

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Doyet A. Early, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES MILLER,

APPELLANT

APPELLATE CASE NO 2015-002664

RECORD ON APPEAL

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State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2014-GS-32-00971
	)	2015-GS-32-01585
James B. Miller	)	
	)	
<u>Defendant.</u>	)	

August 10-13, 2015
Lexington, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Scott Spivey, Assist. Solicitor
Attorney for the State

Ola Johnson, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

1 (The following proceedings were held August
2 10-13, 2015.)

3 THE COURT: All right. We're on the record
4 with State vs. James Miller. We have -- we have a
5 motion to -- we have several motions tomorrow in
6 regards to this that we were going to do at 9:15.
7 And I was asked by the State -- they had a witness
8 who has had health issues or leg issues, and it
9 would have been much easier for him to -- he's here.

10 So I'm trying to accommodate a very short
11 witness to get his testimony in and then complete
12 everything tomorrow. Is that correct, Mr. Johnson?

13 MR. JOHNSON: That's correct, Your Honor. But
14 before we proceed, my client has a motion, and I
15 wanted Your Honor to hear that before we proceed.

16 THE COURT: Well, I'm not going to hear that.
17 I told y'all what I would do this afternoon. It's
18 5:30. My court personnel have gone all day. I'll
19 do exactly what y'all asked me to do, which is take
20 this witness.

21 MR. JOHNSON: Yes, sir.

22 MR. SPIVEY: The State is ready to proceed.

23 THE COURT: All right. Please place your left
24 hand on the Bible and raise your right.

25

1 EDWARD HUFFMAN

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Have a seat, please, sir. Once
5 you're seated --

6 THE COURT: Let the record reflect the
7 defendant is present.

8 Your witness.

9 DIRECT EXAMINATION

10 BY MR. SPIVEY:

11 Q. Please state your name.

12 A. Edward Huffman, H-U-F-F-M-A-N.

13 Q. Where do you work?

14 A. I work for the Cayce Department of Public
15 Safety.

16 Q. How long have you worked there?

17 A. Five years.

18 Q. Okay. What was your role on January 8th of
19 2014 in relation to the case against Mr. Miller?

20 A. Sergeant Gleaton was on scene at the Motel 6.
21 He called me in the office, asked me to type a
22 search warrant, gave me the information I needed for
23 that search warrant. I typed the search warrant and
24 then I went to Judge Whittle's home and he signed
25 the search warrant. And I returned to Motel 6 and

1 provided that search warrant to the sergeant.

2 Q. Do you recognize that document I just handed
3 you?

4 A. Yes, sir.

5 Q. What is that document?

6 A. This is the search warrant that I typed on that
7 date.

8 Q. Is it a true and accurate copy?

9 A. Yes, sir.

10 Q. Okay. Is your signature on the affidavit
11 portion?

12 A. Yes, sir.

13 Q. And that is the warrant that you got signed by
14 Judge Whittle?

15 A. Yes.

16 MR. SPIVEY: Your Honor, for the purposes of
17 this hearing and hearings only, not for the trial, I
18 would move the search warrant into evidence for the
19 purposes of the hearing, State's Exhibit 1.

20 THE COURT: Any objection?

21 MR. JOHNSON: No objection to that, Your Honor,
22 as long as it's not in evidence.

23 THE COURT: It's not. It's just for the
24 purposes of this hearing.

25 MR. JOHNSON: Yes, sir.

1 (State's Exhibit No. 1 marked for
2 identification.)

3 THE COURT: All right. Very well. Any
4 cross-examination?

5 MR. JOHNSON: Just briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Officer, on the warrant now, did you provide
9 any additional evidence to the magistrate?

10 A. No, sir.

11 Q. In addition to the warrant?

12 A. No, sir.

13 Q. No sworn testimony?

14 A. No, sir.

15 Q. Okay. And you spoke directly with Sergeant
16 Gleaton, you say?

17 A. Yes, sir.

18 Q. Did you speak with anybody else in preparation
19 of the warrant?

20 A. No, sir.

21 Q. Okay. What did you do -- after you got the
22 warrant, what did you do with it?

23 A. After I typed it?

24 Q. Yes.

25 A. Then I took the warrant to Judge Whittle's home

1 where he and signed it, then I returned to, I
2 believe, Motel 6 on Knox Abbot Drive and provided
3 Sergeant Gleaton with the search warrant.

4 Q. Okay. What did you do after that?

5 A. I stayed on the scene, but I never went to the
6 room and I never spoke to the defendant.

7 Q. Did you do anything else with the warrant?

8 A. I did document some of the items as they were
9 brought out and placed on a tarp.

10 Q. Okay.

11 MR. JOHNSON: That's all I have, Judge.

12 THE COURT: Any redirect?

13 MR. SPIVEY: No, sir, Your Honor.

14 THE COURT: All right. You may step down.

15 All right. We'll continue in the morning at

16 9:15. Everybody please be present and on time.

17 (Hearing in recess at 5:30 PM.)

18 (The following proceedings were held August 11,
19 2015, at 9:19 AM.)

20 THE COURT: All right. We're back on the
21 record with the Miller case. Mr. Miller, you had a
22 motion that you wanted me to hear this morning; is
23 that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I'll be glad to hear from you. Did

1 you file it?

2 THE DEFENDANT: No, sir. Basically, I wrote to
3 the clerk of court two, maybe three weeks ago,
4 asking to have a new attorney. Mr. Johnson is a
5 great guy, but he, from the very beginning, said, I
6 don't want to take it to trial, I want you to take
7 this plea. And I don't have any confidence that he
8 wants to be here or I don't want to be here with
9 him.

10 I've been trying to get in front of you or in
11 front of somebody to save the time. I don't want to
12 delay it. I want to go forward. I've talked to two
13 attorneys who both said as soon as I got in front of
14 a judge that could do it, they'd come see me --

15 THE COURT: You going to pay them or what?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Why haven't you already hired them?

18 THE DEFENDANT: They both told me that they
19 couldn't talk to me while I had an attorney.

20 THE COURT: Well, Mr. Johnson is an excellent
21 lawyer. He's probably giving you advice that he
22 thinks is appropriate under the facts of the case.
23 And I've had a pretrial conference with both of the
24 lawyers, and I understand they have offered you a
25 second offense, which is a minimum of five years.

1 THE DEFENDANT: Well --

2 THE COURT: Of course that offer has been
3 pulled off the table. But -- and, you know, it's
4 his job to relay all offers to you and give you his
5 opinion on where you are.

6 THE DEFENDANT: He told me I had no offers. He
7 relayed that and I asked him if he could go back and
8 ask them --

9 THE COURT: Well, the offers are no longer in
10 existence. They've been withdrawn, as I understand,
11 because the other one wasn't accepted. And now
12 they've taken the time and effort to prepare for
13 trial. That happens day in and day out.

14 THE DEFENDANT: It isn't that I didn't accept
15 it, I asked him to go back and see if it could come
16 with a recommendation. He came back and said, since
17 you denied it, they withdrew it.

18 THE COURT: I hadn't denied anything.

19 THE DEFENDANT: No, since I didn't accept it.

20 THE COURT: Okay.

21 THE DEFENDANT: But all that said, I'm just not
22 comfortable that Mr. Johnson --

23 THE COURT: Well, I'm sorry you aren't
24 comfortable. But we're not here to make you
25 comfortable, we're here to make sure you're provided

1 adequate legal services, and Mr. Johnson will
2 provide more than adequate. I've been on the bench
3 12 years. Mr. Johnson has appeared before me -- he
4 was a public defender -- or solicitor in Aiken.

5 MR. JOHNSON: Solicitor.

6 THE COURT: When did you start being a
7 solicitor in Aiken?

8 MR. JOHNSON: That was in 2004, I believe.

9 THE COURT: And I went in on the bench in 2004.
10 So Mr. Johnson practiced before me as a solicitor in
11 Aiken. That's my home county. And I've seen him
12 try many, many, many cases, I've seen him prepare
13 many, many, many cases. He's got excellent briefs
14 and motions here today on some issues that are
15 interesting. And all that would do would be putting
16 this off and delaying it. And I find Mr. Johnson to
17 be competent, qualified. And I've never seen him
18 unprepared, never seen him not do what's in the best
19 interest of his client, and I'm going to
20 respectfully deny your motion.

21 All right. Now, let's go back where we were
22 yesterday. We have a number of motions; is that
23 correct?

24 MR. JOHNSON: That's correct, Your Honor. It's
25 my understanding the State wanted to proceed first,

1 I think, with a Denno for their scheduling purposes
2 because they may not have enough time today to go
3 through all of them. I'm not opposed to that, if
4 the State would like to start with the Denno.

5 MR. SPIVEY: Your Honor, what I actually
6 suggested is that we go ahead and do the suppression
7 hearing and the Denno, get all of the testimony on
8 the record, and then we can come back later and
9 argue the motions whenever you have time, Your
10 Honor.

11 THE COURT: It's not a matter of whether I have
12 time. I'm going to give y'all til 10:00. I'm going
13 to start my trial at 10:00, and depending on where
14 we are, we can either come back at lunch or we'll
15 have to see how everyone's schedule is running. I'm
16 not going to make my jury wait. We were scheduled
17 to start at 9:15 and we started right on time this
18 morning. So that's fine with me, if that's the way
19 you want to handle it.

20 MR. SPIVEY: Yes, sir. That would keep them
21 from having to keep coming back and forth.

22 Would you like me to start calling witnesses,
23 Your Honor?

24 THE COURT: Yes. This is in the Denno hearing?

25 MR. SPIVEY: It will be a Denno and suppression

1 hearing. I just want to get as much in, in the time
2 you've allotted, Your Honor.

3 Erin Nanney.

4 THE COURT: All right. Mr. Miller, just so you
5 understand, apparently there's an alleged statement
6 you may have made. That's what a Jackson v. Denno
7 hearing is. I have to make pretrial ruling to
8 determine whether or not your Miranda rights were
9 given to you in the alleged statement and whether or
10 not -- I have to make an initial gatekeeper's
11 finding as to whether or not it was voluntary, if
12 there is a statement.

13 That's what the Jackson v. Denno is about and
14 that's what we're going to do now. These officers
15 will probably testify about giving you Miranda
16 warnings and what you said.

17 Come on up, ma'am.

18 ERIN NANNEY

19 being first duly sworn, testified as follows:

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Please state your full name, ma'am,
22 and spell your last.

23 THE WITNESS: Erin Nanney, N-A-N-N-E-Y.

24

25

1 DIRECT EXAMINATION

2 BY MR. SPIVEY:

3 Q. Where do you work, ma'am?

4 A. Cayce Department of Public Safety.

5 Q. How long have you worked there?

6 A. Since February 2010.

7 Q. In January of 2014, what was your role?

8 A. I was a dispatcher.

9 Q. Okay. How long had you been a dispatcher prior
10 to that?

11 A. Four years.

12 Q. Okay. On January 8th, did you receive a phone
13 call?

14 A. Yes, sir.

15 Q. Okay.

16 (State's Exhibit No. 2 marked for
17 identification.)

18 MR. SPIVEY: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. SPIVEY:

22 Q. Ms. Nanney, if you'll take a look at that.
23 Just yes or no, do you recognize that document?

24 A. Yes, sir.

25 Q. Okay. Does it appear to be a true and accurate

1 copy of your records?

2 A. Yes, sir.

3 Q. Okay. What is that particular form?

4 A. This is the CAD card, the call card from where
5 we receive a phone call. Before we dispatch an
6 officer, we put all the information we're given
7 about the call into CAD, and it's a printout from
8 it.

9 Q. Okay. Tell us what time you received the phone
10 call on that day.

11 A. 5:46 PM.

12 Q. Okay. What was it in regards to?

13 A. Drug -- possible drug activity.

14 Q. Okay. What type of drug activity?

15 A. Possible meth lab.

16 Q. Okay. Did the caller identify himself?

17 A. Yes, sir.

18 Q. Okay. Who was it?

19 A. Jason Carroll.

20 THE COURT: Jason Carroll?

21 THE WITNESS: Yes, sir.

22 BY MR. SPIVEY:

23 Q. Did he give any contact information to you?

24 A. He gave a phone number.

25 Q. Okay. Did he intend for his complaint to

1 remain anonymous?

2 A. I would have put anonymous that --

3 THE COURT: Did you put anonymous?

4 THE WITNESS: No, sir.

5 BY MR. SPIVEY:

6 Q. Was it your common practice to put anonymous
7 if, in fact, the call was anonymous?

8 A. Yes, sir. I would put whatever they told me so
9 that I could relay that information to the officer.

10 Q. Okay. So you did not write that information?

11 A. I did not. No, sir.

12 MR. SPIVEY: Your Honor, I'd like to make that
13 document a part of the record, and for purposes of
14 this motion only, I believe it would be.

