leon Fowler - Direct examination  
by Mr. Robert Hall

1 on the house he plug up outside my house, you know. So, I  
2 wouldn't even know he was doing it.

3 Q Okay.

4 A He never come there and asked me. Just plugged it up.

5 Q All right. And were -- you know if there was a power  
6 cord hooked up at, back when the police came there?

7 A I -- seemed like it was, but I wouldn't swear to it.

8 Q All right. Did the -- Ms. Parkhurst and Mr. Cain  
9 routinely come there to go to the bathroom, use the  
10 restroom?

11 A Well, they -- yeah, they'd come up there.

12 MR. ROBERT HALL: I have no further questions of this  
13 witness, Your Honor.

14 THE COURT: Thank you.

15 MR. ROBERT HALL: Oh, excuse me. Just one more.

16 Do you have a pit bull?

17 A Yes, sir.

18 Q What color?

19 A Oh, it's a brown and got white swipes on it.

20 Q And how long you had that dog?

21 A Oh, about six years.

22 Q She's friendly, isn't she?

23 A Oh yeah.

24 Q All right. Thank you.

25 THE COURT: Ms. Hall.

Leon Fowler - Cross-examination  
by Ms. Claire Hall

1 MS. CLAIRE HALL: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. CLAIRE HALL:

4 Q Mr. Fowler, on this date in January 2012, did any  
5 officers comes to your home to ask you about any questions  
6 about the house?

7 A Not that I remember.

8 Q You don't remember speaking to anyone?

9 A No, ma'am.

10 Q Okay. Thank you.

11 THE COURT: Yes, ma'am.

12 THE COURT: Mr. Holliday.

13 CROSS-EXAMINATION

14 BY SOLICITOR HOLLIDAY:

15 Q Mr. Fowler, the trailer you live on, how far away is  
16 that from the house where the defendants were staying?

17 A About a hundred foot. Just --.

18 Q And had you ever met them before?

19 A No, I knew their mama and daddy, the Cains you know.  
20 But I hadn't seen them in years.

21 Q Okay. Could you, could you point them out if you saw  
22 them?

23 A They were friends with my son.

24 Q Could you point them out if you saw them in a crowd?

25 A Oh, yeah.

Leon Fowler - Cross-examination  
by Solicitor Holliday

- 1 Q Yeah.  
2 When did you first meet them, the defendants?  
3 Do you know their names?  
4 A No.  
5 Q You don't know their names, but you let them come use  
6 your bathroom?  
7 A Sure. They want to take a bath.  
8 Q So, you just let complete strangers who you don't know  
9 their names come use your bathroom?  
10 A Yes, sir, I'd let you use it.  
11 Q Appreciate that.  
12 Did you ever go into the house?  
13 A Not unless my son asked me to come down there and look  
14 at something he built.  
15 Q Okay. You don't know when the defendants moved in?  
16 You don't even know if they were living there?  
17 A I don't know nothing about it.  
18 Q So, do you know what was going on in the house?  
19 A No, didn't want to know. I know they drank too much  
20 and I wouldn't have that around my grandson. So, I ain't  
21 drink nothing since he was born.  
22 Q Did you know if they used drugs?  
23 A No.  
24 Q Did you know there was a meth lab in the house?  
25 A No, sir.

Leon Fowler - Cross-examination  
by Solicitor Holliday

1 Q You didn't know anything about the house?

2 A No, sir, I wouldn't of been around it.

3 Q No further questions.

4 A Yes, sir.

5 MR. ROBERT HALL: Nothing further.

6 THE COURT: May this witness be excused?

7 MR. ROBERT HALL: Yes, sir.

8 MS. CLAIRE HALL: Yes, Your Honor.

9 MR. ROBERT HALL: We'd ask that he be excused.

10 THE COURT: Thank you, sir.

11 WITNESS: Thank you.

12 THE COURT: All right. Ladies and gentlemen, I'm gonna  
13 go ahead and excuse you for the remainder, for the day. I'm  
14 gonna ask that you be back in your jury room by 9:30, and  
15 we'll resume the case at that time. I also remind you not  
16 to speak with anyone about this case including your spouses  
17 or significant others either directly or on the phone.

18 Okay. Thank you. We'll excuse you for the evening.  
19 Thank you.

20 (WHEREUPON, the following takes place outside the  
21 presence of the jury.)

22 THE COURT: If your clients don't appear, do either one  
23 of you anticipate having additional witnesses?

24 MR. ROBERT HALL: Yes, sir, if they, if they do -- if  
25 we do find them, they could very well---

1 THE COURT: No, if they do not.  
2 MS. CLAIRE HALL: If they do not appear, no.  
3 THE COURT: All right. Let me say something to you,  
4 Ms. Hall. I'm so use to having one attorney instead of two.  
5 It's no slight.  
6 MS. CLAIRE HALL: That's okay.  
7 THE COURT: I'm just so use to it. I apologize.  
8 MS. CLAIRE HALL: And we have the same name. So, I  
9 understand that.  
10 THE COURT: We're off the record.  
11 (WHEREUPON, an off-the-record discussion was held at  
12 this time.)  
13 THE COURT: Guys, see y'all in the morning.  
14  
15 (WHEREUPON, Court was in recess for the evening.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 Friday, March 1<sup>st</sup>, 2013

2  
3 THE COURT: All right, guys. I have my law clerk  
4 preparing a verdict form.

5 Does everybody all agree that the charge will be -- let  
6 me just say, I need to rule on your motion to dismiss. I'm  
7 gonna deny that motion.

8 MR. ROBERT HALL: Yes, sir.

9 THE COURT: Okay, sir. I think you're protected on the  
10 record, but I am denying the motion based on the plain  
11 reading of the statute, and based on the cases of,  
12 persuasive authority that was handed in by Mr. Holliday. I  
13 think theoretical yield would be an appropriate analysis in  
14 this case.

15 Now, with that being said, I jotted down, I'm gonna let  
16 y'all look at it and see what you think, a proposed special  
17 interrogatory to the jury, and it goes basically, you know,  
18 do you find that the State has proven, beyond a reasonable  
19 doubt, that the theoretical yield was 10-grams or more but  
20 less than 28-grams. Yes or no. If yes, then go to question  
21 number two about trafficking cause they could still find  
22 that they're not guilty, and then I have the ultimate  
23 manufacturing after that.

24 MR. ROBERT HALL: Okay.

25 THE COURT: I mean obviously subject to your prior

1 motion, but as far as the way the status of the case is now.

2 MR. ROBERT HALL: Yes, sir, I understand. Yes, sir.

3 THE COURT: Ms. Hall, what do you think?

4 MS. CLAIRE HALL: I just want to make sure I understand  
5 your -- you want to send a special interrogatory where the  
6 jury determines whether or not there will be a theoretical  
7 yield of at least 10-grams?

8 THE COURT: Yes, ma'am.

9 MS. CLAIRE HALL: And that's to establish whether or  
10 not it was trafficking?

11 THE COURT: Correct.

12 MS. CLAIRE HALL: Okay. As long as Your Honor is  
13 charging on --.

14 THE COURT: Manufacturing.

15 MS. CLAIRE HALL: Well, manufacturing as well as the  
16 lesser included. But also, I'm assuming, you'll be charging  
17 on intent. We would request a mere presence charge.

18 THE COURT: Yeah, I tell you---

19 MS. CLAIRE HALL: If you'll cover that basis---

20 THE COURT: In fact, let me do this. I'm gonna go over  
21 my, just my basic structure of my charge with you --

22 MS. CLAIRE HALL: Okay.

23 THE COURT: -- and that way you'll know what I'm gonna  
24 do, and both of you, all three of you, excuse me, I keep  
25 doing that to y'all, are more than welcome to come and look

1 at my actual charge.

2 Have y'all ever tried a case with Judge Hill from  
3 Greenville?

4 MR. ROBERT HALL: No, sir.

5 MS. CLAIRE HALL: No, sir.

6 THE COURT: Okay. Well, I have shamelessly plagiarized  
7 his charge just to be honest with you. I sat with him when  
8 I first started, and I liked it. So, I took it.

9 But my charge is in three parts. The first part, I'll  
10 go through the general rules that define and control the  
11 jury's duties. I will then go through the substantive law,  
12 i.e. what the State must prove in order to make its case out  
13 against the, both defendants, and then, third, I'll go over  
14 some considerations for their deliberations, and I will then  
15 go over the verdict form with the foreperson so that they  
16 know or she knows how to fill it, and I tell them, I  
17 reiterate that they have to make their decision based on the  
18 evidence presented here in this courtroom, and, and  
19 according to the law as I give it to them, and, and they  
20 shall not be concerned with what the law is, but they have  
21 to apply it as I give it to them.

22 They shouldn't be influenced by any personal likes or  
23 dislikes, prejudice, undue sympathy to one side or the  
24 other. I tell them then, following these instructions, they  
25 have to follow all of my instructions. They can't just pick

1 out the things that they may like and apply those and  
2 disregard those that they may not like. And if I've done  
3 anything throughout the course of this trial that seems to  
4 indicate how they're to find facts or the verdict they're to  
5 reach, I'm gonna instruct them that they have to disregard  
6 that cause I assure them I have no feeling one way or the  
7 other, that they and they alone are the judges of the facts.

8       They determine what those facts are by evaluating and  
9 weighing the evidence they heard here in this courtroom  
10 during the trial, and there's no way for me to give them a  
11 scale in a literal sense. It is entirely a mental process  
12 that they go through using their good common sense and sound  
13 judgment.

14       Then I go through and describe for them what is  
15 evidence, and I'll tell them that it's testimony that they  
16 heard from the witness stand, and any exhibits that may be  
17 received into evidence, and that's only, the only categories  
18 that they may consider technically as evidence.

19       Now, what is not evidence is what y'all say. You're --  
20 I remind them that everybody, that lawyers have a duty to  
21 object. And, so, the fact that there may be objections  
22 during this trial shall not be discussed by them, and to the  
23 extent I let them see my ruling, it shall not be considered.  
24 Also I tell them anything that they may have heard while  
25 Court is not in session shall not be considered by them.

1 I then go into direct and circumstantial evidence, and  
2 I define both of them for them, and also give them examples.  
3 Now -- and I'll give you the examples I'm gonna give cause  
4 I've had somebody object to my, my circumstantial example.

5 The direct example, I just say if somebody's sitting on  
6 a corner and they see somebody run a stop light would be an  
7 example of direct evidence.

8 Circumstantial evidence, I tell them there's -- imagine  
9 there being a fresh sheet of snow in their front yard when  
10 they go to bed at night, and they wake up in the morning,  
11 and they're tracks in the snow. They can infer that someone  
12 or something walked through their yard during the night  
13 although they did not actually see that, and that the law  
14 makes no distinction between the two.

15 They're entitled to consider both, and there's not a  
16 greater degree of certainty required of circumstantial  
17 evidence. The only prohibition they have is any inference  
18 they may try to draw from their circumstantial evidence  
19 can't be the conclusion, can't be speculation or just  
20 conjecture.

21 Then I go through and tell them about the credibility  
22 of the witnesses, and give them factors they can consider,  
23 and they can disbelieve all or part or believe all or part  
24 of anybody's testimony. They can believe one over all of  
25 the one or one over the all. And -- but what they don't do

1 is add up the number of people that, excuse me, may testify  
2 for one side or the other in making their determination.

3 Also tell them about expert testimony. Basically what  
4 I told them during the trial.

5 And then I'll remind them that the indictment, the fact  
6 that the defendants both were arrested and charged and  
7 indicted is not evidence of guilt, does not raise a  
8 presumption nor an inference of guilt. It's simply the  
9 documents that we use to bring them to Court.

10 He hasn't gotten it for me, but I also have a charge  
11 that I told them earlier about being, you know, being  
12 absent, trial in the absence charge, and that fact that  
13 there's multiple defendants. They can find one guilty and  
14 not the other, and find both guilty or they can acquit both  
15 of them. They have to separately make their determination  
16 as to each defendant.

17 Then I charge them on presumption of innocence and  
18 reasonable doubt and intent.

19 Now, I wouldn't -- what's your thoughts on the failure  
20 of the defendants to testify?

21 I mean, since they're not here.

22 MR. ROBERT HALL: I would --.

23 THE COURT: We have -- I cover it about them being  
24 here, not being here.

25 MR. ROBERT HALL: Yes, sir.

1 THE COURT: I'll be glad to charge it or not. Whatever  
2 you want me to do.

3 MR. ROBERT HALL: I don't think it's necessary, judge.

4 THE COURT: Okay.

5 MR. ROBERT HALL: I mean---

6 THE COURT: I kind of felt the same way.

7 MR. ROBERT HALL: If they have a right not to be here,  
8 they have a right not to testify, and it's kind of --.

9 THE COURT: Okay. We don't have -- is there any --  
10 there was really no identification issue in this case I can  
11 think of, right?

12 MR. ROBERT HALL: No, sir.

13 THE COURT: Okay. So, that would be that aspect of my  
14 charge. I then give them the charge that I have up here.  
15 I'll let y'all look at it. Then I go through the duty to  
16 deliberate and then I define deliberations and go through  
17 all that, and then I'll go over the verdict form with them.

18 Okay.

19 MR. ROBERT HALL: Did you have mere presence?

20 I think once you went---

21 THE COURT: I don't have mere presence, but I'll be  
22 glad to do it.

23 MR. ROBERT HALL: Yeah, that's what we -- I was talking  
24 to your clerk.

25 THE COURT: I think you're right on that.

1 MR. ROBERT HALL: That's one of the things I think that  
2 was not standard that we would ask for.

3 THE COURT: Let me go back and check with my wayward  
4 law clerk and what he's doing and I'll come back. Here you  
5 go. Here's this if you want to look at it, and I'll get  
6 mere presence, and then the failure, and let me get those so  
7 I can look at them.

8 MR. ROBERT HALL: Okay.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: Here's what I'm gonna do. I'm gonna do two  
11 different, separate forms.

12 (Pause.)

13 THE COURT: All right. I'll be right back. I don't  
14 know what's going on, but I need to find out.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: I have Mr. Cain's verdict form if you want  
17 to see it. It's just like Ms. --.

18 MR. ROBERT HALL: I'm sure it's fine, Your Honor.

19 THE COURT: -- Ms. Parkhurst.

20 MR. ROBERT HALL: At least the defendants have names  
21 very different from Hall.

22 THE COURT: Sir?

23 MR. ROBERT HALL: I said at least the defendants have  
24 names very different from Hall. We got Hall, Hall, and  
25 Holliday.

1 THE COURT: All right. Everybody ready to go?  
2 MR. ROBERT HALL: Yes, sir, Your Honor.  
3 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.  
4 MS. CLAIRE HALL: Yes, sir.  
5 THE COURT: Bring the jury in.  
6 I guess you need to rest, don't you?  
7 MR. ROBERT HALL: Pardon?  
8 THE COURT: Both defendants need to rest.  
9 MS. CLAIRE HALL: Yes, Your Honor. There's no more  
10 testimony.  
11 MR. ROBERT HALL: Yes, sir.  
12 (WHEREUPON, the following takes place within the  
13 presence of the jury.)  
14 THE COURT: Good morning, ladies and gentlemen.  
15 Let me just tell you that I know sometimes when you're  
16 sitting back there in the jury room and you're wondering  
17 what we're doing out here, I always like to try to tell  
18 jurors what's happening so you know what the process is,  
19 what we have been doing. We, we are working. We've been  
20 going over the law that I'm gonna charge y'all in just a few  
21 minutes. So, that's what we've been doing. So, don't think  
22 we're sitting around.  
23 Does the defendants have any further witnesses.  
24 MR. ROBERT HALL: No, Your Honor.  
25 MS. CLAIRE HALL: No, sir.

1 MR. ROBERT HALL: We rest.

2 THE COURT: Very good.

3 All right. Ladies and gentlemen, we had opening  
4 statements. We then had presentation of the evidence. We  
5 have passed both those phases. We will now go into what is  
6 called the closing argument phase of this case. After that,  
7 I will charge you on the law.

8 Is the State ready to proceed?

9 SOLICITOR HOLLIDAY: Yes, sir, Your Honor.

10 THE COURT: Defense ready to proceed?

11 MR. ROBERT HALL: Yes, sir, Your Honor.

12 MS. CLAIRE HALL: Yes, sir.

13 THE COURT: Mr. Holliday.

14 SOLICITOR HOLLIDAY: Your Honor, I believe the defense  
15 gets to go first.

16 THE COURT: Okay.

17 MR. ROBERT HALL: We're not requiring them to open on  
18 the law.

19 THE COURT: Okay. All right.

20 MR. ROBERT HALL: All right. Please the Court,  
21 counsel?

22 THE COURT: Uh-huh. (Affirmative).

23 MR. ROBERT HALL: Solicitor.

24 Madam Forelady, and members of the jury, this is my  
25 last opportunity to be in front of you or summarize what

1 we've seen here yesterday basically.

2 This is not been a very long trial. This is a very  
3 important trial to both the State and to the defendants in  
4 this case or we wouldn't be here.

5 It can seem a little complicated. I like to try to  
6 make things a little less complicated.

7 what we have here is two people charged with  
8 trafficking, making certain amounts of, methamphetamine.  
9 Two things we have in this case. The State has to prove to  
10 you beyond a reasonable doubt that there was a operation. I  
11 think to call it a meth lab is a misnomer. I think it's  
12 inappropriate. A meth making operation cause it certainly  
13 wasn't a lab. That produced methamphetamine and it's the  
14 chemist, Ms. Stuart, who testified to they did this, they  
15 did that.

16 The State must prove, beyond a reasonable doubt, that  
17 the defendants were they. Not that they were just there,  
18 but the defendants were they.

19 The evidence you have before you, we have the  
20 testimony. We have the photographs. We have the one pot  
21 method bottles and events and all that in a house. A house  
22 with four doors, four entrances and exits, one of which the  
23 defendant used. They were there. But they would have to  
24 have control of all that other and be involved in that  
25 operation before, if there was an operation that yielded

1 methamphetamine, before they could be found guilty, be  
2 proved guilty beyond a reasonable doubt.

3       We have two officers who came to serve a bench warrant  
4 on a third party. They went to the door that had the car  
5 closest to it. That happened to be the door where there's a  
6 bedroom, a porch, a bedroom. That's where the defendants  
7 told them we were staying. That's where Mr. Fowler told  
8 them they were staying in that bedroom. No power. No  
9 water.

10       They went to Mr. Fowler's trailer behind it where he  
11 lived because it's like his trailer, but his trailer to go  
12 to the bathroom, take a shower, take a bath. Didn't do it  
13 down there.

14       If this pad is the house, this is the back of the  
15 house, they're back here, the bathroom is up here somewhere.  
16 It's -- the stuff for the meth manufacturing production is  
17 up here. Not over here.

18       Now, the two defendants charged in this case were  
19 there. First, hey, we live here. We don't know about the  
20 rest of the house. We can't just let you go in there.  
21 We've got a warrant. We think the person's here got this  
22 address and we can go in there.

23       Okay. They let them in the rest of the house. They're  
24 not told they have to stay. They're not told that there's  
25 suspicion of anything.

1           They searched that room. They were looking for a  
2 person, but they didn't find anything. They didn't find a  
3 person. They're perfectly free to leave, which they did.

4           The testimony -- and we have the pictures of the pour.  
5 I call it a pour in this area. It looks like a bottle was  
6 poured out that was used in the making of meth. It wasn't  
7 there before we got there. When we walked in it wasn't  
8 there. We would of noticed it. We noticed it when we left.

9           But what happened between those two things?

10          They went into the rest of the house and they saw a  
11 meth lab, what they called a meth lab, a meth production  
12 facility. They had the stuff there.

13          Then they were kind of just heightened what they were  
14 looking for. They came out and they saw it.

15          You know what else was on that porch area where it was  
16 poured out?

17          Remember Beth Stuart testifying. There was that trash  
18 can. You got a picture of it. It's just so obvious and it  
19 was sitting right beside the door on that porch. They  
20 didn't notice that when they went in. They didn't look at  
21 it and say gosh this looks like meth stuff. Maybe they  
22 didn't see that other stuff either.

23          What we have is two unfortunate people who were staying  
24 in a room, in a house that is somewhat under construction.  
25 No power. No water. Staying in one room. Something's

1 going on in the rest of the house.

2 Now, the officer said they blocked their door. They  
3 were staying in one part of the house. He doesn't -- a  
4 couple stayed in one part of the house. Don't have anything  
5 to do with the rest of the house. He blocked it off.  
6 Closed that door. You're not part of that house. You're  
7 free to go about your business. They do. They left.

8 This comes down to some kind of circumstantial  
9 evidence, and I think the judge is gonna charge you on that,  
10 and part of the charge is you have snow on the ground in  
11 your yard when you go to bed and you wake up in the morning  
12 and there's tracks. Someone or something went through  
13 there. Some reasonable assumption.

14 But do you have trees up there?

15 The snow could of fallen down and made it look like  
16 tracks.

17 The circumstantial evidence has to be strong to get you  
18 to the conclusion of guilt. What we have in this case is  
19 could they have been, maybe they could of been. But the  
20 State has to prove, beyond a reasonable doubt, that Ms.  
21 Parkhurst and Mr. Cain were involved in meth production if  
22 you find that there was a meth production going on.

23 What they have shown is that they were there in one  
24 part of the house. They didn't try to hide who they were.  
25 They showed their ID's. They said we got a warrant for

1 this, for somebody at this address. We can go in the house.  
2 They let them into the rest of the house. There's a door  
3 that went in there. Opened that door and let them in.

4 The State has showed you some suspicion. Maybe it's a  
5 strong suspicion that they were involved in something. But  
6 they hadn't carried it beyond a reasonable doubt. There is  
7 nothing connecting it other than that they were there and  
8 there was that pour. We didn't see that pour when we left,  
9 when we came in, but when we came back out we saw it.

10 well, they didn't see the trash can either. Those two  
11 officers, once they saw the vented bottle, this could be a  
12 meth production facility. Again, I won't call it a meth  
13 lab, meth production facility, and then they started looking  
14 around more, and they noticed those things.

15 You can't convict somebody because they left when they  
16 were free to leave, that they just happened to be somewhere  
17 staying, that some of the house may of been used for an  
18 illegal purpose. It's mere presence. It's not enough.

19 Ladies and gentlemen of the jury, when you look at this  
20 case, if you find that there was a production facility, and  
21 you find that yeah, there's credible evidence that it could  
22 of produced some meth, you got to decide how much that meth  
23 was, could of been produced, could of been produced. In  
24 laboratory conditions, they gave you testimony what it could  
25 be.

1           This is not a laboratory. It wasn't laboratory  
2 conditions. It's poor conditions.

3           So, if there was a meth production, how much,  
4 50 percent, 40 percent, 30 percent, 60 percent, we don't  
5 have any evidence to determine that other than it certainly  
6 was not a lab. It was not laboratory conditions. And then  
7 for the particular defendants, even if there was a  
8 production facility going on in there, and something could  
9 of been produced, an amount, the connection is tenuous at  
10 best. It certainly was not beyond a reasonable doubt.

11           On behalf of the defendant, Charles Allen Cain, I ask  
12 you to consider this evidence, weigh it, apply it to the  
13 law, and arrive at a verdict for Mr. Cain of not guilty.

14           Thank you.

15           THE COURT: Ms. Hall.

16           MS. CLAIRE HALL: May it please the Court?

17           THE COURT: Yes, ma'am.

18           MS. CLAIRE HALL: Good morning.

19           The first thing I want to say to you, and I hope you'll  
20 remember this throughout your deliberations, is you are not  
21 here to make a moral judgment about illegal drugs. I think  
22 we can all agree that they're devastating to people who use  
23 them, and for communities where they're found.

24           You're here to determine if the State is proven, beyond  
25 a reasonable doubt, if Tiphani Parkhurst and Charles Cain

1 were trafficking methamphetamine, which means first they  
2 have to have proven to you, beyond a reasonable doubt, that  
3 they were involved in making methamphetamine, and, two,  
4 that, in theory, they could have produced at least 10-grams.

5 From what you heard yesterday, at best, you could  
6 speculate that they were involved in making methamphetamine  
7 and that they could have made 10-grams or more. But first  
8 let's talk about whether or not they were actually involved  
9 in making meth. Not did they know if meth was being made in  
10 close proximity to them or that they should have known, but  
11 were they themselves actually involved.

12 what do we hear?

13 They lived in or -- I don't know if we can even say  
14 lived. We know that they were found in a bedroom in this  
15 house that had its own entrance, that had a door that was  
16 closed off to the rest of the house.

17 Officer Wilbanks testified from the stand it appeared  
18 that they were living in the bedroom, that there was food in  
19 there. There was no water to this house. They went to  
20 Mr. Fowler's trailer to use the bathroom on occasion. No  
21 one investigated who owned this house. No one investigated  
22 if Tiphani Parkhurst or Charles Cain had a lease to this  
23 room or how long they been there or what the nature of their  
24 living situation was. We don't know if they were there  
25 every single night or if they only stayed there sometimes.

1           Also, no one testified about their being any smell of  
2 methamphetamine. whatever that might smell like, but we  
3 know apparently there is a smell involved because Beth  
4 Stuart testified from the stand of the photo of a face mask  
5 that oh, it's smells terrible when you're making meth. So,  
6 people wear these masks and they don't smell it.

7           No officer who was there said they, they smelled  
8 anything, and there was no masks or any meth found or any  
9 ingredients to making meth or implements for making it found  
10 in that bedroom, the only place where we know Tiphani and  
11 Charles were in this house.

12          Beth Stuart testified about the theoretical yield that  
13 she got from her equation based on blister packs found in  
14 the rest of the house. we know that those blister packs  
15 were empty.

16          How long was that trash there?

17          How long was Tiphani and Charles there?

18          What the State is asking you to do is to speculate that  
19 Tiphani and Charles were there, when meth was being made,  
20 and that at least 10-grams could of been made or maybe were  
21 made. This Coke bottle in the bathroom was found. We don't  
22 know if it was, the process was underway or if it was  
23 abandoned or if it was over.

24          Even if you believe that Tiphani Parkhurst and Charles  
25 Cain knew what was going on in the rest of this house, that

1 doesn't make them guilty of trafficking meth. Because,  
2 under the law, you don't have a duty to report criminal  
3 activity, and if it's -- that's enough to find these two  
4 people guilty of trafficking meth, then that means that  
5 you're okay with being held responsible for what your  
6 neighbors may do or perhaps a roommate or a family member  
7 living under your roof doing something you don't know about.

8         Then, secondly, the State has to prove to you that,  
9 based on what was found in the rest of this house, that  
10 Tiphani and Charles could have made, in theory, 10-grams or  
11 more of meth, and we heard that the 17 point however much  
12 grams theoretical yield that could of been made from the  
13 empty blister packs found in the rest of the house is based  
14 on ideal lab conditions, which is what?

15         Not using old Coke bottles and makeshift equipment by  
16 people who have no science training, who are not using pure  
17 ingredients, who haven't been trained by the DEA on how to  
18 make methamphetamine. We heard from Beth Stuart that  
19 anytime you have a chemical reaction there's waste. That  
20 not necessarily every product in the reaction actually  
21 reacts.

22         I ask that you review this evidence very carefully and  
23 think is this enough to find someone guilty of trafficking  
24 methamphetamine solely because they were in the proximity of  
25 some illegal activity that had gone on or perhaps is going

1 on, and, in theory, they could have made 10-grams or more  
2 according to a chemist of what could happen in a lab. I  
3 argue to you that is not enough, and there's plenty of  
4 reason for you to hesitate to find Tiphani Parkhurst guilty  
5 of trafficking, and I ask you to return a not guilty  
6 verdict.

7 Thank you.

8 THE COURT: Mr. Holliday.

9 SOLICITOR HOLLIDAY: Thank you, Your Honor.

10 Ladies and gentlemen, manufacturing meth is dangerous,  
11 and I wish, I wish I could come in here and I can show you  
12 the meth that they made, and I wish I could come in here and  
13 I could show you bottles and the, and the tubes and  
14 everything to help the State prove its case. But I can't do  
15 that because making methamphetamine is dangerous.

16 So, all I've got is these pictures that the officers  
17 took on the scene because, as soon as they take these  
18 pictures, they clean up the meth lab and they dispose of  
19 everything.

20 But what I do have is the testimony of deputies who  
21 came in and found this meth lab, and I've got the testimony  
22 of the chemist, Beth Stuart, who came in and gave a, quite a  
23 good class on methamphetamine. I'll have to admit, before  
24 this trial, I really didn't know that much about the  
25 manufacture of methamphetamine, and after hearing Beth

1 Stuart talk, I'm fascinated of the topic.

2 Matter of fact, when you look as these pictures, it was  
3 quite an elaborate process. Quite an elaborate dangerous,  
4 and I find it hard to believe that someone could be living  
5 in a house and not know that this was going on. I find it  
6 hard to believe that someone could be living in a house and  
7 not, at least, if they're aware of the dangers, be willing  
8 to live there unless they're participating in those dangers.

9 I want to point your attention to I believe it's  
10 State's Exhibit 6, and you'll get to look at this more in  
11 detail when you get back in the jury room. If you look  
12 here, you'll notice that Ms. Stuart testified about the use  
13 of aluminum foil in not only making meth, but in using meth,  
14 and this is in the defendant's bedroom. And you'll notice  
15 there's a little bit of aluminum foil, and we can't really  
16 see it this far away. But when you get back in the jury  
17 room you can take a look at it.

18 But what that indicates is they were using  
19 methamphetamine in the bedroom. And if you're using  
20 methamphetamine, and you're living in a house that's got a  
21 meth lab, I'm willing to bet you're probably part of making  
22 that.

23 Now let's talk about who was living in the house. No  
24 one has come forward to testify, yeah, I was in the house, I  
25 was making that meth. There's been no witnesses brought

1 forth to say anyone else was living in the house for that  
2 matter.

3 Matter of fact, the defense own witness, Mr. Leon  
4 Fowler, came up here and testified that, as far as he knew,  
5 no one else lived in the house. Mr. Fowler was very nice.  
6 He even offered me to go take a bath at his house, and, you  
7 know, I may take him up on that, probably won't, but as far  
8 as he's concerned, no one else lived in that house. He kind  
9 of told two different stories though.

10 On the one hand he says yeah, I let them come take a  
11 bath in my house. I'd let you come back to take a bath in  
12 my house. Then, on the other hand, he says well, my  
13 grandson lives in that house. I never go -- lives in my  
14 trailer. Sorry. I never let my grandson go in that house  
15 because those people drink too much. I don't even know  
16 their name.

17 Which one, which one's the truth?

18 Which one's the real, the real deal?

19 I would submit, and I think that he probably doesn't  
20 know their name, he doesn't want to go in that house, and he  
21 doesn't want to have anything to do with the house cause  
22 there's a meth lab in it.

23 No one else lived in that house that we know of. There  
24 was a meth lab in that house. I don't think there's any  
25 question that that's a meth lab. I think, even through the

1 defense's own questioning, they basically understand yes,  
2 there was a meth lab going on in this house.

3 Let's, let's talk about that. You'll get to see the,  
4 the pictures of the tubing and the pipes and the cold packs  
5 and the Pseudoephedrine.

6 Now, in order to prove that they were manufacturing  
7 methamphetamine, and the State's charged them with  
8 trafficking, which means that they were manufacturing so  
9 much methamphetamine that it rose to a certain level of the  
10 offense, and, in this case, it has to be more than 10-grams.  
11 And, so, Ms. Stuart, who is much smarter than me, and I  
12 usually rely on people who are smarter than me to tell me  
13 things I don't know about, manufacturing methamphetamine  
14 being one of them, she said that if you take the Sudafed,  
15 and she's got formula with moles and stuff in it, and she  
16 can type in how much Sudafed they had or would of had so  
17 that -- I believe her testimony was that she, they didn't  
18 find any Sudafed, that all they found was empty packages,  
19 which means that all the Sudafed had been used up. Either  
20 the defendants had some serious cold and had to use ten or  
21 19,000 milligrams of Pseudoephedrine or they were making  
22 meth. And, so, I would submit to you and I personally think  
23 that they were making meth.

24 In order to prove that they were trafficking meth  
25 though we have to prove that they either attempted,

1 conspired, or actually did, in fact, manufacture more than  
2 10-grams of methamphetamine, and Ms. Stuart talked about the  
3 theoretical yield and what that meant.

4       Theoretical yield is basically if you take  
5 19,000 milligrams of pseudoephedrine, you get 17-grams of  
6 methamphetamine. And, so, at some point, on or about the  
7 date that's charged, we allege and I believe it actually  
8 happened, the defendants made methamphetamine. How much  
9 methamphetamine they made is up for you to decide. But at a  
10 hundred percent theoretical yield, they would of made  
11 17-grams. At -- and y'all remember I asked Ms. Stuart what  
12 about 85 percent, what about at 80 percent, 75, 60 percent.  
13 And even at a 60 percent yield they would still have  
14 produced over 10-grams for a trafficking in amount of  
15 methamphetamine, which is a lot of methamphetamine.

16       Now, the defense is kind of raised the argument well,  
17 these weren't chemist. They weren't laboratory. But you  
18 can go on Google and google instructions on how to make  
19 methamphetamine step-by-step. I really don't think it's  
20 that complicated, and when you see the elaborate laboratory,  
21 for lack of a better term, that they've got going on in  
22 their house, I don't think it's an issue. I think these  
23 people knew what they were doing, and I think that the fact  
24 that they had this elaborate system set up proves that they  
25 knew what they were doing.

1       The defense is raised an issue of well, they were just  
2 at the house. They were merely present. They didn't have  
3 anything to do with this. They were just living in that one  
4 bedroom and that was it.

5       Well, what about the fact that -- all right. The  
6 officers go to the house. They checked their ID. They're  
7 looking for this other guy on this bench warrant, and they,  
8 at first, don't want to let them in the house.

9       Wonder why?

10       Cause there's a meth lab in there. But they don't want  
11 to let them into the house, and eventually they say no, we  
12 have the right to come in and search. So, they searched  
13 their bedroom, and they don't really see the evidence of a  
14 meth lab cause, at that point, they're not looking for a  
15 meth lab. They were looking for a person.

16       But once they go back further into the house, they  
17 discover oh, my goodness, look what we've got here. We  
18 better call in the experts.

19       Well, at that point in time they turn around and go  
20 back out, and the door that they try to get out of is  
21 barricaded. They knock on it, bang on it, and the officer  
22 actually had to kick the door down to get through.

23       Why would you barricade a door to two armed deputies  
24 unless you had something to hide or were trying to get away?