15 THE COURT: Any objection?

16 MR. JOHNSON: No, sir, Your Honor.

17 THE COURT: Let me see it.

18 It just says drug activity, State's possible
19 meth lab in room 126.

20 THE WITNESS: Yes, sir. That's all the
21 information he gave me.

22 THE COURT: Do you know Jason Carroll?

23 THE WITNESS: I do not. No, sir.

24 THE COURT: Do you know what he was relying on
25 to say there was a possible meth lab?

1 THE WITNESS: No, sir, I do not. I would have
2 put it in there on the call card in my notes.

3 THE COURT: So he just says, hey, I'm a citizen
4 and I think there's a possible meth lab in room 126?

5 THE WITNESS: Yes, sir.

6 THE COURT: Basically is what he said?

7 THE WITNESS: Yes, sir.

8 THE COURT: Ever talked to him before?

9 THE WITNESS: No, sir.

10 THE COURT: Spoke to him since?

11 THE WITNESS: No, sir.

12 THE COURT: You don't know him?

13 THE WITNESS: I do not.

14 THE COURT: Thank you.

15 BY MR. SPIVEY:

16 Q. Real briefly, where was that location?

17 A. Motel 6, 613 Knox Abbot Drive in Cayce.

18 Q. Okay. And what room was it?

19 A. 126.

20 MR. SPIVEY: No further questions.

21 THE COURT: Mr. Johnson, any questions?

22 MR. JOHNSON: Just briefly, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. There was no information regarding identities

1 of anybody at that motel provided to you by
2 Mr. Carroll?

3 A. No, sir.

4 Q. No information regarding vehicles they may be
5 traveling in or what their movements may be or what
6 street they may be on or anything like that?

7 A. No, sir. None other than room 126.

8 Q. Okay.

9 MR. JOHNSON: No more questions, Your Honor.

10 THE COURT: Anything on redirect?

11 MR. SPIVEY: No, sir.

12 THE COURT: Thank you, Ms. Nanney.

13 Next witness, please.

14 MR. SPIVEY: Jonathan Garcia.

15 JONATHAN GARCIA

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Have a seat, sir. Once you're
19 seated, state your name, spelling your last on the
20 record, please.

21 THE WITNESS: Jonathan Garcia, G-A-R-C-I-A.

22 DIRECT EXAMINATION.

23 BY MR. SPIVEY:

24 Q. Mr. Garcia, where do you work?

25 A. I work for the Town of Lexington Police

1 Department.

2 Q. Okay. Where did you work prior that?

3 A. I worked for the City of Cayce Public Safety.

4 Q. How long had you worked there?

5 A. About five years.

6 Q. What was your role with the Department of
7 Cayce?

8 A. I was a patrolman.

9 Q. Okay. Did you receive a call on January 8th,
10 2014?

11 A. I did.

12 Q. Okay. Tell us about that.

13 A. I received a call from dispatch stating that
14 613 Knox Abbot Drive in Cayce, which is the Motel 6,
15 room 126, that there was a caller that called in a
16 possible meth lab in the room or possible meth
17 activity.

18 We responded to the location. At that time, I
19 exited my patrol car, went to room 126, and knocked
20 on the door.

21 Q. Okay. Did you believe the call to be
22 anonymous?

23 A. I didn't get a name from the complainant. I
24 was just dispatched the information about the
25 possible meth lab. I do not recall getting a name

1 of the complainant.

2 Q. Okay. Did you write in your report that it was
3 an anonymous complaint?

4 A. Yes, sir.

5 Q. Okay. Tell us about your concerns as an
6 officer with a call about a methamphetamine lab.

7 A. It's one of those very high crime calls. We
8 have responded several times to the Motel 6 to drug
9 activity calls. It's not the first time we've been
10 dispatched to that location for drug activity.

11 When I knocked on the door, there was a
12 gentleman that opened the screen door --

13 THE COURT: I'm sorry. There was a what?

14 THE WITNESS: A gentleman.

15 A. -- he opens the screen door -- the curtains.
16 I'm sorry. Had a scared look on his face and then
17 shut it back real quick.

18 THE COURT: Hold on a minute. He opened the
19 door, had a scared look on his face --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- and shut the door?

22 THE WITNESS: The curtain.

23 THE COURT: Scared look on his face and closed
24 the curtain.

25 THE WITNESS: Yes, sir.

1 BY MR. SPIVEY:

2 Q. Okay. When you knocked on the door, did you
3 announce your presence?

4 A. Yes, we did.

5 Q. What did you say specifically?

6 A. Knocked on the door and said, Cayce Police
7 Department, open the door. That's when he opened
8 the curtain, and he had this look on his face, and
9 just shut it real quick. We kept knocking on the
10 door for him to open it.

11 Q. Okay.

12 THE COURT: What kind of look did he have?

13 THE WITNESS: A scared look. He just had big
14 eyes like he was surprised to see me there.

15 Q. Okay. In your --

16 THE COURT: Big eyes and scared to see you?

17 THE WITNESS: Yes, sir.

18 BY MR. SPIVEY:

19 Q. Okay. Is there a school located next door?

20 A. Yes. It's right behind the motel.

21 Q. Okay. Did -- the person who opened the door,
22 is that the defendant or is that somebody else --

23 THE COURT: Wait a minute. Did he open the
24 door or open the curtain?

25 THE WITNESS: He opened the curtain, Your

1 Honor, first.

2 THE COURT: And then closed it?

3 THE WITNESS: And then closed it.

4 THE COURT: And then what happened?

5 THE WITNESS: And then I kept knocking on the
6 door to open the door.

7 THE COURT: All right. And then what happened?

8 THE WITNESS: The door was opened by the same
9 guy that had the scared look on his face.

10 THE COURT: Okay. Door then opened.

11 THE WITNESS: Yes, sir.

12 BY MR. SPIVEY:

13 Q. Prior to the door opening, did you hear
14 anything inside?

15 A. It seemed like they were moving around a lot.
16 I heard things move, kind of whispers. And it took
17 him a little bit to open the door.

18 Q. You say a little bit. About how much time?

19 A. Two minutes -- one to two minutes.

20 THE COURT: One to two?

21 THE WITNESS: Yes, sir.

22 BY MR. SPIVEY:

23 Q. Did you hear him say anything or just whispers?

24 A. Just whispers and commotion inside the room.

25 Q. Okay. Tell us what happened when the door

1 opened.

2 A. When the gentleman opened the door, as soon as
3 he opened it, I caught a smell of -- a chemical
4 smell inside the room. At first it kind of smelled
5 nail polish --

6 THE COURT: Smelled like what? Nail polish?

7 THE WITNESS: Nail polish remover. Yes, sir.
8 And they seemed very nervous when I was trying to
9 talk to them. I asked, I believe, Mr. McFadden,
10 which is the tall, skinny gentleman --

11 THE COURT: I'm sorry. Mr. McFadden was what?

12 THE WITNESS: A tall, skinny gentleman.

13 THE COURT: Thank you. And he seemed very
14 nervous. And I asked him if there was anything
15 illegal in the room because of the smell I just
16 smelled. He said no, we have nothing in here
17 illegal, you can come in and search.

18 BY MR. SPIVEY:

19 Q. Okay. And did you go inside the room?

20 A. We went inside, yes, sir.

21 Q. Okay. What did you see at that particular
22 time?

23 A. At that time, I seen the luggage. There was a
24 female in the room, and she seemed to be going back
25 and forth from the bathroom. She was very nervous.

1 So I went to where she was to see what was going on
2 while she was going out, and I went by a coffee pot
3 there in the room. And there was some clear
4 substance in that coffee pot and it had a smell of
5 some kind of chemical in there.

6 Q. Okay. When you saw her going to and from the
7 bathroom, were you scared or --

8 A. I was concerned about what she was trying to do
9 in the bathroom. I guess it's not normal behavior
10 for people to go in and out of the bathrooms like
11 that the way she was doing it. And she seemed very,
12 very, very nervous.

13 THE COURT: Wait a minute. It was not normal
14 for her to go in and out of the bathroom?

15 THE WITNESS: It didn't seem normal for someone
16 to be going in and out of the bathroom like she was
17 doing.

18 THE COURT: Well, how was she doing it other
19 than going in the door and coming out of it?

20 THE WITNESS: She was very nervous, Your Honor.
21 She was going in and out, in and out, in and out of
22 the bathroom like she didn't know what to do.

23 BY MR. SPIVEY:

24 Q. At that point in time, was anybody detained
25 or --

1 A. No, sir.

2 Q. Okay. How many people were in the room?

3 A. I believe it was four people.

4 Q. Okay.

5 THE COURT: All right. You got the female, you
6 got Mr. McFadden. Who were the other two?

7 THE WITNESS: I believe it was Mr. Miller and
8 another gentleman.

9 THE COURT: Three males and a female?

10 THE WITNESS: Yes, sir.

11 THE COURT: Now, you said you saw something
12 clear in the coffee pot. Describe that.

13 THE WITNESS: There was a clear substance in
14 the coffee pot --

15 THE COURT: Liquid substance?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Like water?

18 THE WITNESS: It looked like water, yes, sir.
19 But when I went by it, there was a strong smell of a
20 chemical in that area.

21 THE COURT: In the area?

22 THE WITNESS: Where the coffee pot was. Yes,
23 sir.

24 THE COURT: But looked like water in the coffee
25 pot and a strong odor of a chemical in that area; is

1 that correct?

2 THE WITNESS: Yes, Your Honor.

3 BY MR. SPIVEY:

4 Q. Were there any other items around the coffee
5 pot?

6 A. There was several containers also.

7 Q. Okay. Did you notice any other -- tell us
8 about the other containers that you saw.

9 A. There was, like, little Tupperware containers
10 around the coffee pot.

11 THE COURT: Well, how big were they?

12 THE WITNESS: I don't remember. They were just
13 regular Tupperware containers.

14 THE COURT: That's not unusual to be around a
15 coffee pot, is it?

16 THE WITNESS: No, Your Honor.

17 THE COURT: You put your sugar in it and you
18 put your coffee bags or whatever --

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Okay.

21 BY MR. SPIVEY:

22 Q. Did you notice a white plastic bucket in the
23 room?

24 A. Yes, sir.

25 Q. Okay. Where was that located?

1 A. It was right next to the coffee pot.

2 THE COURT: Now, tell me what kind of white
3 plastic -- did you say jug?

4 MR. SPIVEY: It was a bucket.

5 BY MR. SPIVEY:

6 Q. Describe that for us.

7 A. I don't remember if it was the -- where they
8 put the ice. The little ice bucket.

9 THE COURT: Well, that's a usual thing in a
10 motel room, the little bucket, and you put a bag in
11 it and go down to get the ice.

12 THE WITNESS: Right.

13 THE COURT: So that's not unusual.

14 BY MR. SPIVEY:

15 Q. What did you observe about the bucket?

16 A. It was just there. It was -- I don't remember
17 if it was anything in there -- in that container or
18 not.

19 Q. Okay. Do you have any training in
20 methamphetamine labs?

21 A. I do not. Just the regular classes we get at
22 the academy. But nothing advanced on how to -- you
23 know, how meth labs are.

24 Q. So minimal training?

25 A. Minimal training.

1 Q. Okay. Do you have any experience with dealing
2 with methamphetamine labs?

3 A. I do not.

4 Q. Okay. Did you ever come across one in your
5 duty as a law enforcement officer?

6 A. I have not.

7 Q. Do you know exactly what kind of smell you were
8 smelling?

9 A. I did not. Just a chemical smell in the room
10 that -- it was not -- it was a real strong smell in
11 the room, real chemical smell. I couldn't pinpoint
12 exactly what chemical I was smelling or if it was a
13 mixture of chemicals, but it was a strong chemical
14 smell in the room.

15 Q. Okay. What did you do at that point?

16 A. At that point, I asked the occupants to exit
17 the room, and I notified my supervisor.

18 THE COURT: So you were by yourself?

19 THE WITNESS: No, Your Honor. We had three
20 other officers there.

21 THE COURT: Were you the only one in the room?

22 THE WITNESS: No, Your Honor. I went in and --
23 I don't know who was behind me --

24 THE COURT: So you had some backup?

25 THE WITNESS: Yes, Your Honor.

1 BY MR. SPIVEY:

2 Q. So you called your supervisor. And what --

3 A. Explaining that the smell that we had. And at
4 that point, we just exited the room, and I believe
5 Investigator Gleaton responded to the scene at that
6 point.