25       Matter of fact, they did get away. They got in their

1 vehicle and they skedaddled. They were not there. They  
2 escaped. They fled. They're gone.

3 And not only do they leave, but on their way out, they  
4 dumped the evidence on the ground.

5 Who knows, maybe there was meth in there. Maybe they  
6 took their meth with them. Maybe that's why we didn't find  
7 methamphetamine. But for some reason, on their way out,  
8 they dumped it, and I believe they dumped it because it's  
9 wet. It was still wet by the time the, the chemist got  
10 there, Beth Stuart, and she took pictures of it. She  
11 testified, and you can even see here on the wood when you  
12 look at the picture, it was still wet. They just dumped the  
13 bottle out here. Maybe they took their meth with them.  
14 Maybe they hid it somewhere. We don't know. We didn't find  
15 any meth. We just have evidence of a meth lab.

16 I wish we had the meth. I wish we had -- could show  
17 you the equipment that they used to make the meth out of,  
18 but that's just the way it is.

19 I've got pictures. I've got testimony. I believe,  
20 when you look at it all, you'll come to the same conclusion.  
21 These defendants were making meth. They were making so much  
22 meth that it rose to the level of trafficking, and I just  
23 ask that you find them guilty and just carry out the truth  
24 and just do the right thing.

25 THE COURT: All right. Madam Forelady, ladies and

1 gentlemen of the jury, my charge will probably be about 25  
2 to 30 minutes. I'll be glad to let you have a break or we  
3 can proceed with my charge.

4 would you poll your jury and see what you want to do?

5 FORELADY: We can continue.

6 THE COURT: Very good.

7 Okay. Ladies and gentlemen, now that you've heard all  
8 the evidence in the case, and you've heard the arguments of  
9 these attorneys, it's my duty to instruct you on the law  
10 which applies to this case. My instruction will be in three  
11 parts.

12 The first part will be the general rules that define  
13 and control your duties as jurors. The second part of my  
14 instructions will be the law that the, that the State  
15 applies or that you must find in this case, i.e. what the  
16 State must prove to make its case. The third part of my  
17 instructions will be some considerations for your  
18 deliberations.

19 If you recall, at the beginning of this case, I told  
20 you that it's your duty to find the facts from the evidence  
21 that's presented here in this courtroom. As to those facts  
22 you must apply the law as I give it to you, and you must  
23 follow the law as I give it to you, and you shall not be  
24 concerned with what you would like it to be or you think it  
25 should be. It's your duty to apply the law as I give it to

1 you, and, again, if I'm incorrect, that will be corrected  
2 down at another place and another time.

3 Also, you must not be influenced by any personal likes  
4 or dislikes or opinions, prejudice, or undue sympathy from  
5 one side or the other. That means that you decide this case  
6 simply on the evidence that's presented here in this  
7 courtroom, and according to the law as I give it to you. In  
8 fact, when you took your oath at the beginning of this trial  
9 you agreed to do just that.

10 Now, following my instructions -- you must follow all  
11 of my instructions. You can't pick out things that you'd  
12 like and apply those and disregard the other aspects of my  
13 instructions that you may not like. They're all equally  
14 important.

15 And, again, I will remind you that if I have done  
16 anything throughout the course of this trial that indicates  
17 to you on what verdict you should have in this matter, I'm  
18 gonna ask you and instruct you to disregard it. I can  
19 assure you I have no feeling about what the verdict should  
20 be. That is not -- I'm not allowed to under the  
21 Constitution. No judge is. This matter is solely up to you  
22 and you and you alone are the judges of what the facts are  
23 in this case.

24 Now, you decide what those facts are by evaluating and  
25 weighing the evidence that you heard during this trial, and

1 there's no way that you can weigh evidence in a literal  
2 sense. I can't give you a set of scales for you to go to  
3 place the evidence on and weigh it. It is entirely a mental  
4 process that you go through, evaluate, and discuss all the  
5 evidence in this case, and you use your good common sense  
6 and sound judgment that you apply to that evidence.

7       So that leads me to what is evidence. Again, the sworn  
8 testimony of the witnesses, whether it was on direct  
9 examination or cross-examination, is evidence. Also, the  
10 exhibits that I have received into evidence is also  
11 evidence, and that is the only two categories that fits into  
12 the technical definition of what constitutes evidence.

13       So, let me tell you what does not constitute evidence.  
14 The arguments and the statements of these fine lawyers is  
15 not evidence. What they say and what they've told you or  
16 their questions throughout this case are designed to help  
17 you understand the case, to point out the issues, and give  
18 you basically a roadmap that you can follow in making your  
19 decision.

20       However, if your memory of the facts in this case  
21 differs from what any of these lawyers tell you, then your  
22 memory will control. Also, let me remind you of the fact  
23 that somebody's notes may say one thing, but somebody's  
24 memory is something else, the notes do not control. That  
25 means you'll have to deliberate the point. If there is a

1 difference of opinion, you discuss all of it and come to a  
2 resolution if you can.

3       Also, the lawyers are required, by their rules of  
4 ethics, to object when they see something going on in a case  
5 they feel like is proper. The fact that a lawyer may have  
6 objected during the course of this trial shall not be  
7 discussed by you and shall not be consideration by you,  
8 considered by you in any form or fashion. That is their  
9 absolute duty and it happens in every single trial. That is  
10 simply the process.

11       Now, finally, ladies and gentlemen, anything that you  
12 may have seen or heard when Court was not in session is not  
13 evidence and may not be considered by you in this matter.

14       In South Carolina, we recognize two types of evidence.  
15 We have direct evidence and we have circumstantial evidence.

16       Direct evidence is this. It is testimony of a person  
17 who asserts or who claims to have actual and direct  
18 knowledge of a fact such as an eye witness. Give you an  
19 example of direct evidence. If I was standing on a street  
20 corner, and a car ran a stop sign right in front of me, that  
21 would be direct evidence cause I viewed it.

22       We also recognize in this state a category known as  
23 circumstantial evidence. Circumstantial evidence is a  
24 little bit more tricky. I'm gonna define it for you and  
25 give you an example of it as well.

1           Circumstantial evidence is proof of a chain of facts  
2 and circumstances from which you can find that another fact  
3 exist although that fact has not been proven directly.  
4 Think about that, and let me give you an example.

5           If you were -- each of you were to go to bed at night  
6 and have a fresh sheet of snow in your front yard when you  
7 went to bed. If you were to wake up in the morning and look  
8 at that snow and see tracks, you may infer that someone or  
9 something walked through your yard during the night although  
10 you did not actually see that occur. That is circumstantial  
11 evidence.

12           I'll tell you that the law makes absolutely no  
13 distinction between the weight or value to be given either  
14 direct or circumstantial evidence. You are entitled to  
15 consider both kinds of evidence, and there's not a higher  
16 degree of proof required for circumstantial evidence to be  
17 considered by you. However, the inference that you draw  
18 from the circumstances may not be speculative or conjecture.  
19 That is the only prohibition.

20           Now, after you have weighed and considered all the  
21 evidence in this case, if you're not considered (sic) of the  
22 guilt of these defendants or either of these defendants  
23 beyond a reasonable doubt, then it will be your duty to find  
24 them not guilty. In defining -- in deciding what the facts  
25 are, it will be essential for you to consider the

1 credibility of the witnesses.

2       In doing this, you have to decide which testimony that  
3 you want to believe and which testimony you choose not to  
4 believe. You have a right to disbelieve all or part of any  
5 witnesses testimony. You may believe all of any witnesses  
6 testimony.

7       In making this determination, of witness credibility,  
8 you may, but you're not required to take into account of the  
9 following factors. You may ask yourselves was the witness  
10 able to see or hear or know the things about which that  
11 witness testified; how well was the witness able to recall  
12 and describe those things, what was the witness' manner on  
13 the witness stand. In other words, what was their demeanor.

14       Also you can ask yourself was there a reason that a  
15 witness would want to give testimony that would help or hurt  
16 one side or the other. Did they have an interest in the  
17 outcome of the case or any bias towards any party or towards  
18 any issue in the case. You can also consider how reasonable  
19 that witness testimony was considered in light of all the  
20 evidence and whether that witnesses testimony was  
21 contradicted by what that witness, witness had said or done  
22 at another time or by other witnesses or by the other  
23 evidence in this case.

24       Now, ladies and gentlemen, those are some but certainly  
25 not all of the factors that you may consider in deciding

1 whether or not to believe any or all of the testimony  
2 presented in this case, and, of course, as jurors, you do  
3 not check your common sense at the door once you're sworn  
4 in, and you should not do so in this case. You should use  
5 those days, those things that in your day-to-day lives that  
6 you find indicative of truthfulness and indicative of lack  
7 of truthfulness in making the determination of credibility.  
8 But one thing you shall not do is to add up the number of  
9 witnesses who may have appeared on behalf of one side or the  
10 other in making that determination cause it does not matter  
11 where the truth comes from. But your sole interest in this  
12 case is to see that truth is done.

13       Also, ladies and gentlemen, you've heard testimony by  
14 persons who have been qualified or described as experts. As  
15 I told you yesterday, people who, by their education or  
16 experience, have become an expert have a right to state  
17 their opinion in the matters in their field of expertise.  
18 Now, expert testimony should be judged just like any other  
19 testimony. You may accept it, you may reject it, or give it  
20 as much weight as you think it deserves considering all the  
21 evidence in this case, the witness' education, and their  
22 experience.

23       Now, ladies and gentlemen, also the fact that these  
24 defendants were charged and arrested and indicted is not  
25 evidence of guilt. These indictments are simply the

1 charging mechanism by which the state of South Carolina  
2 brings criminal defendants before a jury such as yourselves  
3 for a determination of their guilt or innocence. The fact  
4 that these defendants were indicted does not raise an  
5 inference nor a presumption of their guilt.

6 Now, I will charge you that there are two defendants in  
7 this case each of whom is charged with trafficking in  
8 methamphetamine. The case of each defendant and the  
9 evidence and the law concerning that defendant should be  
10 considered separately and individually. Your verdict does  
11 not have to be the same for both defendants. The fact that  
12 you may find one defendant guilty or not guilty should not  
13 control your verdict as to the other defendant.

14 where more than one person is charged with a crime, if  
15 the evidence warrants it, you may convict one and acquit the  
16 other or you may acquit both or you may convict both, excuse  
17 me, or you may convict both. It will be -- it would depend  
18 upon your view of the testimony and the evidence and you  
19 must take each defendant and consider the evidence as to  
20 that defendant and my instructions to you on the law.

21 Now, Madam Forelady, I will give you two separate  
22 verdict forms for each defendant, and you need to consider  
23 each defendant's guilt or innocence independently of one  
24 another.

25 Now, also, ladies and gentlemen, under the laws of this

1 state, a defendant may be tried even if the defendant does  
2 not attend trial. But the fact that the defendant or  
3 defendants is not present may not be considered against that  
4 defendant or defendants in any manner whatsoever. The  
5 burden remains on the State of South Carolina to prove their  
6 case in all respects.

7 Now, mere presence at the scene is not sufficient to  
8 prove someone guilty of a crime. A defendant's presence  
9 where a crime is being committed or mere association with a  
10 person who commits a crime does not make a person, a  
11 defendant an accomplice or an aider and abettor of the  
12 person committing the crime. The burden is on the State to  
13 prove every element of the crime charged. If you find,  
14 after reviewing all the evidence, that the State has proved  
15 that the defendant was only present at the scene of the  
16 crime, and that they have not proved, beyond a reasonable  
17 doubt, any participation in the crime, then you must find  
18 the defendant or defendants not guilty. The law is that  
19 proof of being at the scene of the crime only is not  
20 sufficient to find someone guilty.

21 In fact, ladies and gentlemen, both defendants have  
22 pled not guilty to the charges against them in this matter.  
23 I'll charge you and tell you that a person charged with  
24 committing a criminal offense in South Carolina is never  
25 required to prove himself or herself innocent.

1           Now, I tell you that it is an important rule of law  
2 that a defendant, in a criminal trial, no matter how serious  
3 the crime may be, will always be presumed innocent for the  
4 crime in which they have been charged unless there has been  
5 guilt that proves their guilt, unless there's been evidence  
6 that proves their guilt by proof beyond a reasonable doubt.

7           Now, this presumption, ladies and gentlemen, does not  
8 end when you begin your deliberations. But it accompanies  
9 the defendants throughout the trial until you, the jury,  
10 reach a verdict of guilt based on the evidence that  
11 satisfies you of their guilt or their individual guilt by  
12 proof beyond a reasonable doubt. In the vernacular of the  
13 law, it says that the presumption of innocence is like a  
14 robe of righteousness that is placed about the shoulders of  
15 the defendants that remains there until it has been striped  
16 by evidence satisfying you of their guilt or their  
17 individual guilt by proof beyond a reasonable doubt.

18           Now, ladies and gentlemen, the presumption of innocence  
19 is not a mere legal theory. It's just not a legal phrase.  
20 It is a substantial right to which every defendant is  
21 entitled unless you, the jury, are satisfied from the  
22 evidence of their guilt or individual guilt by proof beyond  
23 a reasonable doubt.

24           Now, that leads me to the definition of reasonable  
25 doubt, and I gave you a short version at the beginning of

1 this case, but I'll give you a little bit longer one now. A  
2 reasonable doubt is the kind of doubt that would cause a  
3 reasonable, sincere, honest, and conscientious person to  
4 hesitate to act in an important matter in their own affairs.  
5 Proof beyond a reasonable doubt is proof that leaves you  
6 firmly convinced of the defendant's guilt.

7 Now, there are very few things in this world that we  
8 know with absolute certainty, and in criminal cases the law  
9 does not require proof that overcomes every possible doubt.  
10 If, based on your consideration of the evidence, you are  
11 firmly convinced that the defendants, plurally or  
12 singularly, are guilty of the crime charged, it would be  
13 your duty to find them guilty. If, on the other hand, you  
14 think there is a real possibility that the defendant or  
15 defendants are not guilty, you must give them the benefit of  
16 the doubt and find them not guilty.

17 A reasonable doubt may arise from the evidence or from  
18 the lack of the evidence, and I further instruct you that a  
19 defendant is entitled to every reasonable doubt that may  
20 arise in the case. Now, what that simply means is this.  
21 If, upon any essential issue to a conviction, conviction,  
22 and a verdict of guilty of an offense charged, if you have  
23 any reasonable doubt as to how that issue should be  
24 resolved, it will be your duty to resolve that issue in  
25 favor of the defendants.

1           Also, ladies and gentlemen, in order to establish  
2 criminal liability criminal intent is required to be  
3 established. For example, the mental state required to be  
4 proven by the State for a particular crime might be purpose,  
5 intent, knowledge, recklessness, or criminal negligence.  
6 Criminal intent must be proven by the State beyond a  
7 reasonable doubt. Criminal intent is always a matter that  
8 must be determined by the jury from the circumstances  
9 surrounding the situation.

10           Now, there's no way to prove intent to a mathematical  
11 certainty. There's no way that medical science can dissect  
12 a person's brain to determine what they had in mind. So,  
13 the law says that criminal intent may be inferred from the  
14 circumstances shown to have existed, and this is how you  
15 make a determination of whether or not the element requiring  
16 intent is present. It is not necessary to establish intent  
17 by direct or positive evidence. But intent may be  
18 established by inference in the same way as any other fact,  
19 by taking into consideration the acts of the parties and all  
20 the facts and circumstances of the case.

21           Criminal intent is a mental state, a conscious  
22 wrongdoing. It's up to you, the jury, to determine what the  
23 defendants or individual defendant intended to do based on  
24 the circumstances shown to have existed. Criminal intent  
25 can arise from action or a failure to act. It may arise

1 from negligence, recklessness, or an difference to a duty or  
2 to the consequences that is considered by the law to be  
3 equivalent to criminal intent.

4 Now, Madam Forelady, ladies and gentlemen of the jury,  
5 those are the general rules that define and control your  
6 duty as jurors. I'm gonna now charge you on the substantive  
7 law that you must apply to the charges in this case.

8 The defendants are charged with trafficking in  
9 methamphetamine. The State must prove, beyond a reasonable  
10 doubt, that the defendants or either of them knowingly sold,  
11 manufactured, cultivated, delivered, purchased, brought into  
12 this state, provided financial assistance, or otherwise  
13 aided, abetted, attempted, or conspired to sell,  
14 manufacture, cultivate, deliver, purchase, or bring into  
15 this state what was knowingly in actual or constructive  
16 possession or attempted to become in actual or constructive  
17 possession of methamphetamine.

18 The State must also prove, beyond a reasonable doubt,  
19 that the amount of the methamphetamine yield was 10-grams or  
20 more, but less than 28-grams.

21 Now, knowingly means with knowledge, consciously, and  
22 not accidentally. To prove possession, the State must  
23 prove, beyond a reasonable doubt, that the defendants or  
24 either of them had both the power and the intent to control  
25 the disposition or use of the methamphetamine. Possession

1 may be either actual or constructive.

2 Actual possession means that the methamphetamine was in  
3 the actual physical custody of the defendants. Constructive  
4 possession means that the defendants had dominion and  
5 control or the right to exercise dominion or control over  
6 either the methamphetamine itself or the property on which  
7 the methamphetamine was found.

8 Mere presence at the scene where the drugs were found  
9 is not enough to prove possession. Actual knowledge of the  
10 presence of methamphetamine is strong evidence of the  
11 defendant's intent to control its disposition or use. The  
12 defendant's knowledge and possession may be inferred when a  
13 substance is found on the property under the defendant's  
14 control. However, this inference is simply an evidentiary  
15 fact to be taken into consideration by you along with the  
16 other evidence in the case and to be given the weight you  
17 decide it should have. Two or more persons, ladies and  
18 gentlemen, may have joint possession of a drug.

19 Now, to deliver means to actually constructively  
20 attempt to transfer the drug. Distribute means to deliver  
21 other than by administering or dispensing a drug.

22 To prove attempt to commit a crime, the State must  
23 prove the defendants committed an overt act. It is  
24 sufficient that the act go far enough toward the  
25 accomplishment of the crime to amount to the commencement of

1 its consummation. while the efficiency of a particular act  
2 depends on the facts of the particular case, the acts must  
3 always amount to more than mere preparation and move  
4 directly toward the commission of the crime. In any event,  
5 it would seem the act need not be the last proximate step  
6 leading to the consummation of the offense. The preparation  
7 consists of devising or arranging the means or measures  
8 necessary for the commission of the crime. The attempt --  
9 the overt act is the direct movement towards the commission  
10 after the preparations are made.

11 Finally, ladies and gentlemen, if you determine that  
12 the State has not proven the charge of trafficking in  
13 methamphetamine beyond a reasonable doubt, you should then  
14 consider whether the State has proven, beyond a reasonable  
15 doubt, that the defendants are guilty of manufacturing  
16 methamphetamine, which is a, which is a lesser included  
17 charge.

18 Manufacturing means to produce, prepare, convert,  
19 process, plant, cultivate, grow, or harvest a drug naturally  
20 or chemically. Manufacturing includes any packaging or  
21 repackaging of the drug or labeling or relabeling of the  
22 drugs container. Possession of equipment or paraphernalia  
23 used in the manufacture of, of methamphetamine is prima  
24 facie evidence of intent to manufacture.

25 Now, Madam Forelady, ladies and gentlemen of the jury,

1 that is the substantive law which you must consider in  
2 making your determination of guilt or innocence of these two  
3 defendants. I'd like now to go over some considerations for  
4 your deliberations.

5 First, deliberation is defined as this. It is a  
6 careful consideration and weighing up with a view toward a  
7 decision. Now, regardless of what you may think about the  
8 judicial system, and our criminal justice system, I would  
9 submit to you that the genius of the system is that it  
10 allows 12 men and women such as yourselves who come from  
11 different walks of life to bring with them different  
12 prospectives and different viewpoints, to listen to the  
13 evidence, to listen to the laws given to you by the Court,  
14 to go through and to thoroughly and courteously discuss all  
15 the evidence and ultimately reach a decision.

16 We call them deliberations for a reason. You should  
17 look at all the evidence very carefully and deliberately and  
18 discuss it in a calm, thorough, and courteous manner.  
19 Remember, you're not partisans or advocates for one side or  
20 the other. You are the judges of the facts. Your sole  
21 interest in this case is to find the truth from the evidence  
22 you heard here in this courtroom.

23 I would ask you and also instruct you that you are to  
24 listen to all the views of your fellow jurors, consider  
25 their points and their points of view, talk to, and talk

1 through and discuss all the evidence. You remember, if  
2 you're doing something deliberately, you should not be in a  
3 big hurry and you should not do that today. This is the  
4 States and these defendants only day in Court.

5 Now, when you retire to your jury room and you discuss  
6 the case with your fellow jurors, in order for your verdict  
7 to stand, it must be unanimous. That means all 12 jurors  
8 must agree to the verdict.

9 With that being said, however, you must decide the case  
10 for yourself and you can only do so after you have  
11 thoroughly and impartially considered all the other  
12 evidence, discussed everyone's points of view, and their  
13 prospectives, and listen to your fellow jurors.

14 Do not be afraid to change your opinion.

15 Do you want me to get you some water?

16 JUROR: Yes, sir.

17 THE COURT: Okay. You okay?

18 JUROR: (Juror nods affirmatively.)

19 THE COURT: Okay. All right. Do not be afraid to  
20 change your opinions if the discussion persuades that you  
21 should change your opinion. On the other hand, do not come  
22 to a decision simply because other jurors think that's the  
23 right thing to do.

24 Again, it is important that you attempt to reach a  
25 unanimous verdict before your verdict stands. But, of

1 course, you can only do that after you have made your own  
2 decision. Do not change an honest view of your belief about  
3 the weight of the evidence simply to reach a verdict. In  
4 other words, don't come to a verdict simply to appease your  
5 fellow jurors.

6 Now, with that being said, I will remind you that your  
7 deliberations of the evidence is confined to the evidence  
8 that is been presented here in this courtroom from the  
9 witness stand and by sworn testimony and by exhibits.

10 Madam Forelady, they're two separate verdict forms  
11 because they're -- each defendant stands trial independently  
12 of one another. The order that I put these in is of no  
13 consequence. I have to put them in some order. So, when  
14 you see them, please do not take any or make any conclusions  
15 as to the order.

16 First, I'm gonna ask that the jury consider what we  
17 call a special interrogatory, and it will be on both verdict  
18 forms. This is the interrogatory. Do you find that the  
19 State proved, beyond a reasonable doubt, that the  
20 theoretical yield of the methamphetamine was 10-grams or  
21 more, but less than 28-grams. If you answer no, then you  
22 would go to number three, which is the last option on this,  
23 on this verdict form. If you answer yes, then you'll go to  
24 section number two, which is the charge of trafficking  
25 methamphetamine.

1           So, we, the jury, under Indictment 2012-GS-44-3135,  
2 unanimously find the defendant either not guilty of  
3 trafficking in methamphetamine or guilty of trafficking in  
4 methamphetamine, methamphetamine. Once you make your  
5 decision, you'll check the applicable space next to the  
6 option that the jury all agrees on, and if you find  
7 trafficking as to either of these defendants, you could sign  
8 the verdict form and would not consider the lesser included  
9 charge.

10           On the other hand, if you do not find that the State  
11 has proven trafficking beyond a reasonable doubt as to  
12 either or both defendants, then you may consider the charge  
13 of manufacturing. Again, if you find trafficking, there's  
14 no need to consider the lesser charge of manufacturing.  
15 Your option under that would be we, the jury, under  
16 Indictment 2012-GS-42-3135 unanimously find the defendant  
17 not guilty of manufacturing or guilty of manufacturing.

18           And also, Madam Forelady, your verdict form is exactly  
19 the same for the other defendant, and that would be  
20 Indictment 2012-GS-42-2547.

21           Now, once the jury reaches a unanimous verdict, I'm  
22 gonna ask that you sign the, each of these verdict forms  
23 separately, knock on the door, and we'll receive your  
24 verdict here in the courtroom.

25           Now, I'm gonna send you back to the jury room right

1 now, but do not begin your deliberations yet. I need to go  
2 over these attorneys whether or not I said something I  
3 shouldn't have said or neglected to tell you something that  
4 I should of told you, and I'm gonna let the alternate  
5 continue back there. But before you begin your  
6 deliberations, I'm gonna ask you step back out in the  
7 courtroom.

8 Okay. But you go to your jury room.

9 (WHEREUPON, the following takes place outside the  
10 presence of the jury.)

11 THE COURT: All right. Any additions or exceptions  
12 form the State?

13 SOLICITOR HOLLIDAY: None from the State, Your Honor.

14 THE COURT: Either defense attorneys?

15 MS. CLAIRE HALL: No, Your Honor.

16 MR. ROBERT HALL: No, Your Honor. Your Honor, just  
17 it's a -- to clarify some things with you. We ruled on our  
18 motions at the time we were, I assume, including directed  
19 verdict motion, at the time we concluded our case. We  
20 didn't renew our directed verdict motion.

21 THE COURT: You know, this morning when I was doing  
22 that I was assuming that's what you were doing at that  
23 point.

24 MR. ROBERT HALL: Yes, sir.

25 THE COURT: But if you wanted to make sure on the

1 record. Obviously we visited that issue, and you may not  
2 have said, said I'll renew, but that's the way I took it for  
3 both of you.

4 MR. ROBERT HALL: Yes, sir.

5 MS. CLAIRE HALL: That was my intent.

6 THE COURT: Right. And both of you were adopting each  
7 one's motions---

8 MR. ROBERT HALL: Yes, sir.

9 MS. CLAIRE HALL: Yes, sir Your Honor.

10 THE COURT: ---for each particular defendant?  
11 Okay. Very well.

12 MR. ROBERT HALL: Thank you.

13 THE COURT: Guys, thank you. Appreciate it. Y'all  
14 tried a nice case and did it efficiently.

15 Would you do two things, let's get the exhibits, and  
16 make sure -- y'all doublecheck your exhibits. Again, once  
17 you take them in there, ask the alternate to come out, and  
18 tell them to begin their deliberations.

19 (Pause.)

20 MR. ROBERT HALL: They're all there.

21 SOLICITOR HOLLIDAY: Your Honor, all the exhibits are  
22 there.

23 THE COURT: Okay. Good.

24 (WHEREUPON, the alternate juror was dismissed at this  
25 time. The jury began deliberations at 10:58AM and returned

1 with a question at 12:17PM.)

2 THE COURT: All right. We got a question. This is the  
3 questions.

4 It says No. 7, 8, and 9, where in the house are these  
5 pictures?

6 No. 5, is this the door that was barricaded?

7 Now, normally I don't ever make any comments on factual  
8 determinations.

9 what would you propose that we do, Mr. Holliday?

10 SOLICITOR HOLLIDAY: Judge, I just think you tell them  
11 they can only consider what's been put in evidence and  
12 nothing more.

13 MR. ROBERT HALL: I agree that evidence has been  
14 presented for their consideration, and we can't---

15 THE COURT: Well -- or we can play where you introduce  
16 those.

17 SOLICITOR HOLLIDAY: We can play the testimony back.

18 THE COURT: If you want to do that, of course, my court  
19 reporter is -- let me just say this. I'm gonna tell them  
20 I'm not allowed to comment on the evidence. However, if you  
21 want me to replay for these introduced, I can do that.  
22 we'll take just a minute to tee it up. That's the only  
23 thing I know to do. I hate to not just send them back and  
24 not say anything to them because it just doesn't seem fair  
25 to them.

1 MR. ROBERT HALL: They have the burden of proof.

2 It's---

3 THE COURT: All right.

4 SOLICITOR HOLLIDAY: I agree, judge. I think that's  
5 what we need to do.

6 THE COURT: Does everybody agree if I told them that  
7 that would be fine?

8 MR. ROBERT HALL: Yes, sir.

9 MS. CLAIRE HALL: Yes, sir.

10 THE COURT: Okay. Bring them in.

11 (WHEREUPON, the following takes place within the  
12 presence of the jury.)

13 THE COURT: Thank you, sir.

14 All right. Madam Forelady, ladies and gentlemen of the  
15 jury, my understanding is the jury has the following  
16 questions. Number 7, 8 and 9, where in the house are these  
17 pictures, and Number 5, is this the door that was  
18 barricaded.

19 Is that, in fact, the jury's question?

20 FORELADY: Yes, sir.

21 THE COURT: All right. Madam Forelady, let me say two  
22 things.

23 First, as I've told you, I'm not allowed to have any  
24 comment on the facts of the case. So, I'm not allowed to  
25 address or answer that question directly.

1           Okay. The second part of that is I can have our court  
2 reporter go back in the record and find where those exhibits  
3 were introduced and explain and let you listen to that if  
4 there's an audio version of the testimony if that's what you  
5 prefer. I'm gonna ask you to do, to check with your jury  
6 and see if that's what they want.

7           FORELADY: Yes, sir.

8           THE COURT: Okay. It will take us a few minutes. So,  
9 I'm gonna ask you to go back to your jury room. Stop your  
10 deliberations now till we get this up and then we'll bring  
11 you back out.

12          Okay.

13          FORELADY: Thank you.

14          (WHEREUPON, the following takes place outside the  
15 presence of the jury.)

16          THE COURT: All right. Any additions or exceptions to  
17 my instructions to the jury?

18          SOLICITOR HOLLIDAY: None from the State, Your Honor.

19          MS. CLAIRE HALL: None, Your Honor.

20          MR. ROBERT HALL: No, Your Honor.

21          THE COURT: All right. Very good.

22          (Pause.)

23          THE COURT: Bring them in.

24          (WHEREUPON, the following takes place within the  
25 presence of the jury.)

1 THE COURT: Ladies and gentlemen, thank you. It takes  
2 a little while to round this up.

3 Madam Court Reporter, are you ready?

4 COURT REPORTER: Yes, sir.

5 (WHEREUPON, a portion of the testimony was played back  
6 for the jury at this time.)

7 THE COURT: Does that answer your question, Madam  
8 Forelady?

9 FORELADY: It does.

10 THE COURT: I am gonna check with the lawyers and make  
11 sure I didn't do anything wrong. So, if you'd go back to  
12 your jury room, and we'll send you word to go ahead and  
13 start back.

14 Okay.

15 (WHEREUPON, the following takes place outside the  
16 presence of the jury.)

17 THE COURT: All right. Any additions or exceptions  
18 from the State?

19 SOLICITOR HOLLIDAY: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. ROBERT HALL: None, Your Honor.

22 MS. CLAIRE HALL: None, Your Honor.

23 THE COURT: Okay. Tell them to resume their  
24 deliberations.

25 (WHEREUPON, the jury began deliberations again at

1 12:21PM and returned with a verdict at 12:35PM.)

2 THE COURT: I hear we have a verdict.

3 would you bring the jury in please?

4 (WHEREUPON, the following takes place within the  
5 presence of the jury.)

6 THE COURT: Madam Forelady, my understanding is the  
7 jury has reached a verdict, is that correct?

8 FORELADY: Yes, we have.

9 THE COURT: Is it unanimous?

10 FORELADY: Yes, it is.

11 THE COURT: would you pass the form to the bailiff  
12 please, ma'am?

13 (Forelady complies.)

14 THE COURT: Very good.

15 would you publish the verdict please, verdicts?

16 CLERK: State of South Carolina, County of Spartanburg,  
17 in the Court of General Sessions, the State of South  
18 Carolina versus Tiphani M. Parkhurst, it says do you, do you  
19 find that the State proved, beyond a reasonable doubt, that  
20 the theoretical yield of the methamphetamine was 10-grams or  
21 more, but less than 28-grams.

22 The answer is yes.

23 we, the jury, under Indictment Number 2012-GS-42-2546,  
24 unanimously find for the defendant guilty of trafficking in  
25 methamphetamine. It is signed by the foreperson and dated

1 today's date.

2 State of South Carolina, County of Spartanburg, in the  
3 Court of General Sessions, the State of South Carolina  
4 versus Charles Allen Cain, do you find that the State  
5 proved, beyond a reasonable doubt, that the theoretical  
6 yield of methamphetamine was 10-grams or more, but less than  
7 28-grams.

8 Yes.

9 We, the jury, under Indictment Number 2012-GS-42-3135,  
10 unanimously find the defendant guilty of trafficking in  
11 methamphetamine. It is signed by the foreperson and dated  
12 today's date.

13 Ladies and gentlemen of the jury, if this is your  
14 verdict and still your verdict, please raise your  
15 right-hand.

16 (WHEREUPON, all jurors raise their hands at this time.)

17 CLERK: So say you-all.

18 THE COURT: Let the record reflect that all 12 jurors  
19 raised their right-hand.

20 (WHEREUPON, the jury was dismissed at this time.)

21 THE COURT: All right. Does defense counsel wish to  
22 file written motions or do you wish to make your post-trial  
23 motions now?

24 MR. ROBERT HALL: I think we make them now, Your Honor.

25 MS. CLAIRE HALL: Yeah, you do.

1 THE COURT: Okay.

2 MR. ROBERT HALL: Your Honor, on behalf of Mr. Cain,  
3 I'd make a motion for a new trial. The case was basically  
4 circumstantial against them, and we just don't feel there's  
5 enough evidence to support the jury's verdict.

6 MS. CLAIRE HALL: Your Honor, I would join in  
7 Mr. Hall's motion on behalf of Ms. Parkhurst.

8 THE COURT: All right. Thank you. Those motions were  
9 denied.

10 And my understanding, ladies and gentlemen, is that  
11 when I have a trial in absence I just sentence them and seal  
12 it, and sign it, and then when he gets caught or they get  
13 caught, then they'll be read the verdict.

14 SOLICITOR HOLLIDAY: Yes, sir.

15 THE COURT: Is that right?

16 Okay. I'm gonna place on there, unless y'all think I  
17 shouldn't, that any Circuit Court judge can open and read  
18 the verdict.

19 SOLICITOR HOLLIDAY: That's fine.

20 THE COURT: Usually they don't come back to us.

21 SOLICITOR HOLLIDAY: No objection.

22 THE COURT: Thank you, guys.

23 (Pause.)

24 THE COURT: What is the range on these?

25 SOLICITOR HOLLIDAY: Three to ten, Your Honor.

1 THE COURT: Three to ten.

2 Okay. We have it here, Madam Clerk.

3 SOLICITOR HOLLIDAY: Judge, do you want their prior  
4 record?

5 THE COURT: Yeah, I think I heard one of the jurors  
6 holler hold it. Y'all hang on for one second.

7 SOLICITOR HOLLIDAY: Oh, sure.

8 (Pause.)