7 THE COURT: Well, what explanation or
8 description did you give your supervisor about what
9 you were smelling?

10 THE WITNESS: I told him that it was a strong
11 chemical smell in the room. I informed him how they
12 were acting, the occupants in the room. And for
13 safety purposes -- I never come across a meth lab or
14 chemicals, it's a very volatile environment -- we
15 left the room.

16 THE COURT: So you don't know what kind of
17 chemicals, you never smelled it before, you never
18 been on a meth lab so you just told your supervisor
19 you smelled some strong chemical in the room and
20 they were acting nervous.

21 THE WITNESS: Yes, Your Honor. And I explained
22 the behavior in the room.

23 THE COURT: The nervousness, how they were
24 acting?

25 THE WITNESS: Yes, Your Honor.

1 BY MR. SPIVEY:

2 Q. Did you do any searching of the room after
3 that?

4 A. I did not.

5 Q. Okay. Did you talk to any of the occupants of
6 the room after that?

7 A. I talked to the -- some of the occupants. I
8 just asked for their IDs and the -- just personal
9 information. I did not ask them any questions about
10 anything that went on.

11 MR. SPIVEY: Okay. I don't have any further
12 questions, Your Honor.

13 THE COURT: Okay. Mr. Johnson.

14 CROSS-EXAMINATION

15 BY MR. JOHNSON:

16 Q. When you're approaching room 126, who were you
17 with?

18 A. At that point, I'm by myself and, I believe,
19 Corporal Wihlidal was right behind me. He just
20 pulled up.

21 THE COURT: You were the first to get there.
22 And then, of course, I assume you radioed you were
23 going there and, per protocol, a couple of other
24 officers came in behind you. But you were the first
25 one there?

1 THE WITNESS: Yes, Your Honor.

2 BY MR. JOHNSON:

3 Q. And there was nothing that you observed outside
4 of the motel room, prior to doing the
5 knock-and-talk, that corroborated anything given to
6 you by dispatch about drug activity?

7 A. That's correct. I didn't see anything outside.

8 Q. And who is Sergeant Gleaton to you?

9 A. Sergeant Gleaton, he's the sergeant over
10 investigations.

11 Q. Okay. Were you aware of Sergeant Gleaton's
12 report indicating that the chemical odor he smelled
13 outside the room, that he could not distinguish it
14 from a cleaner? Are you aware of that information?

15 A. I was not aware of that.

16 Q. When you entered -- now, tell me, you knocked
17 on the door, and then what happened?

18 A. I knocked on the door and there was a gentlemen
19 inside who opened the curtain after we announced
20 ourselves. And, like I explained earlier, he had
21 this scared look on his face like he was surprised
22 to see me, and the he shut the curtain real fast.

23 Q. Okay. Now, you created a report in relation to
24 this case?

25 A. Yes, sir.

1 Q. And when you created that report, you didn't
2 put anything about the curtain being open; you put
3 that the door was open. Correct?

4 A. Yes, sir.

5 Q. But why did you leave that out of your report?

6 A. We just did a basic supplemental report on the
7 initial report, and then Sergeant Gleaton filled in
8 the rest of the report and the investigative notes.

9 Q. Okay. And you said when the door opened, what
10 happened?

11 A. I said when the door opened the first time, I
12 smelled a strong odor of the chemical coming from
13 inside the room.

14 Q. Okay. Who saw the female move to the bathroom?

15 A. I did.

16 Q. Then what happened?

17 A. Well, I talked to the gentlemen McFadden who
18 was standing, and I asked -- no one would talk to
19 me, so I talked to him. And I said, you know, is
20 anything illegal in the room? And he said, no, sir,
21 there's nothing illegal in this room, you can come
22 in and search.

23 The reason why I asked is because they seemed
24 very nervous. You know, normal people, when we
25 knock on the rooms, they open the door and they just

1 greet us. It was very off of how they were behaving
2 inside that room.

3 Q. When the female moved towards the bathroom, did
4 anybody from law enforcement enter the room?

5 A. I don't remember.

6 Q. Did you say that you entered the room?

7 A. I entered the room after I asked Mr. McFadden
8 if there was anything illegal in the room.

9 Q. Okay. Now, was there another officer there
10 named Wihlidal?

11 A. Wihlidal.

12 Q. Now, is that a female officer or a male
13 officer?

14 A. That's a male officer.

15 Q. Did that officer enter the room?

16 A. I don't remember if he entered the room. I
17 remember that I went inside first. I don't know if
18 he came right behind me afterwards.

19 Q. Okay. Do you remember anything about -- well,
20 that officer was standing there with you then.

21 A. Say that again, sir.

22 Q. Was that officer standing there with you when
23 the door opened?

24 A. Yes. He was on the other side of me.

25 Q. Do you remember that officer saying anything?

1 A. I don't remember saying much. No.

2 Q. Do you remember that officer issuing commands
3 to anyone in the room or the lady running to the
4 bathroom?

5 A. I don't recall that.

6 Q. Do you recall that officer entering the room
7 before you?

8 A. I don't recall that sir, no.

9 Q. Okay. Are you aware that those facts are
10 present in Sergeant Gleaton's report indicating that
11 that officer commanded that woman to stop and then
12 that officer entered the room? Are you aware of
13 that?

14 A. I wasn't aware of that, no.

15 Q. Okay.

16 A. Only thing I can recall is just my conversation
17 with Mr. McFadden.

18 Q. Did you see anything in the hands or in the
19 possession of that female moving towards the
20 bathroom at all?

21 A. I did not.

22 Q. Okay. Did you hear anything from her or from
23 anyone else indicating she had and contraband or
24 anything in her possession when she was moving to
25 the bathroom?

1 A. No, not to me. No.

2 Q. Was there any way to exit that room through a
3 window, a door, or any way towards the bathroom?

4 A. No, sir.

5 Q. Okay. Did you get any statements from my
6 client Mr. Miller?

7 A. I did not.

8 MR. JOHNSON: No more questions, Your Honor.

9 THE COURT: Well, let me ask you this: What
10 information did you have that led you to that room
11 to knock on the door to simply want to talk to these
12 people, what we call a knock-and-talk? What were
13 you relying on?

14 THE WITNESS: I was relying on the information
15 that dispatch gave us about the possible meth lab
16 activity.

17 THE COURT: And that information was derived
18 from a nameless person who called, and all he said
19 or she said was that there was a possible meth lab
20 in room 126?

21 THE WITNESS: Yes, sir.

22 THE COURT: So you don't know the name of the
23 tipster?

24 THE WITNESS: I did not know at the time, Your
25 Honor.

1 THE COURT: All right. Do you know now?

2 THE WITNESS: I know now, yes, sir.

3 THE COURT: Don't know where he was calling
4 from?

5 THE WITNESS: I do not, sir.

6 THE COURT: And don't know what he was relying
7 on to say there was a possible meth lab?

8 THE WITNESS: That's correct, I do not.

9 THE COURT: Okay. Thank you very much.

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Anything else?

12 MR. SPIVEY: No, sir, Your Honor.

13 THE COURT: Next witness, please.

14 MR. SPIVEY: Officer Wihlidal.

15 Your Honor, may he be excused?

16 MR. JOHNSON: No objection.

17 FINDLEY WIHLIDAL

18 being first duly sworn, testified as follows:

19 THE WITNESS: I do.

20 THE CLERK: Once you're seated, state your full
21 name, spelling your last, please.

22 THE WITNESS: Findley Wihlidal,
23 W-I-H-L-I-D-A-L.

24 DIRECT EXAMINATION

25 BY MR. SPIVEY:

- 1 Q. Where do you work?
- 2 A. Cayce Public Safety, sir.
- 3 Q. How long have you worked there?
- 4 A. Going on my 11th year.
- 5 Q. Okay. Do you have any training in
- 6 methamphetamine labs?
- 7 A. I've had a couple courses, but nothing that --
- 8 like day courses. Other than that, that's it.
- 9 Q. Had you ever encountered a methamphetamine lab
- 10 prior to this incident?
- 11 A. Yes, sir. Approximately three.
- 12 Q. Okay. Were you at all familiar with any odors
- 13 associated with manufacturing methamphetamine?
- 14 A. Yes, sir. More of a chemical smell, the
- 15 acetone more than anything.
- 16 Q. Okay. Are you aware of the dangers of
- 17 methamphetamine?
- 18 A. Yes, sir.
- 19 Q. Okay. And what are those dangers?
- 20 A. That they can explode and blow up a room or
- 21 blow up a house.
- 22 Q. Okay. Are there any dangers associated with
- 23 the fumes or the chemicals?
- 24 A. The chemicals can be ignited, depending on what
- 25 the chemicals are, you know, if they hit each other.

1 Like I said, I'm not an expert. I know more of the
2 smells. But I know they can ignite.

3 Q. Is it safe to breathe the chemicals?

4 A. No, sir, it's not.

5 Q. Okay. What point did you arrive at this
6 particular location?

7 A. Officer Garcia had, I guess, just gotten into
8 the door of the room, and I came up as his
9 backup -- or one of his backups.

10 Q. What did you observe?

11 A. That there were four people in the room, kind
12 of scattering around. They weren't standing still.
13 I saw the female go to the bathroom a couple times.
14 When she went around the third time, I'm not sure
15 exactly how many times, I told her to stop because I
16 didn't know what was going on.

17 It's unusual for somebody to keep going back
18 and forth to a bathroom in that short of a period of
19 time. And if there were drugs involved, I didn't
20 want anybody flushing them or destroying them in any
21 way.

22 Q. Did she stop?

23 A. Yes, sir, she did.

24 THE COURT: So she followed your command?

25 THE WITNESS: Yes, sir, she did.

1 BY MR. SPIVEY:

2 Q. At that point, did you talk to anybody else?

3 A. No. I was more -- as I came in -- you know, as
4 I said, it was a very short period of time. When
5 she went back and forth to the bathroom, that's when
6 I told her to stop. There was really no
7 conversation going on at that time.

8 Q. Okay. Was Officer Garcia talking to anyone at
9 that point in time?

10 A. I cant really recall if he was talking to
11 somebody. I think he was getting the IDs so we
12 could run them.

13 Q. Okay. Let me back up. Were you there when
14 Officer Garcia asked for consent to search?

15 A. No, sir, I wasn't. I came in directly -- it
16 must have been just maybe a minute after that. He
17 was already in the room when I got there.

18 Q. Okay.

19 THE COURT: Well, let me ask you this: I know
20 you have limited meth experience. You said you may
21 have been involved with maybe three labs and just a
22 little bit of training, but no particular training.
23 Was there anything else in the room other than what
24 you described as an acetone smell or an odor of
25 acetone? That's sort of like fingernail polish

1 remover?

2 THE WITNESS: Yes, sir. That's a proper --

3 THE COURT: Was there anything else that made
4 you think that there was any illegal activity going
5 on; i.e., meth lab?

6 THE WITNESS: None of that type, sir. Just the
7 smell. I knew the smell because I had been in a
8 couple others. So that smell, it's a very distinct
9 smell. It's not anywhere that you would go in a --
10 and I haven't been in a nail salon; maybe you could
11 smell it there.

12 THE COURT: You don't get your nails done?

13 THE WITNESS: No, sir, I don't. But it's a
14 distinctive smell that --

15 THE COURT: But that's the only thing that led
16 you to believe there might be some illegal activity
17 going on --

18 THE WITNESS: Yes, sir.

19 THE COURT: -- that one smell?

20 THE WITNESS: Yes, sir.

21 BY MR. SPIVEY:

22 Q. Is this a high crime area?

23 A. The Motel 6, we get numerous calls down there
24 for either drug activity, CDVs. We get it all down
25 there. It's a cheap motel, so people congregate

1 there that aren't the highest of citizens.

2 THE COURT: Where is that located? It's on
3 Knox Abbot?

4 THE WITNESS: Knox Abbot.

5 THE COURT: Help me with that. If I'm going --
6 where to where.

7 THE WITNESS: Okay. If you're going down to
8 the bridge to go across the bridge into Columbia,
9 it's by the Bi-Lo, the mall there or the park,
10 Guingnard Park, Parkland Plaza, CVS is on the
11 corner.

12 THE COURT: There's a place to eat breakfast?

13 THE WITNESS: Lizard's Thicket, yes, sir.

14 THE COURT: On the same side as Lizard's
15 Thicket?

16 THE WITNESS: Yes, sir. It used to be Master's
17 Inn and now it's --

18 THE COURT: There used to be a barbecue joint
19 somewhere in there.

20 THE WITNESS: I don't know. That was probably
21 before my time, sir.

22 THE COURT: Okay. I know right where you're
23 talking about.

24 BY MR. SPIVEY:

25 Q. It's right by Brookland-Cayce High School.

1 A. Yes, sir. Brookland-Cayce High School, they
2 actually have a chain-link fence separating the two
3 properties.

4 Q. Were you aware of the nature of the complaint?

5 A. I'm sorry?

6 Q. Were you aware of the complaint coming in from
7 dispatch?

8 A. Yes, sir, that there was possible drug
9 activity.

10 Q. Okay. Moving away from the reason you were
11 there, after everybody was detained, did you talk to
12 anybody?

13 A. Yes, sir. I talked to three of them. I talked
14 to the woman. And I'm sorry I'm not good with the
15 names. But I talked with her for a while, and then
16 with the defendant by the soda machine.

17 Q. Okay. Did you read him Miranda rights?

18 A. No, sir, I did not.

19 Q. Was he detained at that particular time?

20 A. I think he was detained, yes, sir, but I'm not
21 positive. Honestly, I'm not totally sure.

22 Q. Okay. Tell us about the nature of your
23 conversation.

24 A. We just -- I mean, I strike up conversations
25 with everybody that we have there. We talked -- and

1 asked him -- I remember asking him if he was ever in
2 jail before. And he said, yes, I had just gotten
3 out. If it was jail or prison, I don't remember
4 which one.

5 And I asked him, for what? And he said, for
6 meth. And I said, oh. And he said, yeah, I'm well
7 known for that. Oh, okay. I mean, I didn't really
8 think too much of it.

9 THE COURT: All right. He was -- you said it
10 was your impression he was detained, and you struck
11 up a conversation with him, and you did not give him
12 your Miranda rights.

13 THE WITNESS: I did not.

14 THE COURT: And you asked him about any prior
15 jail or prior incarceration, and he said he just got
16 out, he was on drugs, meth, and that's why he was in
17 jail.

18 THE WITNESS: Yes, sir.

19 THE COURT: Anything else he said?

20 THE WITNESS: Again, it was general
21 conversation. I remember one of the males told him
22 to shut up. And that's when the conversation kind
23 of stopped.

24 THE COURT: One of his buddies?

25 THE WITNESS: Well, one of the other two males.

1 THE COURT: One of the other people in the
2 room?

3 THE WITNESS: Yes, sir.

4 MR. SPIVEY: No further questions at this time,
5 Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Officer, just briefly, when someone is
9 handcuffed, are they detained?

10 A. Usually, sir, yes.

11 THE COURT: Was he handcuffed?

12 THE WITNESS: Again, I don't remember. I think
13 he was. But my recollection -- I'm not positive,
14 but I think he was.

15 BY MR. JOHNSON:

16 Q. Okay. And you initiated the conversation with
17 him?

18 A. Yes, sir.

19 Q. Okay. And you knew that there was criminal
20 investigation going on?

21 A. I did.

22 Q. And you knew there was a report about a
23 possible meth lab at that room?

24 A. Yes, sir. That's what we got, yes.

25 Q. And you're at the door. Was Officer Garcia

1 standing next to you?

2 A. He was already in the room, sir.

3 Q. Okay. Did you enter the room first or did he?

4 A. No. He did.

5 Q. Okay. Are you aware of Sergeant Gleaton's
6 report indicating that you entered the room first?

7 A. No.

8 Q. Okay. Did you witness the female move towards
9 the bathroom?

10 A. Yes.

11 Q. Did you witness anything in the hands of the
12 female or anything in her possession?

13 A. No, sir.

14 Q. Did she say anything or did anyone say anything
15 that indicated she had any contraband in her
16 possession?

17 A. No, sir.

18 Q. Was there anything on the opposite side of the
19 room, a window, a door, or anything, that would
20 allow her to exit or to leave the room?

21 A. No.

22 Q. All right. And when you talk about a high
23 crime area, you're not talking specifically about
24 room 126, you're talking about the motel?

25 A. Motel 6. Yes, sir.

1 Q. Did you stay with Mr. Miller the entire time
2 before he was transported?

3 A. No, sir. Because of the time that it was,
4 another shift came on and we left.

5 Q. Okay. Who took over and detained Mr. Miller?

6 A. I'm not sure, sir. One of the other officers.

7 Q. Okay. And when -- did you hear him say
8 anything to anybody else?

9 A. The defendant?

10 Q. Mr. Miller, yes.

11 A. No, sir.

12 Q. And you didn't give Miranda?

13 A. No, sir.

14 Q. And, Officer, when you went up, did you witness
15 any behavior or did you have knowledge from dispatch
16 or from anybody about any behavior outside of the
17 hotel room prior to the knock-and-talk that would
18 indicate drug manufacturing or drug dealing or any
19 criminal activity at room 126?

20 A. No, sir.

21 Q. Okay. And you testified about nail polish
22 remover or acetone. Do you have any training about
23 chemical analysis or recognizing substances in any
24 way?

25 A. No, sir.

1 Q. Did you perform any tests or did anybody --

2 A. No, sir.

3 Q. -- perform any tests of any substances?

4 A. No, sir.

5 MR. JOHNSON: No more questions, Your Honor.

6 THE COURT: Redirect, if any.

7 MR. SPIVEY: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. SPIVEY:

10 Q. Did you -- when you say you didn't perform a
11 test, you mean that -- because he asked, did you
12 perform a test or did anybody else --

13 A. I did not.

14 Q. Okay. You didn't. You don't know if anybody
15 else did any tests or anything?

16 A. No, sir.

17 Q. Okay. In fact, are you aware of Officer
18 Gleaton's report at all?

19 A. I've read through the report.

20 Q. Okay. There was mention of -- the defense
21 attorney asked whether or not you were aware that
22 Officer Garcia -- it states that you entered before
23 Officer Garcia. It's your testimony that you did
24 not --

25 A. I did not.

1 Q. Okay. When you were talking with the defendant
2 out in the hallway, was Investigator Gleaton already
3 present?

4 A. Yes, sir.

5 Q. Okay.

6 MR. SPIVEY: No further questions, Your Honor.

7 THE COURT: All right. You may step down.

8 All right. Gentlemen, we're going to take a
9 break. My jury is ready to go. Y'all just check
10 with me around lunchtime and we'll see how we are.

11 MR. SPIVEY: Yes, sir, Your Honor.

12 (Pause in the proceedings at 9:59 AM, resuming
13 at 11:36 AM on August 12, 2015.)

14 MR. SPIVEY: We'll continue with Mr. Simmons.

15 JEFFREY SIMMONS

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE COURT: Have a seat and give us your full
19 name, spelling your last.

20 THE WITNESS: Jeffrey Scott Simmons,
21 S-I-M-M-O-N-S.

22 MR. JOHNSON: Your Honor, I apologize for the
23 interruption. My client has glasses he needs to
24 read. Thank you.

25 THE COURT: Everything okay, Mr. Miller?

1 THE DEFENDANT: Yes, sir. Thank you, sir.

2 THE COURT: You're more than welcome. I'd be
3 lost without mine too.

4 DIRECT EXAMINATION

5 BY MR. SPIVEY:

6 Q. Lieutenant Simmons, where do you work?

7 A. I work for the City of Cayce Public Safety.

8 Q. What is your role there?

9 A. Currently, I'm the administrative lieutenant
10 and the public information officer.

11 Q. Okay.

12 A. And also the gang investigator.

13 Q. Okay. Does one of your duties involve
14 overseeing police investigations?

15 A. Not so much police investigations. I pretty
16 much handle all of the administrative-type things;
17 like, I type letters for the chief, I do the gang
18 investigations, I handle Brady motions, discovery
19 motions for the attorneys.

20 Q. Okay. If you got a -- would one of your duties
21 involve notifying a business or a motel if there
22 were some sort of -- if there numerous complaints
23 about that particular location?

24 A. Yes. I'm pretty much dependent for the
25 department scribe, if you will.

1 Q. Okay. So did you investigate the Motel 6 on
2 Knox Abbot Drive?

3 A. Well, it was a compilation of people involving
4 Ms. Nanney that testified earlier in this. She got
5 the data out of our software system, which is
6 Lawtrac, and we did a comparative analysis between
7 the number of calls for service for all of the
8 motels within the city, and we found that there was
9 a disparity and it was leading towards a large
10 volume of calls to the Motel 6 at 613 Knox Abbot
11 Drive.

12 Q. Okay. And what did you compare the Motel 6
13 analysis to? What was it relative to?

14 A. There is the Knights Inn at 1987 Airport
15 Boulevard, there is the Masters Economy Inn, which
16 is at 2125 Commerce Drive, there's the Airport Inn,
17 which has now taken another name, the Best Western
18 or something to that effect, located at 1937 Airport
19 Boulevard, and there's Country Inn & Suites, and
20 there's Country -- I get the two confused. There's
21 one on Charleston Highway and one on Airport. One
22 of them is Country Inn & Suites, the one -- the
23 other one, I think, is just Country Inns, formerly a
24 Ramada Limited.

25 Q. Did you review the analysis made?

1 A. I did.

2 Q. Okay. What was your interpretation of that
3 analysis.

4 A. It was not just myself. It was myself,
5 Lieutenant Snellgrove who is over the road patrol
6 division, and the chief of the department, Chief
7 McNair. And we saw a disparity in that we were
8 getting a lot more calls down to the Motel 6 for
9 calls for service, and they were calls for drugs.
10 We'd had -- I can think of two right off the top of
11 my head, two gang parties down there.

12 I addressed the letter to the manager of the
13 motel. I don't recall the date. I think it was
14 March 21st of 2013. Is that right?

15 MR. SPIVEY: May I approach the witness, Your
16 Honor?

17 Q. If you'll take a look at that. Do you
18 recognize that?

19 A. April 21st, 2014 to Tanisha Walker who was the
20 Motel 6 general manager. And I also spoke to her in
21 person. I said, listen, we will offer you some
22 training -- we have a drug enforcement officer --
23 things to look for so you don't encounter these
24 problems, because this is a warning letter saying
25 we're getting ready to deem your business or your

1 establishment as a nuisance, and then we're going to
2 start citing you. Because we have to give them a
3 warning prior to. And we were having a lot of
4 problems at the Motel 6.

5 Q. Do you recognize that document I just handed
6 you?

7 A. Yes, sir. I wrote it.

8 Q. What is that?

9 A. The letter I sent to the Motel 6 manager,
10 Tanisha Walker.

11 MR. SPIVEY: Your Honor, I'd like to make that
12 a part of the record for this motion.

13 THE COURT: For the motion?

14 MR. SPIVEY: Yes, sir. We're not intending to
15 introduce it as part of the trial.

16 THE COURT: Without objection.

17 (State's Exhibit No. 24 marked for
18 identification.)

19 MR. SPIVEY: Yes, sir. I don't have any
20 further questions, Your Honor.

21 MR. JOHNSON: No questions.

22 THE COURT: Thank you.

23 Have things gotten better down there?

24 THE WITNESS: It has. We've seen some
25 improvement because we did offer some training and

1 telling them when you see 20 people in a room,
2 that's usually a clue, Scooby.

3 THE COURT: Wow. When I was in college, we
4 used to put more than that in a room.

5 THE WITNESS: Well, these are gang bangers and
6 smoking crack and --

7 THE COURT: We weren't doing that. We were
8 just studying.

9 THE WITNESS: Okay. Thank you, Your Honor.

10 THE COURT: All right. Obviously, that letter
11 can't come in during the trial of the case.

12 MR. SPIVEY: Yes, sir, Your Honor.

13 I call William Dougall.

14 WILLIAM DOUGALL

15 being first duly sworn, testified as follows:

16 THE WITNESS: I do.

17 THE CLERK: Once you're seated, state your name
18 and spell your last.

19 THE WITNESS: William Dougall, D-O-U-G-A-L-L.

20 DIRECT EXAMINATION

21 BY MR. SPIVEY:

22 Q. Officer Dougall, I want to ask you about your
23 role -- first, how long have you worked with the
24 City of Cayce?

25 A. I have sort of a dual role at our public safety

1 department. I'm assigned as a patrol officer
2 primarily engaged in criminal enforcement within the
3 city. All of our patrol officers are dual qualified
4 as firefighters, so I also serve as a firefighter
5 within the city.

6 Q. Okay. Tell me about when you arrived at the
7 Motel 6 on Knox Abbot.

8 A. I arrived well after the call had been
9 dispatched. I believe I was on Airport Boulevard
10 returning from the jail. So when I arrived, Officer
11 Garcia was already on scene, I believe Corporal
12 Wihlidal was also on scene. They had already moved
13 everyone outside of the room, and Officer Garcia
14 stated we obtained consent to search the room for
15 contraband.