9 THE COURT: Tell me about Ms. Parkhurst first.

10 SOLICITOR HOLLIDAY: Ms. Parkhurst, Your Honor, her  
11 prior convictions are 2005 shoplifting, and 2005 possession  
12 of drug paraphernalia.

13 THE COURT: That's it?

14 SOLICITOR HOLLIDAY: That's it.

15 THE COURT: All right. Ms. Hall, what do you, you --  
16 anything you want to add to what you've told me already?

17 MS. CLAIRE HALL: Your Honor, I would just request  
18 that, based on her lack of any serious record, that you  
19 would sentence her to the minimum possible under the law.

20 THE COURT: Okay.

21 Okay. Tell me about Mr. Cain.

22 SOLICITOR HOLLIDAY: Your Honor, Mr. Cain has a  
23 '97 possession of marijuana.

24 '98, fifteen counts of fraud check, public disorderly  
25 conduct, possession of marijuana, driving under suspension,

1 false information, and grand larceny.

2 '99, driving under suspension, and habitual traffic  
3 offender.

4 2005, six counts of burglary third.

5 2008, two counts of third property offense.

6 2011, public disorderly conduct.

7 THE COURT: Okay, sir. Anything you want to tell me?

8 MR. ROBERT HALL: Yes, sir, he -- I'd spoken with him  
9 about the 2005 conviction for those burglaries, Your Honor.  
10 She says that's not him.

11 THE COURT: I hate it for him.

12 MR. ROBERT HALL: Well, Your Honor, that's in Greenwood  
13 County. All his other record is in Spartanburg County. He  
14 received a five year sentence. He was arrested---

15 THE COURT: Let me just tell I'm gonna treat it as if  
16 it is him.

17 MR. ROBERT HALL: Okay.

18 THE COURT: When he's here, he's arrested, he can  
19 contest it then.

20 MR. ROBERT HALL: I don't know who's gonna be doing  
21 this once we do find him, but he was arrested in 2006 and  
22 2007 while he would of been -- I think after -- he got  
23 the -- excuse me. He got sentenced in 2000 or those or  
24 whoever it was got sentenced in 2007, and it looks like he  
25 was arrested while he should of been serving that sentence

1 in 2008 and stuff, Your Honor. But it's -- he did contest  
2 that. He does have one child, 15-year old son, and I think  
3 he and Ms. Parkhurst have one on the way.

4 THE COURT: Okay, sir.

5 (Pause.)

6 THE COURT: All right, guys. Thank you so much. I  
7 appreciate your professionalism, and I've always -- as  
8 always, enjoyed Spartanburg County.

9 MR. ROBERT HALL: Thank you, Your Honor.

10 MS. CLAIRE HALL: Thank you.

11 SOLICITOR HOLLIDAY: Thank you, Your Honor.

12 (WHEREUPON, two notes from the jury were marked as  
13 Court's Exhibit Nos. 3 and 4 for identification purposes  
14 only at this time.)

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17 \* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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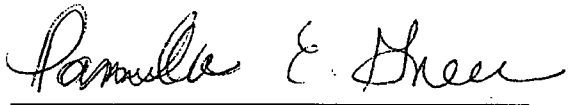
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 28<sup>th</sup> day of February and the 1<sup>st</sup> day of March, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 3<sup>rd</sup>, 2013



PAMELA E. GREEN, Court Reporter



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INDEX

PAGE

Sentence	3
Certificate of reporter	5

NO EXHIBITS INTRODUCED

1 THE COURT: Alright, let's do Ms. Parkhurst. It says  
2 March the 1st first I believe based on the sentencing sheet is  
3 when the jury found Ms. Parkhurst guilty in her absence?

4 MS. HALL: I have February 29th.

5 THE COURT: Okay, ---

6 MR. HALL: But that ---

7 THE COURT: --- that was beginning, is it, a couple day  
8 trial?

9 MR. HALL: It be March 1st.

10 THE COURT: Either way, ---

11 MS. HALL: I'm sorry.

12 THE COURT: --- Ms. Parkhurst, the the trial was had in  
13 your absence, you were found guilty by a jury of trafficking  
14 methamphetamine 10 to 28 grams grams first offense. Your  
15 attorney appeared and and defended you on your behalf and also  
16 gave me your background information at the time I filled out  
17 the sentencing sheet, this stage I don't need to hear anything  
18 further. The sentence that I gave you back in March of this  
19 year on March 1st is 5 years suspended on 3 years and 40  
20 months probation. During your probation you'll be subject to  
21 random drug and alcohol testing, substance abuse counseling.  
22 Good luck to you. How much time does she need to get credit  
23 for, counsel?

24 MS. HALL: Um, Your Honor, she was picked up on the bench  
25 warrant, um, I believe it was about two weeks ago.

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(Attorney/client discussion held off the record.)

THE COURT: I'll just mark credit for time served and we just need to put that in, okay?

MS. HALL: I can get ya the exact time.

THE COURT: Okay. Alright, Mr. Cain, you were likewise found guilty in trial in your absence, your attorney appeared, defended you as well and gave me your background information. The State gave me your prior record, because yours was much more severe than Ms. Parkhurst I sentenced you to 10 years straight up. Good luck to you.

MR. HOLLIDAY: Thank you, Your Honor.

MS. HALL: Thank you, Your Honor.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 11, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 4, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

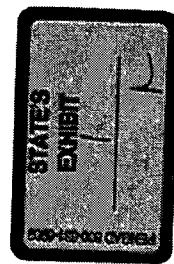
I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

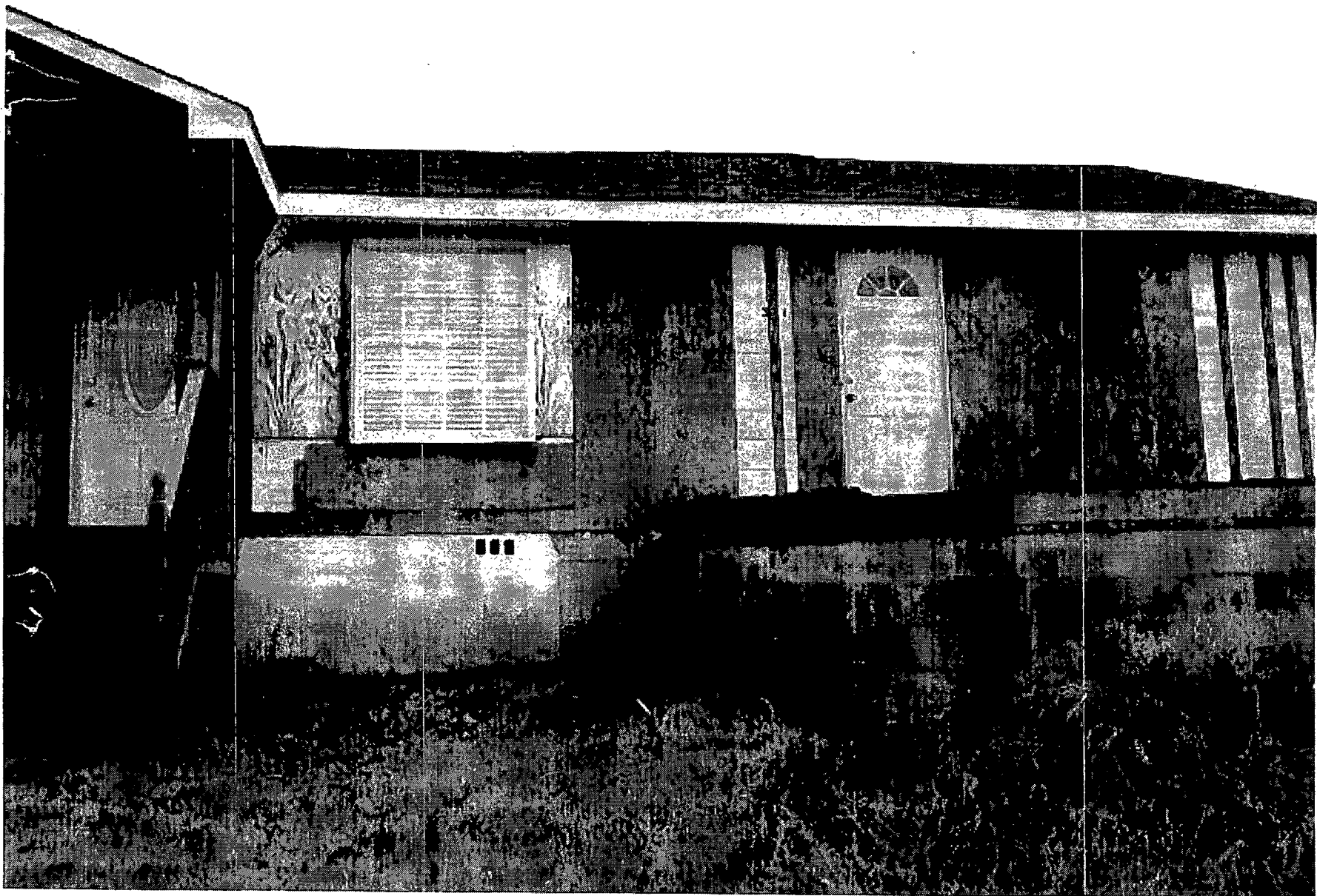
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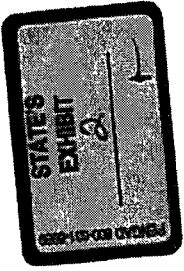
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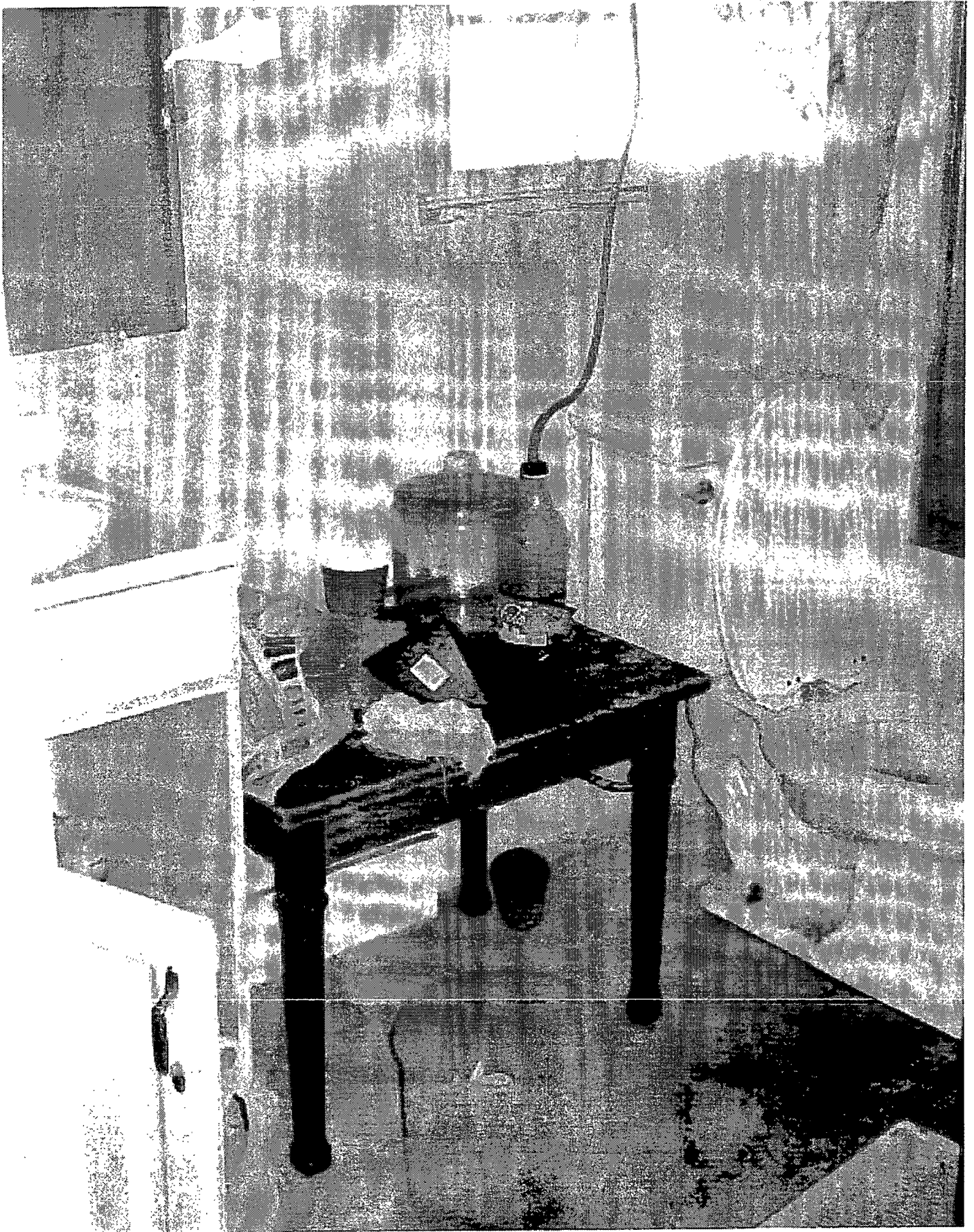
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in and for the State of South Carolina at Large.