16 Q. Did you actually do any of the searching?

17 A. I walked inside the door, but did not really
18 physically search the room, no.

19 THE COURT: You walked inside the room?

20 THE WITNESS: Yes, sir.

21 THE COURT: Were you the first, second, or
22 third officer?

23 THE WITNESS: I believe I was the first officer
24 to walk inside the room after everyone had been
25 moved -- after Mr. Miller and the other room

1 occupants had been moved outside.

2 THE COURT: But you weren't the first officer
3 in there. The other officers moved the people out;
4 right?

5 THE WITNESS: Yes, sir.

6 THE COURT: So you were about the third officer
7 inside?

8 THE WITNESS: Yes, sir.

9 BY MR. SPIVEY:

10 Q. Moving on, once the occupants of the room were
11 detained, standing outside the room, what did you
12 observe?

13 A. What happened was Sergeant Gleaton arrived
14 shortly after I did, he walk into the room and I
15 believe he saw a coffee pot or something that drew
16 his attention and immediately led him to suspect
17 that there was a candescent methamphetamine lab in
18 the room. I believe his exact words were everyone
19 out, and he pointed to the door, which I took to
20 mean some type of hazard inside the room.

21 I moved outside of the room with everyone else.
22 Mr. Miller and everyone else that had been in the
23 room was detained while Sergeant Gleaton and, I
24 believe, Investigator Huffman worked to obtain a
25 search warrant for the room.

1 Q. Okay. During that time did --

2 THE COURT: I'm sorry. Did what now about the
3 room? Say that last part. Did what?

4 BY MR. SPIVEY:

5 Q. I believe you were talking about obtaining the
6 search warrant.

7 A. Yes, sir. After Sergeant Gleaton hazard and
8 saw some type of -- what I took to be some sort of
9 hazard, ordered everyone to leave the room, the
10 defendant and the other occupants of the room were
11 detained while Sergeant Gleaton and Investigator
12 Huffman worked in obtaining a search warrant for the
13 room.

14 THE COURT: What were you doing?

15 THE WITNESS: I was sitting with Mr. Miller --

16 THE COURT: Okay.

17 THE WITNESS: -- and other occupants, detaining
18 them, making sure they did not flee the scene or
19 become violent while the search warrant was being
20 typed and taken to a magistrate to be signed.

21 THE COURT: Very well.

22 BY MR. SPIVEY:

23 Q. Did you observe the defendant during that
24 period of time?

25 A. I did.

1 Q. Okay. What did you observe about him?

2 A. Mr. Miller was handcuffed. He was standing
3 next to a soda machine. And when he was handcuffed,
4 we do a pat-frisk for weapons. No one -- Mr. Miller
5 was found to be unarmed. But during that process of
6 obtaining a search warrant, which I would guess took
7 between 20, 25 minutes, we were just standing there
8 kind of just -- we paused the scene, basically,
9 while the paperwork was being completed.

10 Mr. Miller started making -- Mr. Miller was
11 handcuffed with his hands behind his back. He made
12 started making real -- he made movements that
13 concerned me. He started digging behind his back,
14 just making real sharp movements around his
15 waistband which led me to believe that, possibly,
16 something had been missed during a pat-frisk or he
17 was -- I couldn't understand what he was doing. But
18 I felt it could be a threat, what he was doing.

19 THE COURT: Wait a minute. He had his hands
20 handcuffed behind his back and he's scratching
21 around his waist, and you thought that was a threat?

22 THE WITNESS: He wasn't scratching, Your Honor;
23 he was digging like he was trying to retrieve an
24 object.

25 THE COURT: But you had already patted him down

1 for weapons, hadn't you?

2 THE WITNESS: Yes, sir. But I've -- we've
3 patted people down and later found them to have
4 weapons that were missed during a pat-frisk.

5 THE COURT: Go ahead.

6 THE WITNESS: I took Mr. Miller's motions to be
7 suspicious, possibly threatening. I moved
8 Mr. Miller back from the wall, patted him down a
9 second time, thinking that maybe a weapon was
10 missed.

11 I then looked behind the soda machine and I saw
12 a black wallet wedged between the back of the soda
13 machine and the wall of the motel.

14 BY MR. SPIVEY:

15 Q. Okay. So the defendant, prior to you observing
16 this, he was standing in the corner where the soda
17 machine and the wall intersect?

18 A. Yes, sir.

19 Q. So when you saw the wallet, what did you do?

20 A. I considered the wallet to be abandoned at that
21 point. You normally don't see a wallet wedged
22 between a soda machine. So I retrieved the wallet
23 from behind the soda machine. I examined it, I
24 found it had an identification card from
25 Transitions, which is a local shelter in the

1 Columbia area. It had Mr. Miller's name and picture
2 of him on it.

3 And then inside of the wallet I observed a
4 brown coffee filter. And as I unfolded the filter,
5 I found it had a very white, crushed powder that I
6 believe to be methamphetamine.

7 Q. Okay. Did you ask the defendant anything?

8 A. I did. I believe I actually asked him, in
9 booking after he was transported to the jail -- or
10 transported to headquarters. And I asked him -- I
11 still had possession of the wallet, and I asked, is
12 this your wallet? And he responded, well, I have a
13 wallet like this.

14 And I showed him the picture ID and said, this
15 is your picture and name, isn't it? And I really
16 didn't get a response. And I then said, well -- I
17 believe I told him, it's your wallet, your ID, your
18 white powder and coffee filter.

19 MR. SPIVEY: No further questions.

20 THE COURT: And what did you think it was?

21 THE WITNESS: I believed it was
22 methamphetamine, Your Honor.

23 THE COURT: And what did it turn out to be?

24 THE WITNESS: I believe it turned out to be
25 pseudoephedrine.

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Officer, briefly, did you notice the initial
5 entry into the room by the officers?

6 A. I did not.

7 Q. Okay. And when you were standing there, who
8 told you to detain the defendant and the
9 co-defendants?

10 A. I don't believe there was a specific direction
11 to detain them. Once Sergeant Gleaton made his
12 determination that he had probable cause and began
13 the process of obtaining a search warrant, I think
14 all of the officers on scene just instinctively knew
15 that we needed to detain the occupants while we
16 paused that situation and obtained a search warrant.

17 Q. Okay. How many people were in the room?

18 A. At what point?

19 Q. Total number of people that got pulled out of
20 the room by the officers.

21 A. I believe it was three.

22 Q. Only three?

23 A. Yes, sir.

24 Q. Okay. Do you remember their names?

25 A. I do not.

1 Q. Now, you said you instinctively detained
2 Mr. Miller and the co-defendants?

3 A. Yes, sir.

4 Q. Okay. When you did that, what did you do with
5 them?

6 A. They were handcuffed, pat-frisked for weapons,
7 and they were ordered to stand against a wall
8 outside of the room.

9 Q. Okay. Who placed the handcuffs on Mr. Miller?

10 A. I don't recall.

11 Q. Okay. And where were they in relation to each
12 other up against this wall? How far apart?

13 A. They were separated by between three and five
14 feet between each person.

15 Q. Okay. And how far was Mr. Miller from this
16 Coke machine?

17 A. Mr. Miller was standing directly against --
18 directly in the corner created by the Coke machine
19 and the wall.

20 Q. And did you ever give Mr. Miller his warnings
21 under Miranda?

22 A. I did not.

23 Q. Did you ever hear anybody else do that?

24 A. Yes.

25 Q. Who?

1 A. I heard Sergeant Gleaton advise everyone -- all
2 three persons who were present in the room of their
3 Miranda rights. I've worked several meth labs with
4 Sergeant Gleaton where he responds as a
5 methamphetamine technician. And I've noticed, just
6 out of habit, every time Sergeant Gleaton arrives on
7 scene, as soon as he interacts with an individual
8 who is inside that room or present on scene, he
9 advises them of their Miranda rights.

10 Q. Did you hear any of the responses of the three
11 individuals you saw against the wall?

12 A. Not that I recall.

13 Q. Did you witness anyone filling out any
14 paperwork in relation to those Miranda rights?

15 A. They could not have filled out paperwork, they
16 were handcuffed.

17 Q. Did you witness anything that you would
18 describe as consent, whether a nod or anything,
19 coming from Mr. Miller or from anybody?

20 A. I believe they were advised of their Miranda
21 rights --

22 THE COURT: No, sir. I don't want you to
23 speculate. Did you hear anybody advise them of
24 their Miranda rights?

25 THE WITNESS: I'm sorry, Your Honor?

1 THE COURT: I don't want you to speculate. I
2 want to know if you did or if you personally saw
3 somebody do it.

4 THE WITNESS: I heard Sergeant Gleaton advise
5 them of their Miranda rights, Your Honor.

6 THE COURT: Sergeant Gleaton?

7 THE WITNESS: Yes, sir, Sergeant Gleaton, the
8 individual sitting here with the Prosecution.

9 BY MR. SPIVEY:

10 Q. When you started talking to Mr. Miller, did you
11 initiate that conversation?

12 A. Yes, sir, I did.

13 Q. Okay. And you started asking him questions?

14 A. Yes, sir.

15 Q. And he had his handcuffs on while you were
16 doing that?

17 A. Yes, sir.

18 Q. And where did that conversation take place?

19 A. Outside the room, right by the Coke machine
20 after I moved him away from it.

21 Q. Okay. And you said you took him to the Cayce
22 Police Department?

23 A. Yes, sir.

24 Q. And you initiated another conversation with
25 him?

1 A. I really didn't -- I did not converse with
2 Mr. Miller much at the Coke machine. Mr. Miller was
3 taken back to Cayce Police Department where we
4 completed booking paperwork. And when I went back
5 to the police station, I asked Mr. Miller about the
6 wallet.

7 Q. Okay. So you initiated that conversation by
8 asking him that question?

9 A. Yes, sir.

10 Q. And at that point, you didn't advise him of his
11 rights under Miranda?

12 A. No, sir. I had already heard Sergeant Gleaton
13 advise him of his Miranda rights.

14 Q. And he was still in handcuffs?

15 A. Yes, sir.

16 Q. And he was located inside the police station in
17 custody?

18 A. Yes, sir.

19 Q. All right. Did you ask him any other
20 questions?

21 A. I asked him nothing beyond the scope of the
22 wallet and the ownership of it.

23 Q. And was there anyone else present when you had
24 that conversation with Mr. Miller?

25 A. I believe Officer Garcia was present, but I

1 can't specifically recall who was in booking at that
2 time.

3 Q. Okay. Did you attempt to record that
4 conversation in any way?

5 A. No, sir.

6 THE COURT: Mr. Miller is only charge with the
7 altered pseudoephedrine?

8 MR. JOHNSON: Mr. Miller with manufacturing
9 third and the pseudoephedrine, Your Honor.

10 THE COURT: And manufacturing third?

11 MR. JOHNSON: Manufacturing third and
12 pseudoephedrine second.

13 THE COURT: Well, pseudoephedrine is just
14 altered pseudoephedrine; right?

15 MR. JOHNSON: That's correct. It's crushed --
16 within the statute, it's crushed pseudoephedrine.
17 And they tested that, and that's the only test that
18 was performed in this case, and it came back
19 positive.

20 THE COURT: And the other indictment is for
21 manufacturing third?

22 MR. JOHNSON: Yes, sir.

23 THE COURT: Okay.

24 MR. JOHNSON: Thank you, Judge. Those are all
25 of the questions I have.

1 THE COURT: Thank you, sir.

2 All right. I hate that we keep interrupting
3 this, but we have a verdict in our other trial.

4 (Hearing in recess at 11:56 AM - 4:17 PM.)

5 THE COURT: All right. Where are we?

6 MR. SPIVEY: Your Honor, we're ready to call
7 Jim Gleaton.

8 JAMES GLEATON

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 THE CLERK: State your full name, spelling your
12 last, please.

13 THE WITNESS: James Gleaton, G-L-E-A-T-O-N.

14 DIRECT EXAMINATION

15 BY MR. SPIVEY:

16 Q. Where do you work and what is your role there?

17 A. I work for the Cayce Department of Public
18 Safety and I'm currently the sergeant over the
19 investigations and intelligence division.

20 Q. Do you have any training or experience in
21 narcotics?

22 A. I do. I have probably well over ten years
23 worth of experience in narcotics, I have over 170
24 hours of specialized training in the field of
25 methamphetamine investigations, as well as certified

1 meth tech for cleaning up and disposing of meth
2 labs, probably 400-plus hours in narcotics
3 investigations themselves.

4 Q. Experience-wise, give us a rough estimate of
5 how many methamphetamine cases you've actually
6 worked.

7 A. Probably well over 200.

8 Q. Okay. In your experience and training, you've
9 been exposed to the different smells and chemicals
10 used in methamphetamine labs?

11 A. I have many times.

12 Q. So you're very familiar with the smell of
13 methamphetamine --

14 A. Yes, sir.

15 Q. -- and labs and the chemicals there?

16 Okay. You were called out on January 8th to
17 the Motel 6 there on Knox Abbot?

18 A. I was.

19 Q. Okay. Tell us what happened when you got
20 there.

21 A. Well, once I got there, I smelled a chemical
22 when I got out of my vehicle, which is notated --

23 THE COURT: Hold on a minute. When you get to
24 the Motel 6, you're in your car, you get out. I
25 assume you're in the parking lot.

1 THE WITNESS: Right. There's a --

2 THE COURT: You smelled the odor from the
3 parking lot?

4 THE WITNESS: I smelled a chemical odor.

5 THE COURT: A chemical odor from the parking
6 lot.

7 THE WITNESS: Right. Well, it's kind of hard
8 to explain. The breezeway was right where the room
9 was, and my vehicle -- I pulled right up to the
10 breezeway so I could be as close as I could to where
11 they were.

12 THE COURT: What type of odor did you smell in
13 the parking lot?

14 THE WITNESS: It smelled like ether odor, but I
15 had not gotten a full whiff of it. I just notated
16 it that I did smell an odor. But I believe I
17 notated it in there that it was -- I couldn't
18 distinguish it at the time.

19 THE COURT: They don't use ether to make meth,
20 do they?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Go ahead.

23 BY MR. SPIVEY:

24 Q. All right. Tell us what happened after you
25 smelled that odor and approached.

1 A. As I smelled the odor, I was walking up to
2 Officer Garcia because he was the -- from what I
3 understood, the first officer there. He immediately
4 told me what was going on, said that he walked into
5 the hotel room, showed me which room it was, and
6 told me he observed what he thought was a white
7 container and thought it was acetone.

8 Well, my first thought was, okay, it was
9 probably a meth lab, because that was the call they
10 were on that I heard across the radio was they were
11 responding to a possible meth lab. Once I walked
12 into the room, there were several defendants and
13 some officers standing outside the room. I walked
14 in and Officer Garcia showed me where he saw the
15 white container, because it was up on the top of the
16 shelf. And I'm short, so I asked him if he could
17 pick it up and hand it to me so I could look in it.
18 When he did, I saw what it was, sat it back down,
19 had everybody leave the room --

20 THE COURT: What was it?

21 THE WITNESS: It was a liquid with a
22 blue-colored tint consistent with acetone or nail
23 polish, which is commonly used in the production of
24 methamphetamine in different phases.

25 BY MR. SPIVEY:

1 Q. Was it nail polish or nail polish remover?

2 A. Nail polish remover.

3 Q. All right. What else did you observe, if
4 anything at all?

5 A. I did observe there was a coffee pot that
6 sitting on the counter in the bathroom. It didn't
7 appear to have anything in it, but the way it was
8 arranged, it just didn't look right, it was just
9 sitting on the counter.

10 When I immediately turned around to go back out
11 the door, there was coffee pot in, like, a plastic
12 bag, like a Walmart bag. When I first saw that, my
13 first thought was let me see, because my first
14 concern is public safety. I don't want anything in
15 there that's going to blow up, catch fire, anything
16 like that. So that's what I'm looking for
17 immediately is to make sure everything is safe
18 because I don't want, you know, me to get hurt or
19 anybody else to get hurt.

20 When I saw it, I lifted the bag down, lifted it
21 up just to make sure. It's got a clear liquid in
22 it. As soon as I moved it, I could smell the odor
23 coming from it.

24 THE COURT: It had clear liquid in the Walmart
25 bag?

1 THE WITNESS: No. In the coffee pot that was
2 inside the bag.

3 BY MR. SPIVEY:

4 Q. So there were two coffee pots?

5 A. Yes. There was one inside of a plastic bag
6 that was on -- if you're coming out of the room,
7 going back towards the door, it would have been on
8 the left side, on that side over there, and then one
9 behind us actually sitting on the counter.

10 Q. Based on your training and experience, what was
11 your reaction from all of these observations?

12 A. Based on what I smelled, what I saw, I was
13 pretty sure that it was a meth lab. I was convinced
14 it was a meth lab. It was the matter of what stage
15 it was in and where it was. That's why --

16 THE COURT: It was what you call a
17 bake-and-shake lab?

18 THE WITNESS: Yes, sir. Well, I couldn't tell
19 if it was a one-pot at that point, but that's what
20 it appeared to be, as far as the bake-and-shake.

21 THE COURT: A mobile sort of type?

22 THE WITNESS: Right. Yes, sir.

23 BY MR. SPIVEY:

24 Q. Once you had everybody detained, did you read
25 anybody Miranda rights?

1 A. I did. It has been taught to me and it's
2 pretty much my standard procedure, what I do is as
3 soon as I know or think I have a meth lab, I
4 immediately -- any person who has any involvement in
5 it, we detain them, I immediately read them Miranda
6 rights. And it's specifically to ask them is there
7 anything active as far as a cook going because, you
8 know, if it's not burped or bled, it could erupt
9 causing, you know, catastrophic damage, pretty much.

10 So I immediately read them, quick couple
11 questions, hey, do you want to talk to me, yes or
12 no, this is what I need to know. They say no. I
13 Mirandized every one of the individuals quickly
14 because it's, you know, time consuming. And the
15 only person who said they would talk to me was
16 Ms. Breedlove.

17 Q. Okay. Do you remember Mirandizing the
18 defendant?

19 A. I do.

20 Q. How long from the time they were detained --
21 how much time elapsed from the time they were
22 detained until the time you read Miranda?

23 A. Roughly speaking, maybe two to five minutes
24 tops.

25 Q. Okay. And last thing for the Judge's

1 edification, I've shown this to Ola. Are you
2 familiar with the area over there?

3 A. Yes, sir.

4 (State's Exhibit No. 3 marked for
5 identification.)

6 Q. Okay. This is marked State's Exhibit 3. Is
7 this a map of that area?

8 A. Yes.

9 MR. SPIVEY: Okay. I'd like to move this in
10 just for purposes of this hearing at this time.

11 MR. JOHNSON: No objection.

12 THE COURT: And it's located right near
13 Brookland-Cayce High School?

14 THE WITNESS: Yes, on the corner right there.
15 So when you were asking about my vehicle, what's --
16 where I pulled up here, that's where the room is.

17 THE COURT: Okay.

18 MR. SPIVEY: No further questions, Your Honor.

19 THE COURT: Now, Sergeant Gleaton, you did not
20 go get the search warrant, did you?

21 THE WITNESS: I did not. Once I'm on scene, I
22 pretty much can't leave. There's only two of us
23 that are meth techs, so we just call --

24 THE COURT: And you sent one of the other
25 officers who signed an affidavit saying what you

1 observed and what you smelled and -- based on your
2 experience?

3 THE WITNESS: Right. Yes, sir.

4 THE COURT: Mr. Johnson.

5 MR. JOHNSON: Thank you, Judge..

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Officer, what -- how far were you from your
9 vehicle when you smelled something of this chemical
10 odor you were talking about?

11 A. Pretty much as soon as I got out and I
12 started -- if you're familiar with the area, there's
13 like a lip, a sidewalk. I pulled right up to that.
14 When I got out, I believe the defendant and at least
15 one other person were standing in the breezeway, and
16 I could smell it then. And as I got closer, I was
17 able to distinguish exactly what it was.

18 Q. Okay. Was there an officer standing with the
19 defendant and this other person?

20 A. Yes.

21 Q. Who was that?

22 A. Officer Dougall was with the defendant and, I
23 believe, Officer Garcia had Mr. McFadden, if I'm not
24 mistaken.

25 Q. Okay. Is this near the Coke machine that was

- 1 talked about?
- 2 A. I don't know that it was a Coke machine, but it
- 3 was near a drink machine that was there.
- 4 Q. Okay. How many people were in the room?
- 5 A. When I got there or total?
- 6 Q. Total people brought out of the room.
- 7 A. I was told it was four, and four is the number
- 8 that I interviewed and talked to that night.
- 9 Q. Okay. And didn't you create a report in
- 10 relation to this case, investigative notes?
- 11 A. I did, yes, sir.
- 12 Q. Okay. And in that report didn't you indicate
- 13 that you smelled a chemical odor, but could not
- 14 distinguish it from cleaner?
- 15 A. I did.
- 16 Q. Okay. And you didn't say that it smell of
- 17 ether, you said, a chemical odor, but could not
- 18 distinguish it from cleaner. You didn't say
- 19 anything about ether or anything else?
- 20 A. Right.
- 21 Q. Okay. And what was the distance in feet from
- 22 the room to where you parked?
- 23 A. Rough guess, 20, 25 feet maybe.
- 24 Q. Okay.
- 25 A. Not very far.

1 Q. When you entered the room, did you gain consent
2 from anyone? Why did you enter the room?

3 A. I entered the room because they said they
4 thought they had a meth lab in there. At that
5 point, I'm -- my focus is to make sure that the
6 lab -- and there's nothing in there that could
7 present any danger, especially in a crowded hotel.

8 Q. Who told you there was a meth lab in there?

9 A. The officers on scene said that they suspected
10 it based on what they had observed.

11 Q. Okay. Which officer said that?

12 A. I want to say Officer Findley said it, as well
13 as Officer Garcia.

14 Q. And that was your reason for entering the room?

15 A. Yes.

16 Q. Okay. And did you talk to anyone about anyone
17 giving consent to enter the room?

18 A. No, sir.

19 Q. Okay. And --

20 A. Although if you're asking did someone tell me
21 that, yes; Officer Garcia told me he got consent to
22 search the room.

23 Q. Did he tell you that before you entered the
24 room?

25 A. My guess would be -- I'm trying to remember

1 exactly. It was either right as we were walking in
2 it or right before. But somewhere in there when he
3 was telling me what had transpired before me getting
4 there.

5 Q. Okay. So you may have entered after or you may
6 have entered first and then had that conversation?

7 A. Yeah. Like I said, again, my focus is directly
8 to the chemicals.

9 Q. So you're not sure, is what you're saying?

10 A. I'm pretty sure it was right there in that time
11 period. But I can't tell you, like, were we in the
12 threshold of the door or if it was before it.

13 Q. Okay. Did you order all the other officers to
14 get out of the room when you entered the room?

15 A. I did once I went in and saw what Officer
16 Garcia was talking to me about, yes, sir.

17 Q. Okay. And you relayed information to this
18 other officer about -- Officer Huffman about getting
19 a search warrant; correct?

20 A. That's correct.

21 Q. Okay. And when you created that, you put on
22 there, Sergeant Gleaton. Did you tell them that
23 you, Sergeant Gleaton, conducted a knock-and-talk at
24 room 126?

25 A. I didn't tell him I did. But he may have --

1 because I'm the one giving the information. That's
2 probably why he wrote it that way.

3 Q. Okay. So you did not --

4 A. I mean, don't have the search warrant in front
5 of me. I can't see it. So...

6 Q. Okay. Would it be helpful for me to hand you a
7 copy for you to see it?

8 A. Yes, sir.

9 Q. Okay. With the Court's permission I'll hand
10 you a copy of the search warrant. And it says --
11 Officer, on that search warrant, it says you
12 actually -- says there that you actually conducted
13 the knock-and-talk. But you did not?

14 A. I did not. That's correct.

15 THE COURT: The warrant itself or the affidavit
16 for the warrant?

17 MR. JOHNSON: The affidavit for the warrant,
18 Your Honor, under reasons for affiant's belief.

19 THE COURT: Okay.

20 BY MR. JOHNSON:

21 Q. Now, it says on there that you also conveyed
22 information that there was a chemical odor that was
23 encountered coming from room 126.

24 A. That's right.

25 Q. Okay. And how did you know where this chemical

1 odor was coming from when you got out of your car?

2 A. Because the officers were there.

3 Q. They were at the room 126?

4 A. Yes.

5 Q. Did you somehow in any other way notice the
6 smell was coming from that room or you're just
7 saying because you saw officers there?

8 A. I'm not sure I understand what you're asking.

9 Q. Well, did you determine where the smell was
10 coming from when you got out of the car?

11 A. I did because I had to go where they were,
12 which is where the smell was.

13 Q. Okay. And you did not conduct the
14 knock-and-talk. And you said -- says here -- you
15 also gave the information that you, Sergeant
16 Gleaton, observed a strong odor of acetone inside
17 room 126; correct?