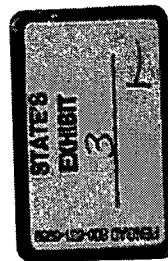




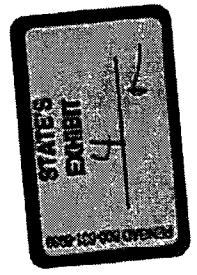


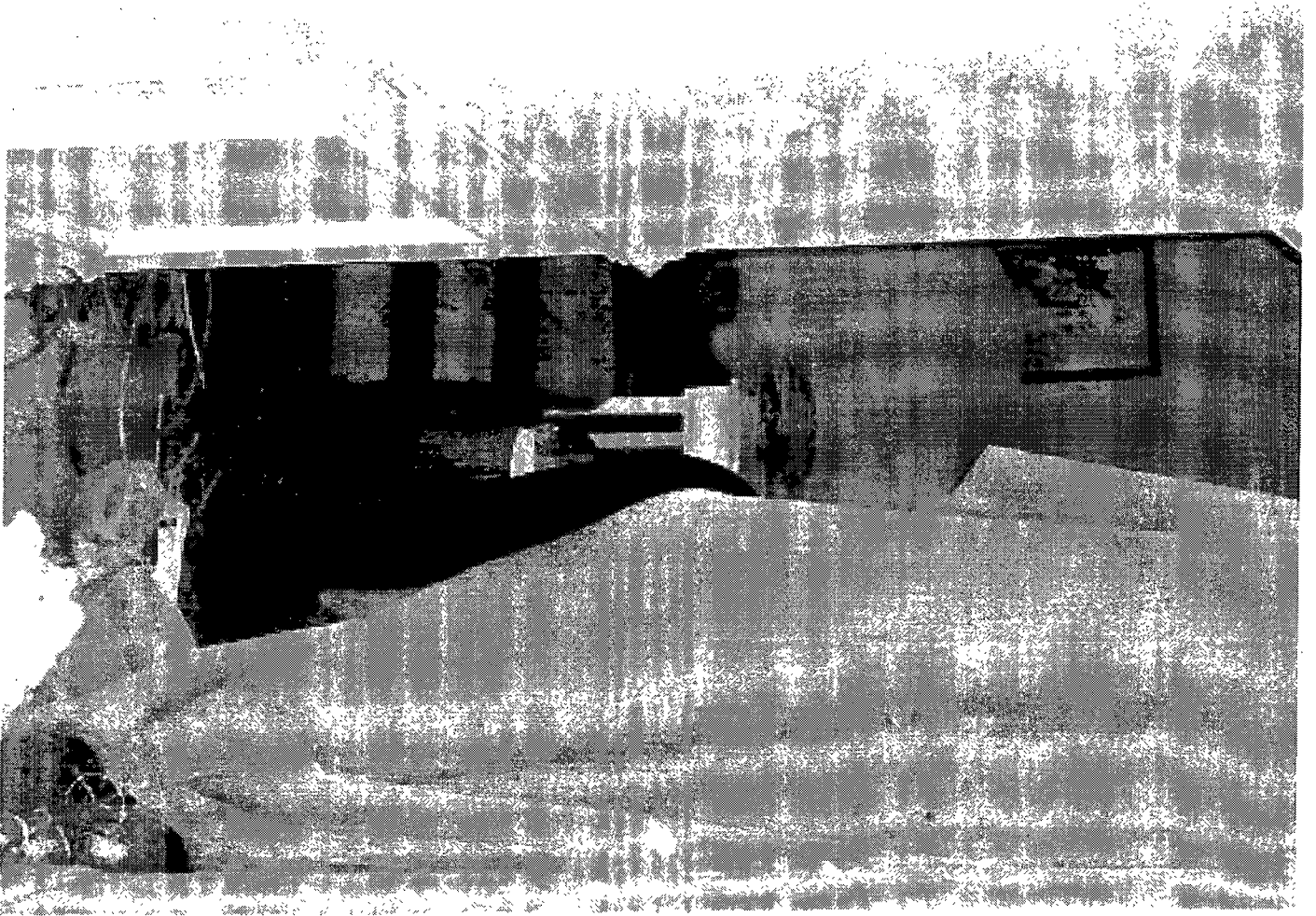




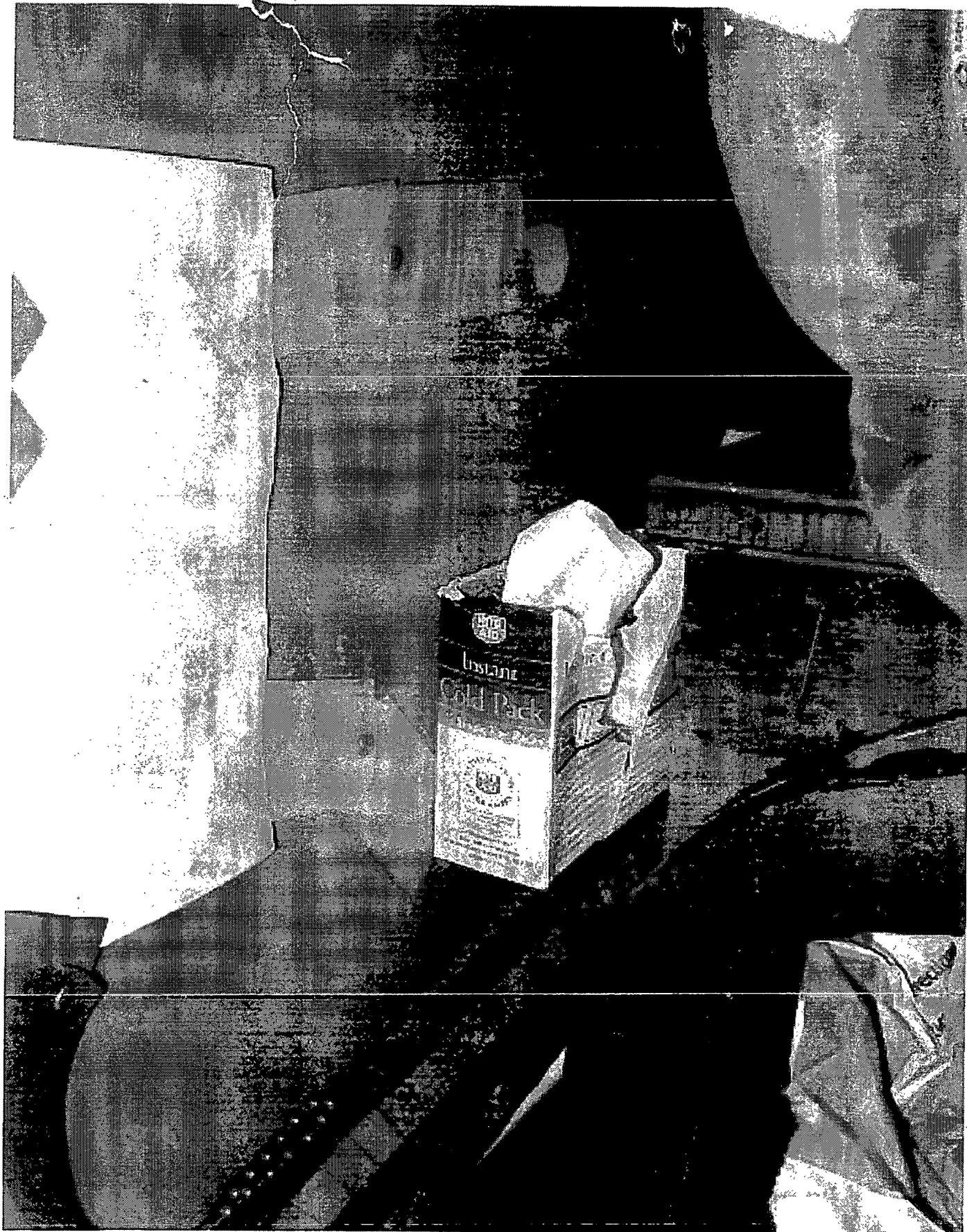


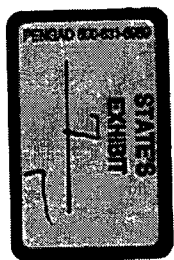




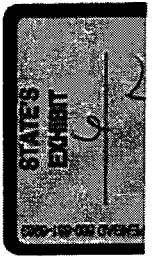


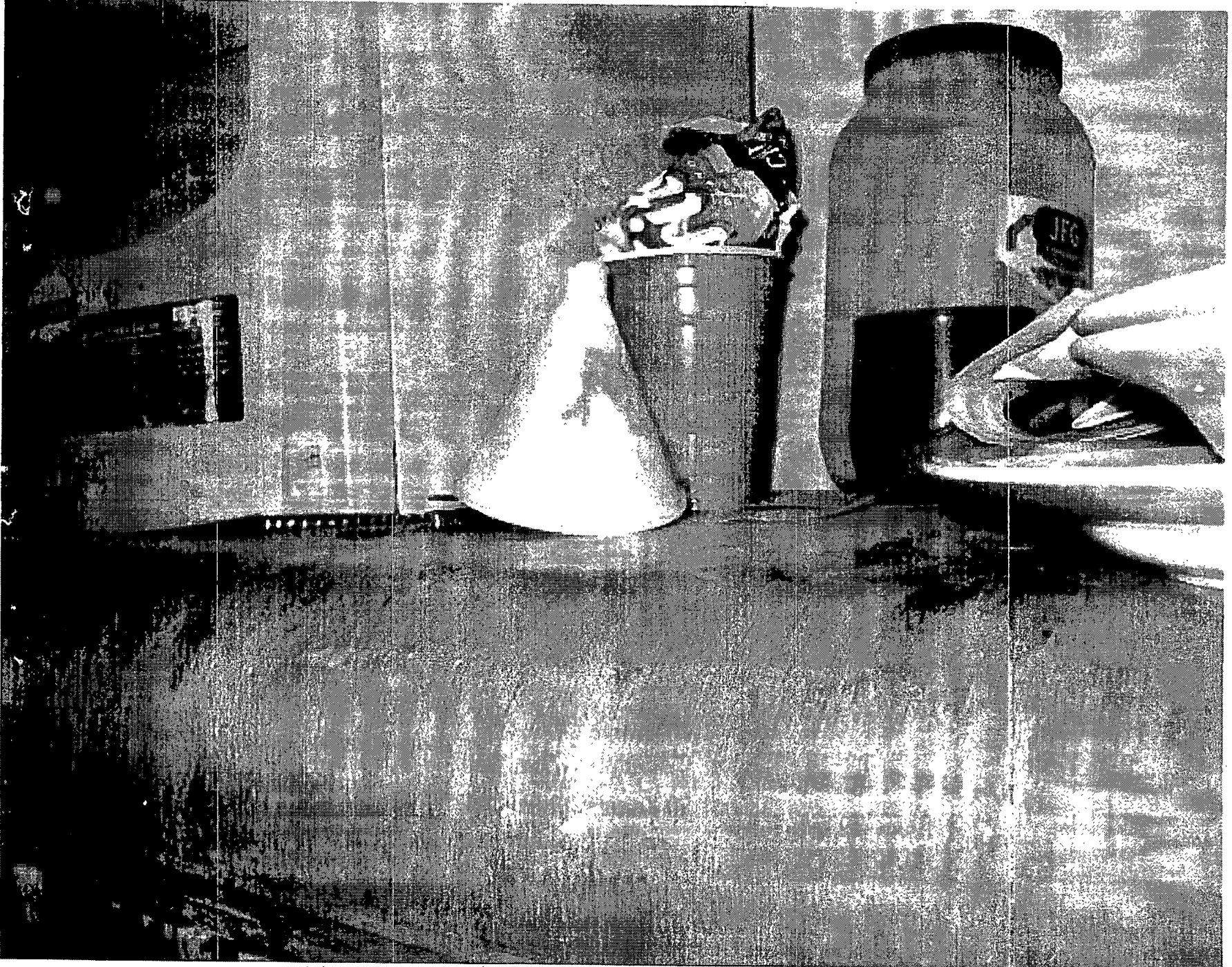


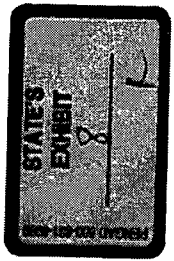


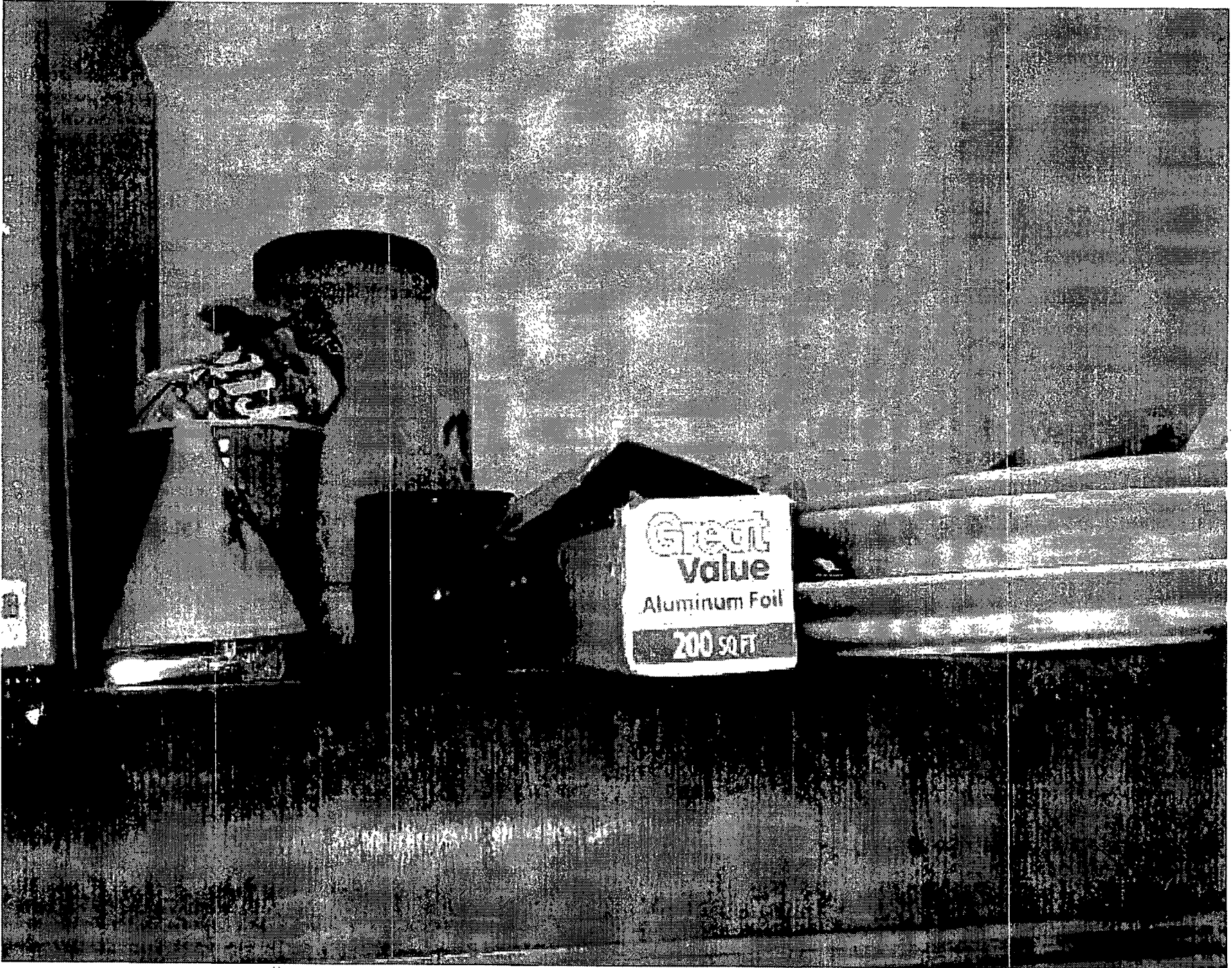


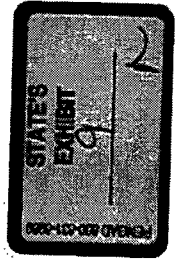


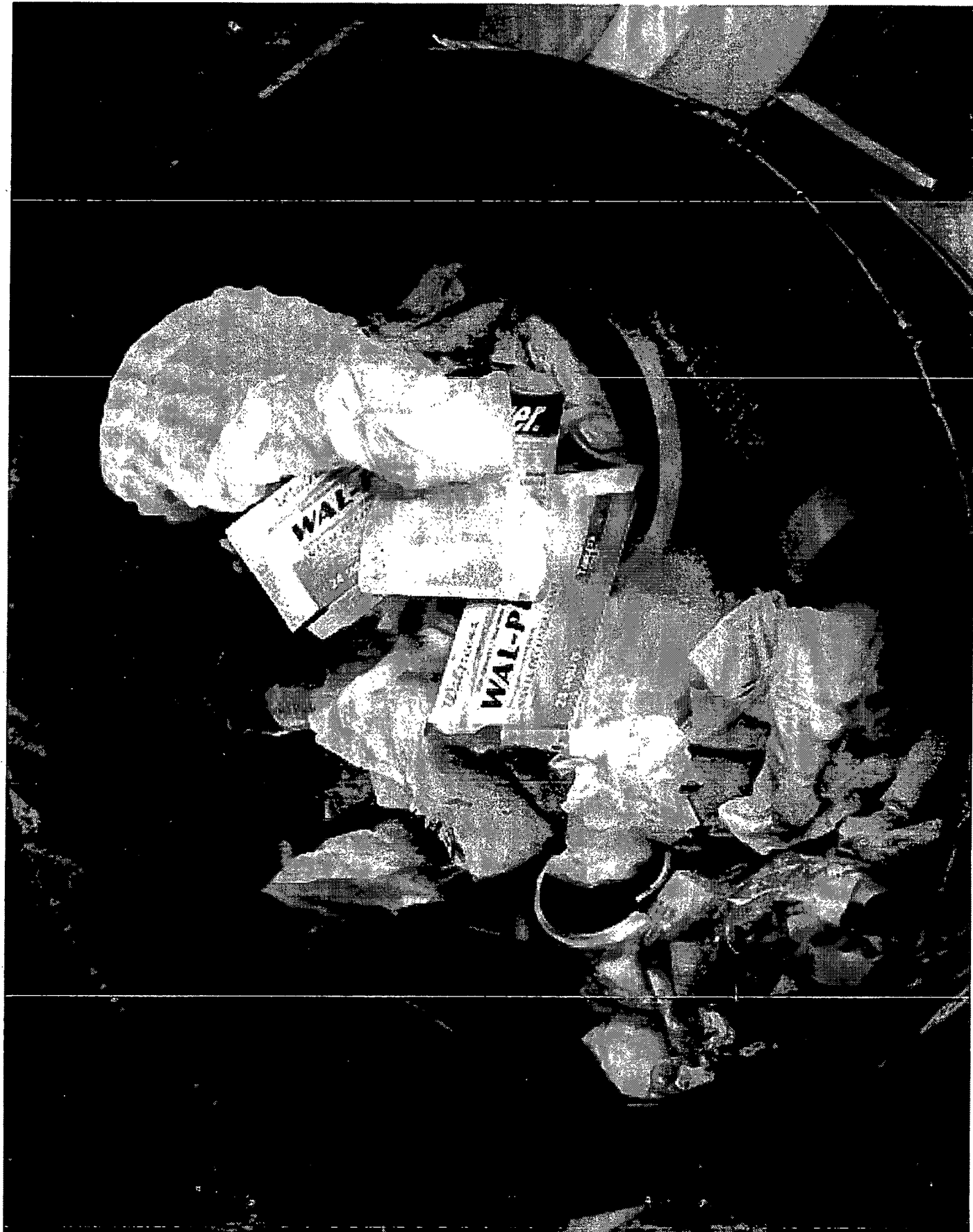


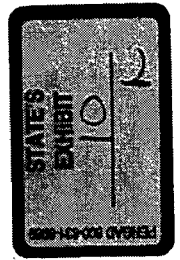


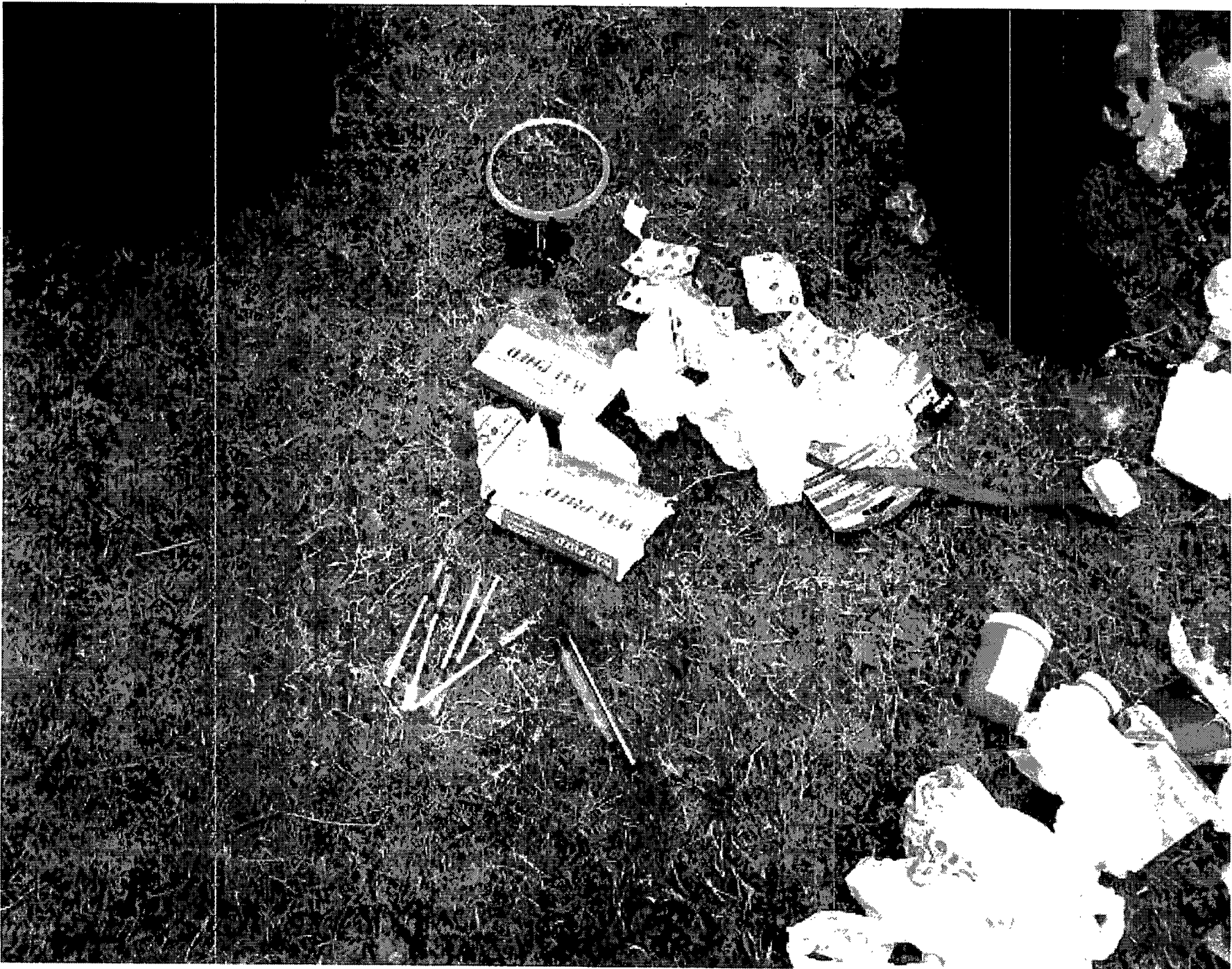


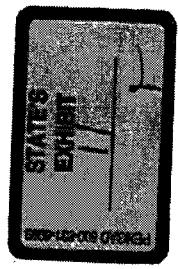




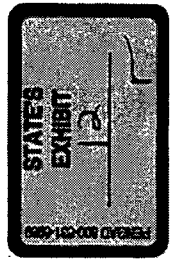


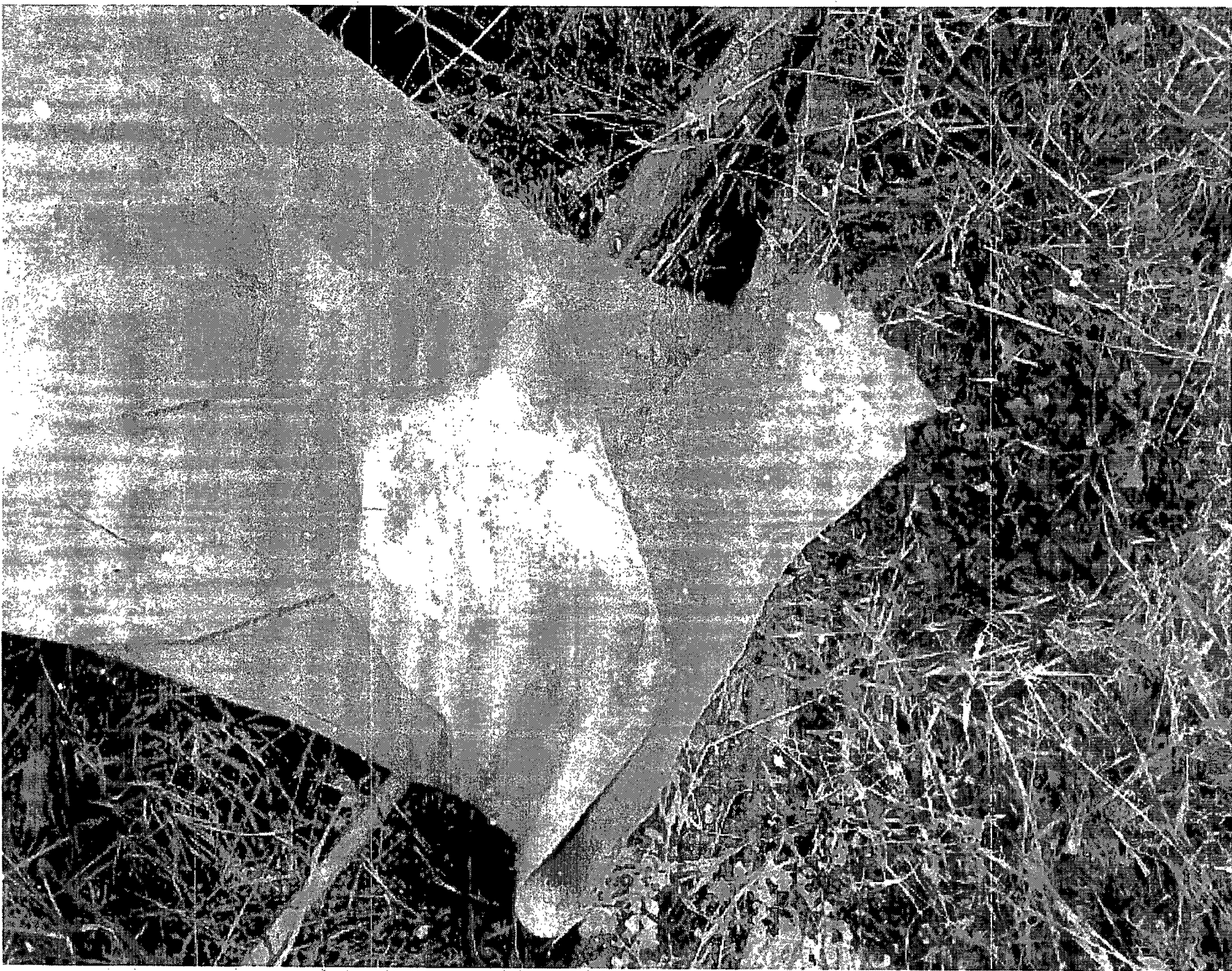


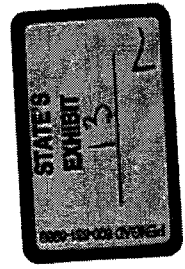




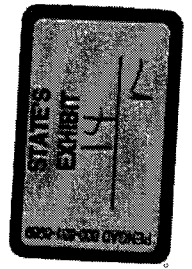


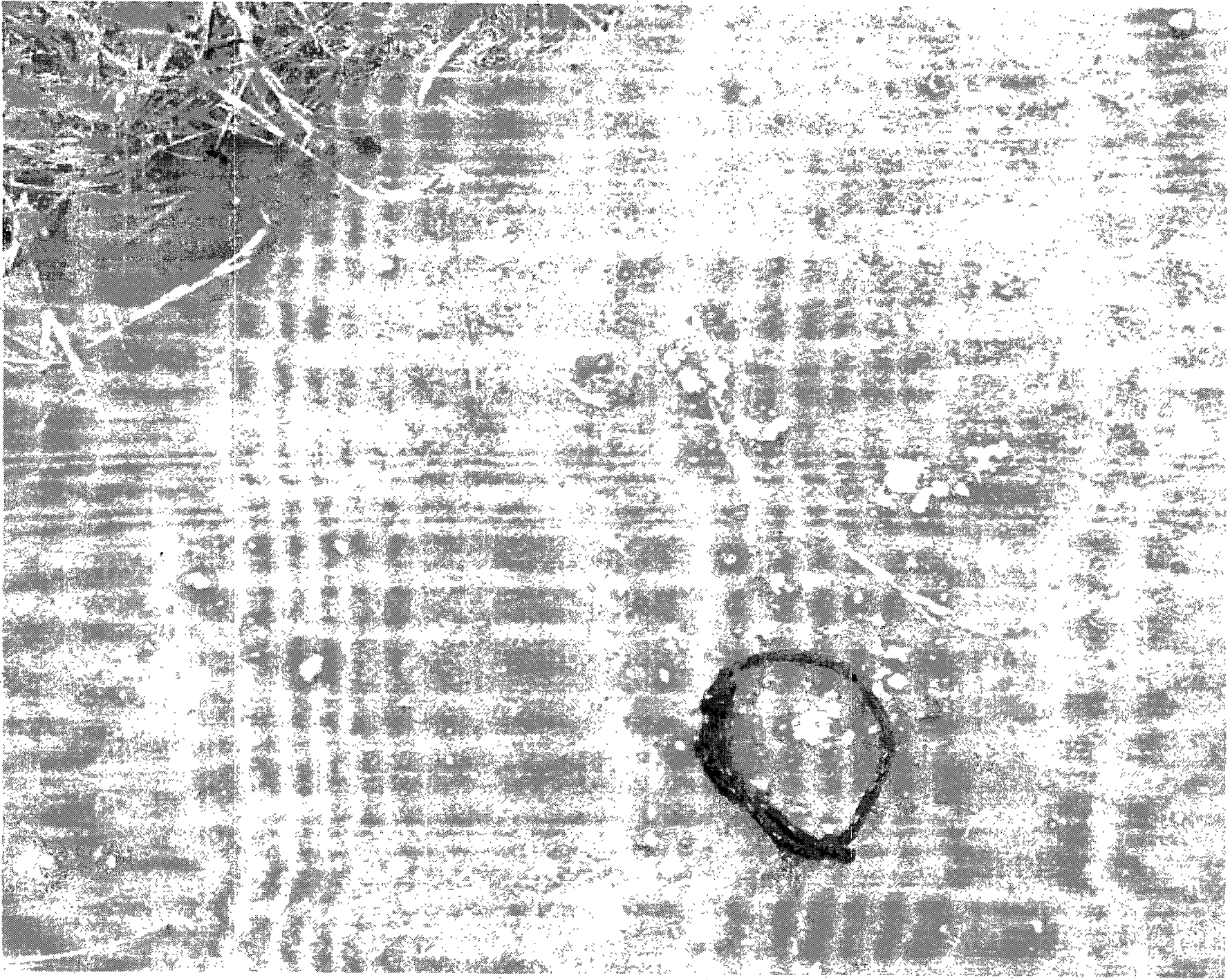


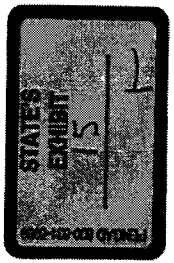