18 A. Correct.

19 Q. And in your investigative notes, you didn't say
20 that; you said, chemical odor that you could not
21 distinguish from a cleaner.

22 A. You're referring to two different timelines.

23 Q. Yes. On your investigative notes you said
24 something different. You recorded you had a
25 chemical odor that you couldn't distinguish from a

1 cleaner. You did not say acetone; correct?

2 A. That was on my arrival, not on what you're
3 talking about for the search warrant. That's two
4 different things.

5 Q. So are you saying -- at what point did you
6 notice acetone?

7 A. Once I entered the room.

8 Q. Okay. And that was after crossing over the --
9 into the room?

10 A. Right.

11 Q. Okay. Now, it says under information you gave
12 the officer: Also one open bucket containing
13 acetone. Correct?

14 A. That's correct.

15 Q. Now, did you test the substance?

16 A. Eventually I did, but not at that point.

17 Q. You tested the substance for acetone?

18 A. No. I tested it for its pH. That's all we do.

19 Q. Okay. But --

20 A. We do not test any of that.

21 Q. Okay. But that test does not tell you whether
22 or not it's acetone?

23 A. No. It's consistent with acetone.

24 Q. Right. And you have no qualifications as a
25 chemist or anybody that deals with chemical

1 substances like that? You're not -- you're not
2 qualified to test substances in a lab and give an
3 analyst report or anything like that?

4 A. No, sir.

5 Q. Okay. And --

6 THE COURT: Was it tested and it turned out to
7 be acetone?

8 THE WITNESS: It turned out -- it was a pH of,
9 I believe, a 6 or 7, which is consistent with
10 acetone.

11 THE COURT: And acetone has a very distinct
12 smell, does it not?

13 THE WITNESS: Yes, it does. And it...

14 THE COURT: Go ahead.

15 THE WITNESS: Well, I was just going to say,
16 when we're trained, we have to smell each and
17 every -- as many chemicals as they can possibly put,
18 we have to smell all of those. And we work with the
19 chemicals while we're being trained, so we become
20 very familiar with the odors of them, even though --

21 THE COURT: But notwithstanding all that
22 training and sniffing, you still send it to be
23 analyzed?

24 THE WITNESS: As far as, what, the acetone?

25 THE COURT: Yes.

1 THE WITNESS: No, we don't. And the -- do you
2 want me to tell you why?

3 THE COURT: Yes.

4 THE WITNESS: The reason we don't is because if
5 we were to send samples of liquids that have
6 unknowns in them, which that's pretty much what we
7 do, what we deal with with them, it's been taught to
8 me through classes that those chemicals could have
9 other chemicals in them that could react violently
10 with the equipment that they're tested by. That's
11 why it's all destroyed.

12 THE COURT: And that's protocol; right?

13 THE WITNESS: That is, yes, sir.

14 BY MR. JOHNSON:

15 Q. Just briefly, Officer, you can't testify,
16 again, about the amount of time from when you gave
17 Miranda to my client and when he spoke with the
18 other officer who testified about talking to him
19 about the wallet and talking to him back at Cayce
20 Public Safety; you have no idea how much time passed
21 between those two events?

22 A. I couldn't tell you. I was working on a lab.

23 Q. Okay. And you didn't get any paperwork or
24 waivers or anything signed by my client regarding
25 his Miranda warnings?

1 A. No, sir. I would not do that normally in that
2 practice because it's not the time for that. I
3 would usually go back and interview them later if
4 they want to talk to me. That's more right then
5 what's in the room or what's dealing with the lab
6 itself --

7 Q. Okay.

8 A. -- safety concerns. That's it.

9 Q. Okay. Can you tell me what you said to him in
10 order to advise my client of his warnings under
11 Miranda?

12 A. I keep a card in my wallet that I pull out and
13 read it to them.

14 Q. Do you have that with you?

15 A. I got my wallet, so I got my card. Would you
16 like to see it?

17 Q. Would you mind reading that for me as you read
18 it to my client?

19 A. Sure. And I probably read it a little quicker.
20 But I'll read it to you. Do you want me to read the
21 whole thing?

22 Q. What you read to my client.

23 A. It would have been:

24 You have the right to remain silent. Anything
25 you say can and will be used against you in a court

1 of law. You have the right to talk a lawyer and
2 have him present with you while you're being
3 questioned. If you cannot afford to hire a lawyer,
4 one will be appointed to represent you before any
5 questioning, if you wish.

6 I don't have my glasses, so I'm trying here.

7 You can decide at any time to exercise these
8 rights and not answer any questions or make any
9 statements. Do you understand each of these rights
10 as I've explained them to you?

11 I let them answer me.

12 Having these rights in mind, do you wish to
13 talk to us now -- or to me now. And then I'll let
14 him answer me.

15 Q. What was the response of my client?

16 A. No.

17 Q. He just said the word no?

18 A. Yep. He said, nope, I don't want to talk to
19 you.

20 Q. Okay. And did you have any other conversations
21 with him?

22 A. I did not.

23 Q. Okay. Did you witness anything about the
24 wallet behind the Coke machine seized by the officer
25 and that event? Did you witness any of that?

1 A. I did not witness any of it, no, sir.

2 Q. Okay.

3 A. I was told about it later.

4 Q. Okay.

5 MR. JOHNSON: No more questions, Your Honor.

6 THE COURT: Redirect?

7 MR. SPIVEY: No, sir, Your Honor.

8 THE COURT: All right. Sir, you may step down.

9 Any additional witnesses?

10 MR. SPIVEY: No, sir, Your Honor.

11 THE COURT: All right. What motions do we now
12 have outstanding?

13 MR. JOHNSON: Judge, it's my understanding this
14 was sort of a combo of the Denno and the suppression
15 that I filed under the new case law regarding the
16 knock-and-talk. The other --

17 THE COURT: The new case law on what?

18 MR. JOHNSON: The new -- well, the State v.
19 Counts.

20 THE COURT: Okay.

21 MR. JOHNSON: I'm just trying to identify --
22 it's a written motion. This is the one that -- it's
23 my understanding, this is what the State was
24 responding to, as well as the Denno. The motion was
25 a motion to quash the indictment regarding the

1 possession of altered pseudoephedrine. That is
2 another motion.

3 We also have -- there was a motion to suppress
4 the nuisance letter provided by State. But it's my
5 understanding they're not going to use that at
6 trial, so that's a moot point at this point.

7 There's a motion to suppress the
8 pseudoephedrine logs. And that is something that --
9 a little more detailed and it's my understanding the
10 State has some witnesses in relation to that.

11 THE COURT: I'm sorry. A little more detailed
12 what?

13 MR. JOHNSON: They have some witnesses for
14 that, I believe, lined up; some chain of witnesses
15 regarding the --

16 THE COURT: Let's deal with what we've taken
17 testimony on so far, which would be the motion to
18 suppress based on the Counts case. I'd be glad to
19 hear from you. Isn't that correct; isn't that what
20 you wanted to do?

21 MR. JOHNSON: Judge, you just want to proceed
22 and argue that motion?

23 THE COURT: Yes, sir.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: That's Counts, C-O-U-N-T-S, the

1 case that came out of the Supreme Court on July 8th,
2 2015.

3 MR. JOHNSON: Yes, sir. Your Honor, at this
4 point, to go forward with that, under Counts it
5 recognizes that -- basically, that was the case
6 where they had what was described as an anonymous
7 tip and then another anonymous tip. But it said,
8 basically, under the state right to privacy
9 recognized under the state constitution, it talks
10 about this right to privacy being violated because
11 in Count, it said that there were two separate
12 anonymous tips, and these tips provided created a
13 great deal of what were discussed as multiple
14 identities or identifiers of information.

15 And then they talked about people who provided
16 these tips gave specific information about a
17 defendant they said was dealing drugs, and they had
18 all of this specific information verified by law
19 enforcement. And because of that, this court ruled
20 that because the officers conducted surveillance of
21 this location under Counts, because they got
22 information describing the vehicle, they got
23 information about this person having false
24 identities, the officers in that case established
25 reasonable suspicion to allow them to conduct a

1 knock-and-talk as an investigative tactic.

2 And, basically, it's my understanding, the
3 court -- South Carolina Supreme Court ruled there's
4 basically this right, separate from the federally
5 recognized right to privacy or right under the
6 fourth amendment against search and seizure.
7 There's a state right, and under Counts, it said
8 that this higher level of privacy we've got under
9 state constitution was something that required the
10 State to establish reasonable suspicion if they're
11 going to target a residence and conduct a
12 knock-and-talk as more than just a --

13 THE COURT: Well, they specifically say on the
14 knock-and-talk: We hold that law enforcement must
15 have reasonable suspicion of illegal activity before
16 approaching the targeted residence prior to
17 approaching the residence and knocking on the door.

18 And in leading up to that, they say: Similar
19 to federal precedent, this Court has found that,
20 quote, police have the investigative authority to
21 approach the front door of a home in order to
22 investigate the anonymous tip. So I assume an
23 anonymous tip is -- gives rise to reasonable
24 suspicion of illegal activity. Does it not?

25 MR. JOHNSON: Well, Your Honor, they get into

1 the great details of the tip. And that is something
2 that controls, I think, their decision.

3 Under South Carolina Constitution, Article I,
4 Section 10, they start talking about what kind of
5 information is provided. Now, in Counts' case, they
6 talk about people saying, well, this is the
7 individual, and they give a specific name; and they
8 say, well, this individual is going to drive this
9 car, and this individual is going to have fake
10 identities. And then they had two separate tips
11 where the officers talked about it, looked up
12 information on the individual and actually did some
13 surveillance.

14 THE COURT: Well, there's no question that the
15 anonymous tip in Counts was much more detailed than
16 in this case where, as I understand it, it was a
17 meth lab was being operated in the motel room, not
18 withstanding in the affidavit for the search warrant
19 it said there was -- chemical odor was coming out of
20 the room 126. But I think the officer yesterday
21 testified clearly that it was just an anonymous tip
22 that meth was being manufactured in that room,
23 they're talking about a smell.

24 But, either way, the anonymous tip in our case
25 here certainly is not as elaborate as the anonymous

1 tip in Counts. Everybody would concede that, I
2 would think. But is what we have here enough to
3 satisfy the reasonable suspicion of illegal activity
4 as Justice Beatty is now requiring? And plus, that
5 was not the law when this took place.

6 MR. JOHNSON: Well, Your Honor, I will say that
7 this right under the South Carolina Constitution did
8 exist; it did not appear or -- it was not created at
9 the time of this incident, so I would argue that my
10 client had this right at the time of the incident.
11 And since the court, the South Carolina Supreme
12 Court, had access and obviously knew about the
13 United States Supreme Court decisions that the
14 solicitor is relying on regarding Davis v. U.S.,
15 they basically chose not to recognize that, talking
16 about officers that operated under the current law
17 as a basic, kind of a good-faith argument that they
18 went in, conducted the knock-and-talk, that would be
19 proper and not a violation of the fourth amendment
20 rights because that was the law at the time, the law
21 of the land.

22 Since that law, under this Davis v. U.S.,
23 existed at the time the Counts case came out, I
24 would argue that the South Carolina Supreme Court is
25 saying we've got this broader right to privacy as

1 they indicate that's the ceiling -- the federal rule
2 is the floor, the state rule is the ceiling; we've
3 got this broader right, it existed at the time of
4 the incident, and they're saying clearly -- I mean,
5 clearly they knew about the decision of the U.S.
6 Supreme Court, they understood the Davis v. U.S.,
7 and chose not to apply that.

8 THE COURT: Well, let's assume we apply it.
9 Let's assume that Justice Beatty now has, by a
10 three-to-two decision, that becomes the law in this
11 state that you need reasonable suspicion of an
12 illegal activity before knocking and talking. And
13 in this case, clearly -- it's not contradicted that
14 police officers received an anonymous tip to go to
15 Motel 6; Motel 6 has been known to have criminal
16 activity including a lot of drug usage and gang
17 activity, et cetera, et cetera, to the point that
18 it's being threatened to shut down as a nuisance.

19 They go, based on that, knock on the door, and
20 eventually the guys invite them in. He goes in, he
21 smells something he thinks is suspicious, has
22 permission to go in, and he does not do anything,
23 basically, except call in some back-up, more trained
24 person in methamphetamine. He smells the chemicals
25 which are consist with the manufacturing

1 methamphetamine, he sees other things that raise his
2 suspicion, and instead of doing anything, he backs
3 off and they get a search warrant and they go in and
4 execute. Why is that not a reasonable,
5 constitutional approach to how they handle this
6 situation?