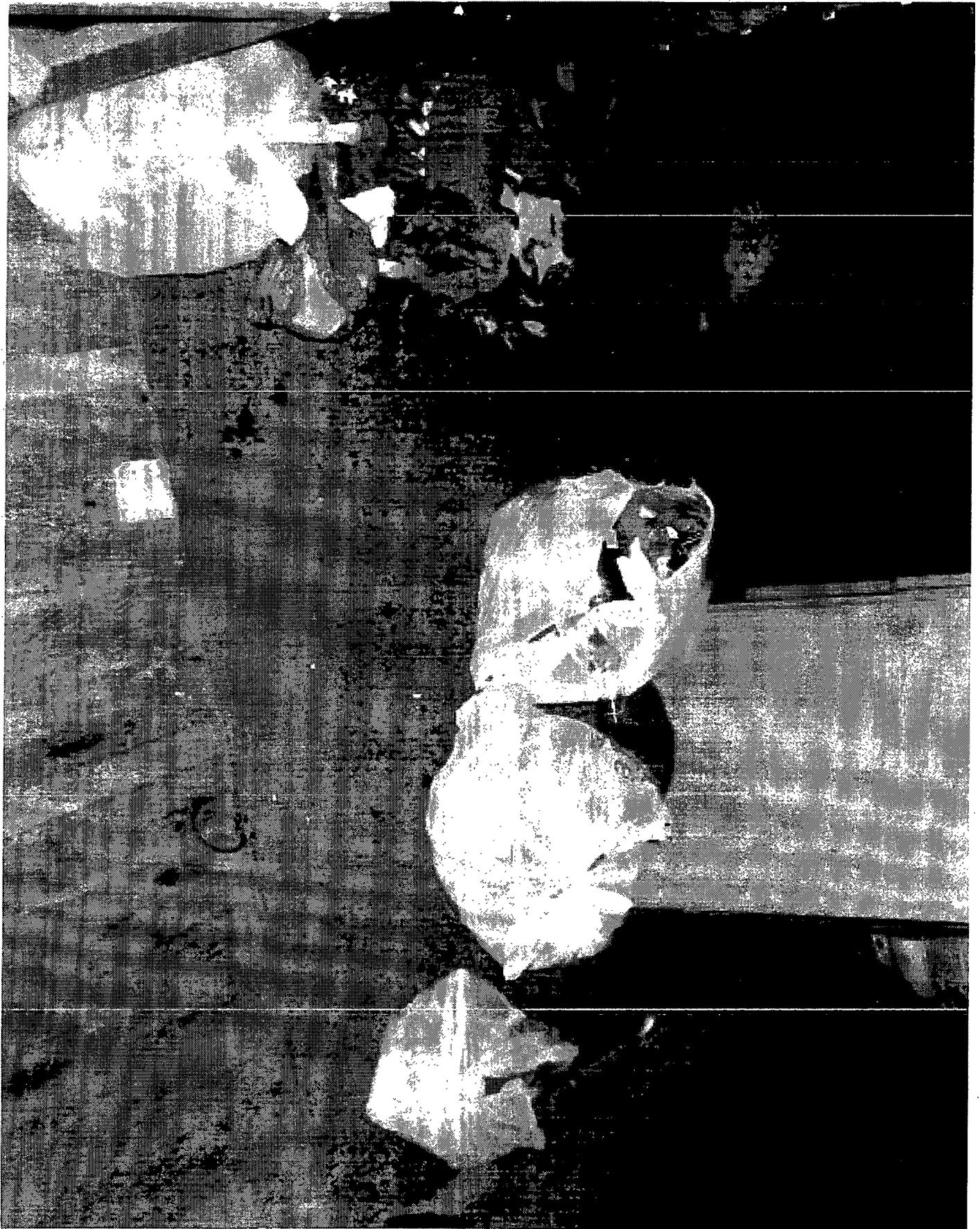


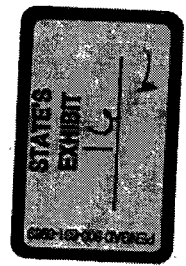


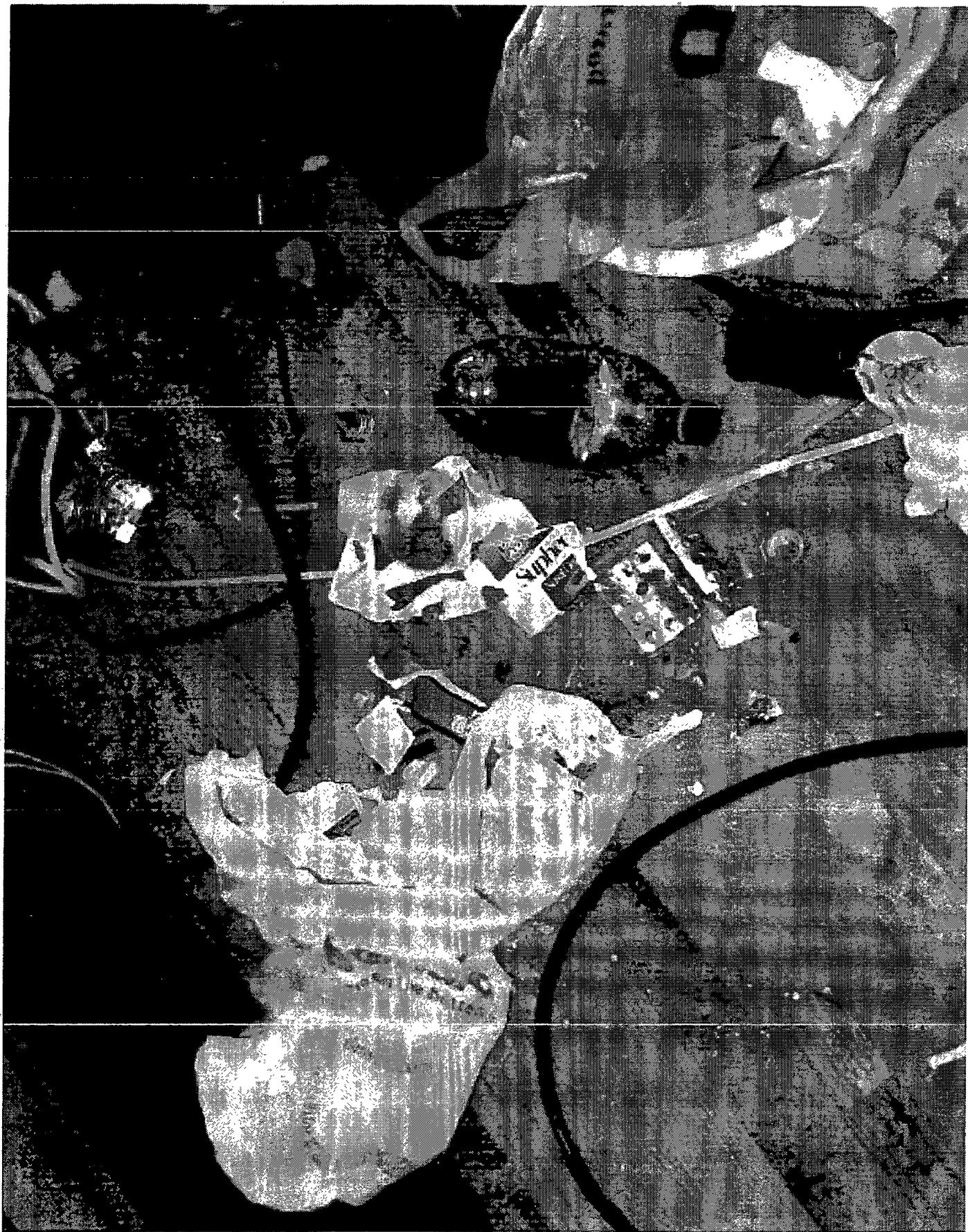


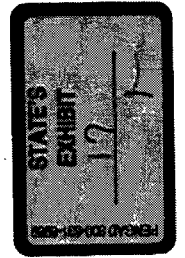




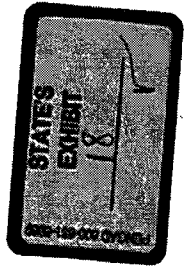




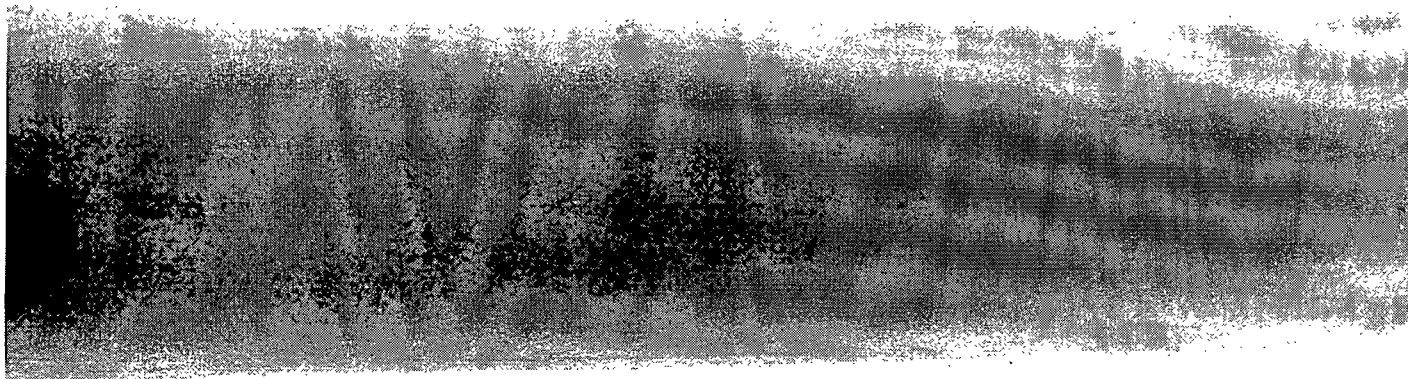
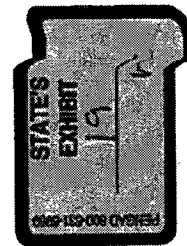


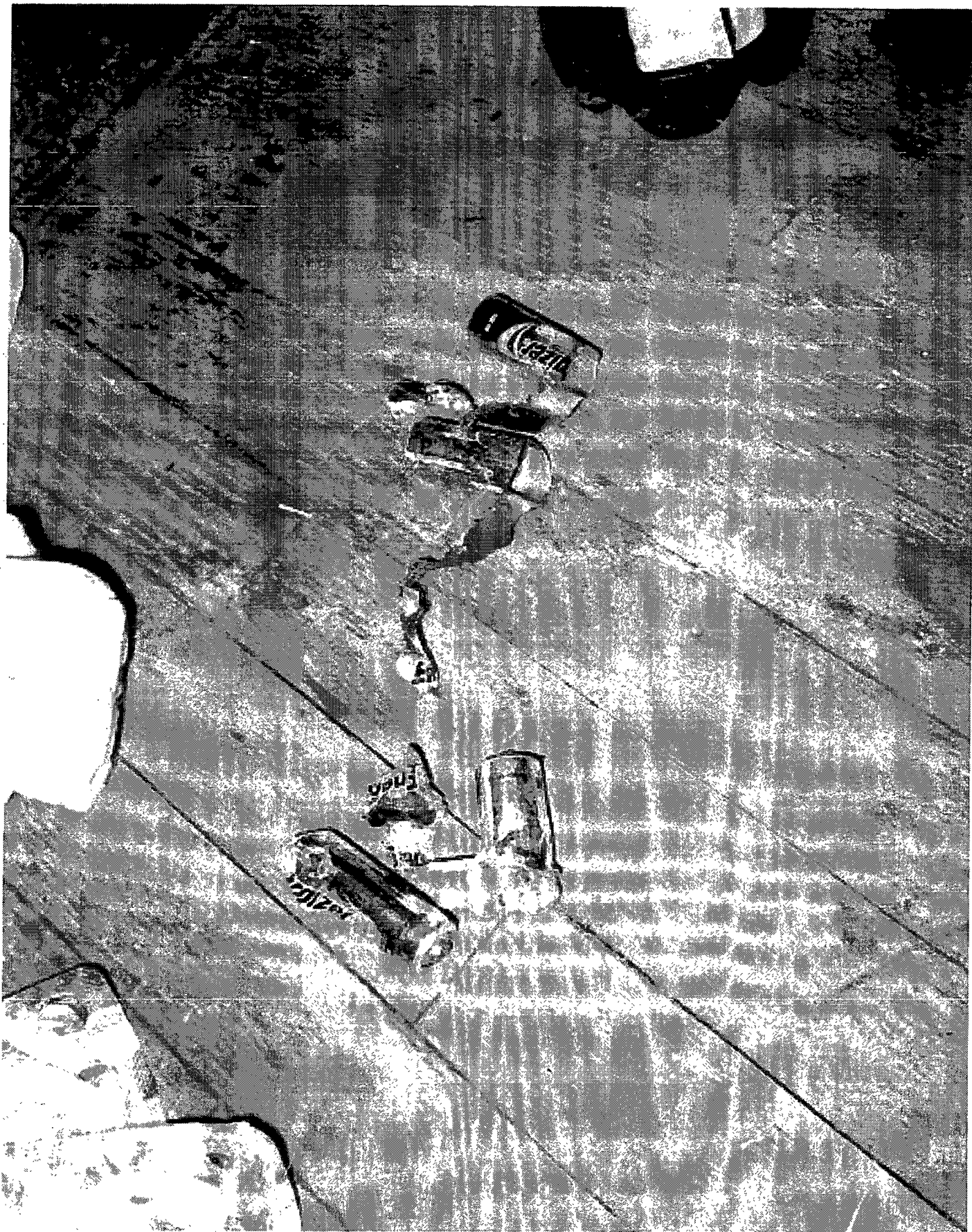


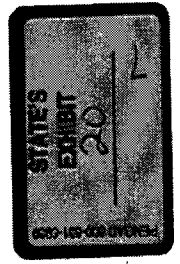




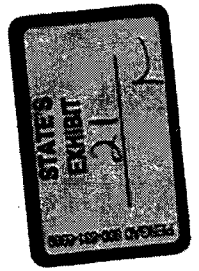




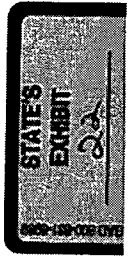


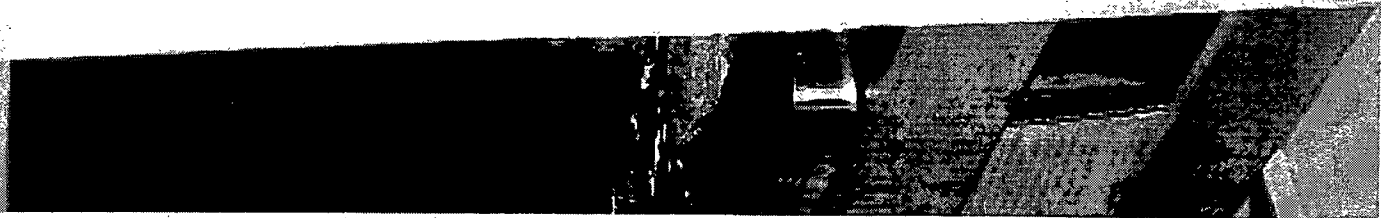
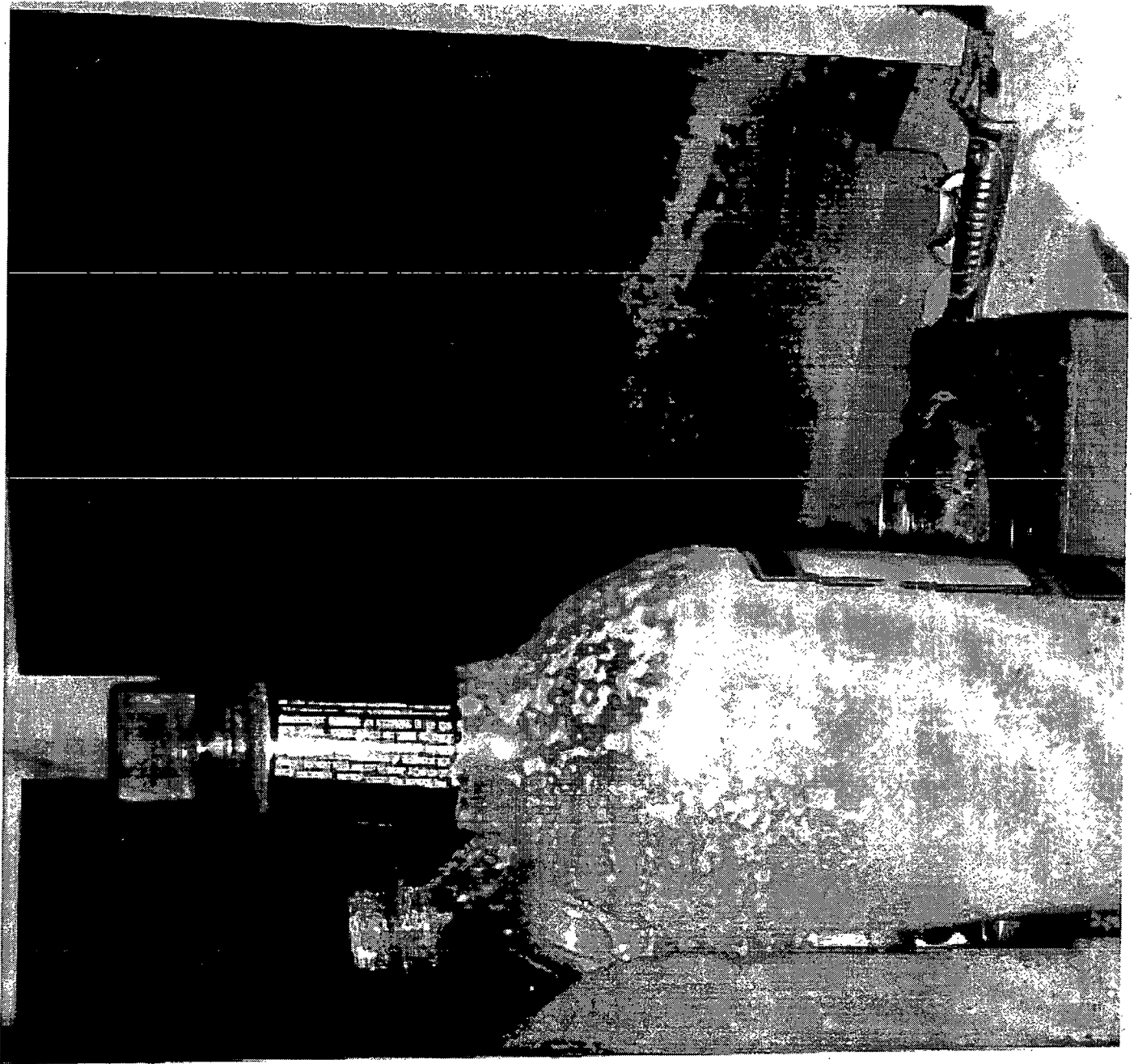


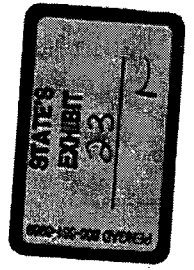


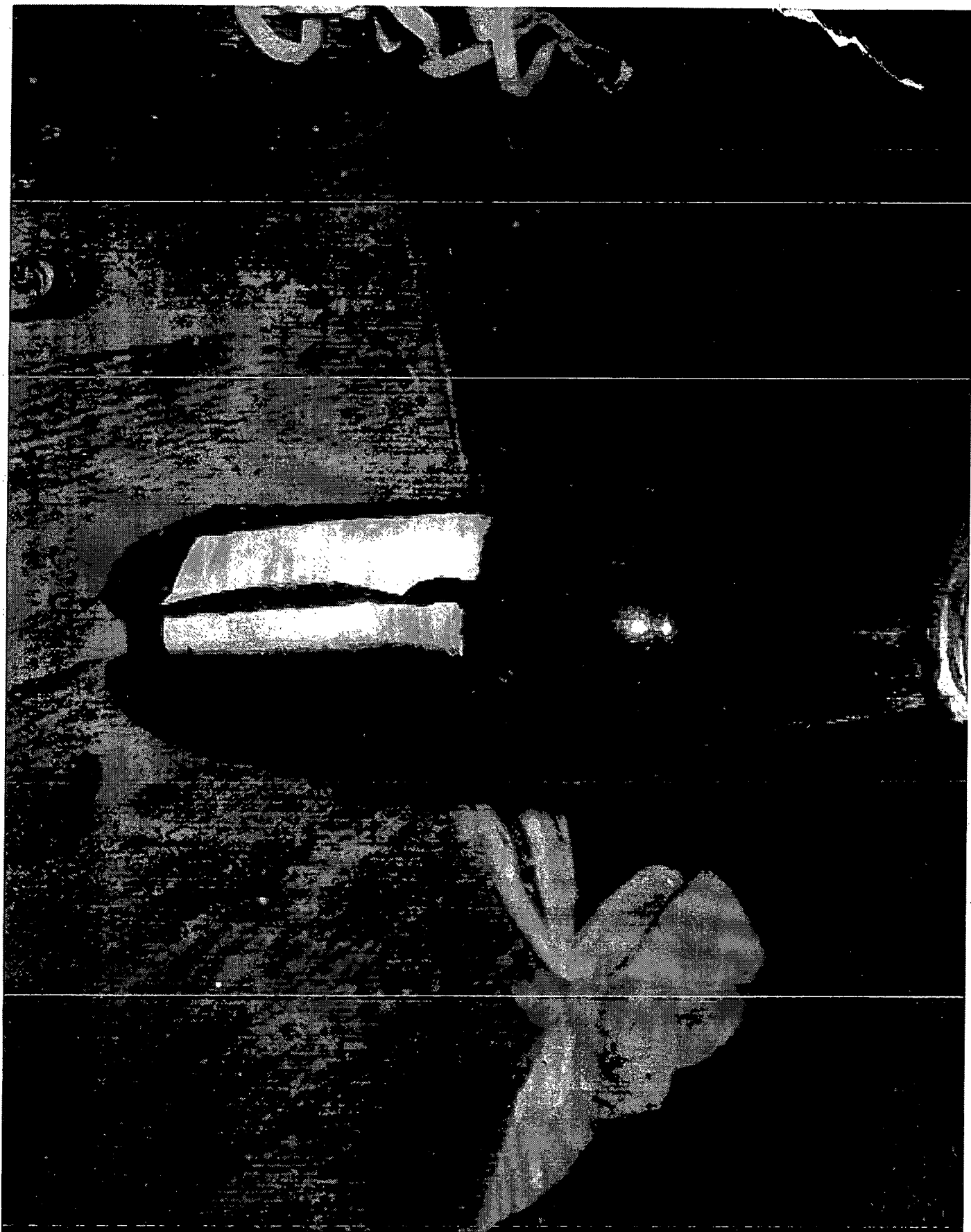


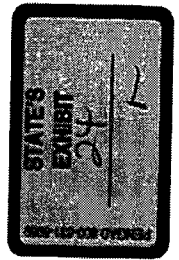












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In the Court of Appeals

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**SC Court of Appeals**

APPEAL FROM SPARTANBURG COUNTY

Court of General Sessions

The Hon. Lawton McIntosh, Circuit Court Judge

Case No. 2013-000817

The State. . . . . Respondent.

v.

Charles Cain . . . . . Appellant.

**CERTIFICATE OF COUNSEL**

The undersigned attorneys hereby certify that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

June 11, 2014

**FOR THE APPELLANT:**

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\_\_\_\_\_  
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CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11<sup>th</sup> day of June, 2014.

Brandon Hall  
Brandon Hall  
Administrative Specialist

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JUN 11 2014

SC Court of Appeals

SUBSCRIBED AND SWORN TO before me  
this 11th day of June, 2014.

Talal McKee (L.S.)  
Notary Public for South Carolina

My Commission Expires: July 24, 2022.