7 MR. JOHNSON: Well, Your Honor, it's so much
8 weaker than the tip and the information from Counts
9 because --

10 THE COURT: Well, I don't know that I've ever
11 seen a case where the anonymous tip was so detailed
12 as it is in Counts. Most of the time it's just
13 somebody calling, hey, we got something going on in
14 this room.

15 MR. JOHNSON: Well, Judge, that case I cited,
16 State v. Green, was a tip that information about
17 guns in a car. And it said, this guy is going to
18 have this car and he's going to have guns and drugs,
19 and they did a traffic stop. And the court said
20 that's not reasonable suspicion.

21 THE COURT: State vs. Green?

22 MR. JOHNSON: That's cited in my motion, Your
23 Honor. That came out about 14 years ago or 12 years
24 ago. And I think I have a copy --

25 THE COURT: But that wasn't a knock-and-talk --

1 MR. JOHNSON: No, sir; that was a reasonable
2 suspicion for a stop. And since we're talking about
3 the same standard, I would argue gave -- it gave
4 detail. And the court said that's not enough,
5 because you have an anonymous tip and -- and in this
6 case they supplied the name off of the dispatch call
7 off of the dispatch log and said, well, this is the
8 name of the tipster. Well, of course, there's
9 nothing there about the person's credibility and
10 which -- as required when they talk about in Green,
11 testing someone's credibility, knowing their
12 history, like when narcotics officers use a CI and
13 having to provide that and say a warrant based on a
14 CI. The law requires them to lay it out, this is
15 why we know this is a reliable CI. Well, they do.
16 that because they've got to know this person is --
17 there's a more reasonable chance this person is
18 going to be telling the truth.

19 And in State v. Green, they did that and they
20 said, well, we don't have reasonable suspicion.
21 Even though they stopped the car and they find the
22 guns, they didn't have the name of the person. They
23 said, tell us this detailed information, but it's
24 not enough. And I would argue in this case, the
25 officers had the option; they could set up outside

1 room 126, they could set up surveillance like they
2 did in Counts. They did not do that. They had the
3 option of finding out the exact name of who is
4 registered to room 126 and trying to contact that
5 person, if they called them over the phone or if
6 they look at their rap sheet and their history, if
7 this person has a history of manufacturing
8 methamphetamine. And they failed to do that.
9 That's some of the things mentioned in the Counts
10 case that, in the alternative, they could have
11 done --

12 THE COURT: Sure. Sure.

13 MR. JOHNSON: -- since they knew the room
14 number and since they knew the area, Judge. They
15 just simply chose not to do it.

16 THE COURT: So your position is that this just
17 bound on an anonymous tip, that that's not
18 reasonable suspicion and precludes the
19 knock-and-talk?

20 MR. JOHNSON: That's correct, Your Honor. And
21 I would also address what you mentioned earlier
22 about the consent, if you want me to go forward with
23 that.

24 Officer Wihlidal, he actually admitted on the
25 stand he entered the room, and then the other

1 officer said he stepped in the room, but they both
2 said, we stepped in the room and saw a female going
3 towards the bathroom. And when they come on
4 cross-examination, they both said they didn't see
5 any means of her to escape, this was not a pursuit
6 situation, exigent circumstances; there was no
7 contraband, nothing in her hands to be destroyed.

8 And so in that situation, that invasion by
9 stepping into the room, they came into this room
10 without a warrant. And then I would argue they
11 could not gain consent at that point -- voluntary
12 consent from this person because they even had
13 trouble identifying who gave them consent. When we
14 asked the numbers of --

15 THE COURT: Isn't there a lot of case law on if
16 you and I are renting a house together I can give
17 consent to search and it affects you?

18 MR. JOHNSON: Well, what I'm saying, Judge,
19 they have trouble even identifying the number of
20 people in the room. One person said three, another
21 officer said four, and another officer said five.
22 So as far as reliable information, when one officer
23 says -- Wihlidal says he stepped in the room,
24 ordered the woman to stop, didn't have anything in
25 her hands, didn't fear destruction of evidence or

1 flight from the room, and then another says, well, I
2 stepped and then stepped back out, and then I got
3 consent, I would argue that at -- at that point they
4 can't give consent, because they've already evaded
5 and crossed that barrier. And --

6 THE COURT: But the first officer who testified
7 who went to the room said he knocked on the door and
8 the guy opened the curtain and looked sort of
9 startled, but he eventually told him to come on in.

10 MR. JOHNSON: Well, there was also confusion
11 there. The officer talked about -- that officer put
12 in his report -- when I cross-examined him, there
13 was confusion about whether or not he said door.
14 And he created the report of Officer Garcia and he
15 said he responded to the call, and he says, well,
16 one of the subjects opened the door.

17 There's no mention of a curtain, looking
18 through a window, recognizing anything through a
19 window. In his report he admitted, I said they
20 opened the door. And he changed that or amended
21 that in his testimony.

22 So I'd argue, as far as judging the actual
23 specific events that you have to have control over
24 the fourth amendment situation, the officers were
25 not clear about who entered the room first, they

1 were both clear about they had entered the room
2 prior to getting consent, they were clear about the
3 fact that nobody saw anybody trying to destroy
4 evidence or exigent circumstances, nobody was
5 fleeing from the room.

6 They were also clear about the fact -- when I
7 questioned Officer Gleaton and I talked about the
8 search warrant, his definition of what he smelled
9 changed. He said ether, but in the report he
10 reflected, I smelled something I could not
11 differentiate from cleaner that would be used
12 anywhere. And then he said, yes, I did record that,
13 but when I got in the room, I smelled acetone.

14 And outside the room, I asked him, well, what
15 did you smell? And it went from ether to, yes, I
16 did record cleaner. So if he's going to say in the
17 report he smelled just cleaner when he got out of
18 the car and then they're going to justify going in
19 the room, clearly, you know, the question is, how
20 did you get in the room? His response was, I don't
21 know, I think I went in there because officers were
22 there; we had a conversation about someone maybe
23 getting consent; maybe it happened before I went in
24 or after I went.

25 So if the State is going to rely upon consent,

1 I think the initial entry by both of these officers
2 prior to getting consent, I think that destroys the
3 ability to then gain consent of people when they're
4 inside their hotel room asking for it after they've
5 already crossed that barrier, Judge.

6 And regarding the search warrant, I think,
7 judging the details of it, since the officer --
8 Officer Gleaton had some issues there and -- in the
9 specifics of it, and when you actually look at it,
10 they're relying on a search warrant where it talks
11 about testing and the reason for -- it says:
12 Conducted knock-and-talk -- which is not true,
13 Sergeant Gleaton admitted that he did not conduct a
14 knock-and-talk -- the coffee pot and filters --
15 which are in every hotel room, Judge -- and then a
16 bucket containing acetone.

17 Well, they also admitted that he never tested
18 it. And then when he did have some basic pH test,
19 it did not say acetone, it just talks about the pH
20 level; it did not tell him it was acetone.

21 THE COURT: Consistent with acetone, but not
22 necessarily --

23 MR. JOHNSON: Yes, sir.

24 THE COURT: All right.

25 Let me hear from the State, please.

1 MR. SPIVEY: Yes, sir, Your Honor. The first
2 three broad topics I want to argue relate to, number
3 one, why the Counts case doesn't apply to this case.

4 THE COURT: You sent me a memo last night and
5 told me why it didn't.

6 MR. SPIVEY: Well, yes, sir. That's one
7 reason. But I think, factually, this case is
8 different. And then I also think Counts is narrowly
9 tailored to a specific type of criminal
10 investigation. And I think our case is --

11 THE COURT: Which is what?

12 MR. SPIVEY: Well, just a pure criminal
13 investigation. Our case goes beyond criminal
14 investigation to a public issue. This is a meth
15 lab; i.e., they're flammable, the smells are
16 noxious, they're dangerous. There's a school next
17 door, there's other neighbors. I think police have
18 a duty --

19 THE COURT: On a main thoroughfare of West
20 Columbia.

21 MR. SPIVEY: That's correct. There's a duty
22 for police to respond to this, whether they've got
23 reasonable suspicion or not. Now, I think there is
24 an argument there is reasonable suspicion, but
25 setting that aside, Counts applied -- it says

1 specifically: You have to have a reasonable
2 suspicion prior to approaching a targeted residence
3 for purposes of criminal investigation.

4 There's a lengthy analysis in there about
5 welfare checks. And that's the only thing they went
6 into with that particular decision. But what they
7 said was, this wouldn't apply to a welfare check.
8 So if you get a call from a daughter who says, hey,
9 check on my --

10 THE COURT: There's a footnote talking about
11 the welfare.

12 MR. SPIVEY: Yes, sir. You know, a daughter
13 who calls and says, hey, go check on my mom, I
14 haven't heard from her for a while, they can do
15 that. Well, that's the police acting in more of a
16 public safety role rather than just a criminal
17 investigation.

18 I'm not trying to argue to you that this is not
19 a criminal investigation, because it is; but it's
20 also public safety role.

21 THE COURT: So when they get that anonymous
22 tip, they have reasonable suspicion to go and at
23 least investigate, perhaps knock, see if they can
24 come in, and when they get indication that it's a
25 meth lab, then it becomes a public -- well, a public

1 safety problem as well as a violation of the law
2 problem, and your people act reasonably by going and
3 getting a search warrant and handling it as they
4 did.

5 MR. SPIVEY: Right. Your Honor, what's most
6 important about South Carolina's constitutional
7 right to privacy is this all counts in
8 reasonableness. That is -- I mean, the word -- I
9 think they're -- free from unreasonable invasions of
10 their privacy, I think is the words they use.

11 So, you know, just like on any other right to,
12 you know, unreasonable search or seizure, it's
13 reasonableness. So with all of the exceptions
14 and -- of the fourth amendment, it would logically
15 extend to unreasonable invasions of privacy.

16 THE COURT: But Mr. Johnson says they should
17 just sit out there and wait and see what's going to
18 go on and then let them blow up inside, but -- a
19 meth lab, I guess.

20 MR. SPIVEY: Yeah. I --

21 THE COURT: Burn the building down, catch
22 Brookland-Cayce High School on fire and, next thing
23 you know, it's like Chicago, the whole town is
24 burning down.

25 MR. SPIVEY: I think there would be quite a

1 lawsuit, Your Honor.

2 THE COURT: Well, that's a little extreme.

3 MR. SPIVEY: Yes, sir, but not outside of the
4 impossible.

5 But having said that, I do want to back up,
6 because I do think there is at least a strong
7 argument and reasonable suspicion in this case than
8 what we've been relying on. It's true that Officer
9 Garcia said that he thought the -- or he couldn't
10 remember if the call was anonymous or not, but that
11 he did write in his report that it was anonymous and
12 didn't remember the caller.

13 But the dispatcher came and said he gave his --
14 it was not anonymous; in fact, he gave his name and
15 phone number. And that name and phone number was
16 provided to the defendant at the beginning of the
17 case in discovery.

18 If you look at the analysis of what a mere
19 tipster is or what is or is not reliable and whether
20 they're confidential or not, a person who is not
21 anonymous is automatically given more credence in
22 the eyes of the law because they put their name
23 behind it; it's not just somebody hiding behind the
24 cloak of anonymity.

25 So I would argue, first and foremost, that

1 Officer Garcia, whether he was right or not, his
2 subjective intent as to whether or not this -- he
3 was acting on an anonymous tip or a not anonymous
4 tip, it doesn't matter. The fact of the matter is,
5 here, it was not anonymous. There was, in fact, a
6 guy named Jason Carroll who called, gave his phone
7 number, and complained of this meth lab.

8 Having said that, this is an extreme high-crime
9 area. I think every witness that -- with the
10 exception of maybe one or two --

11 THE COURT: Well, surely it's not a -- other
12 than the fact that a lot of people hang out at the
13 Motel 6, that's the only reason it's a high-crime
14 location. But Knox Abbot Drive and Brookland-Cayce
15 High School is not a, per se, high-crime area.

16 MR. SPIVEY: Yes, sir. But this is a call
17 about this particular motel. It was to the point
18 where the chief of Cayce wrote a nuisance letter
19 saying if y'all don't tighten down on, you know,
20 your control of who you're renting these rooms to
21 and what you allow to go on there, we're going to
22 start fining you every time we come out, essentially
23 is what he's telling them.

24 The other realm of law that I did brief you on
25 and I'll state briefly here, Davis v. U.S. Counts

1 was a -- is a brand new interpretation of the South
2 Carolina right to privacy. I agree, the right to
3 privacy did always exist.

4 THE COURT: It's always been there since we've
5 had our state constitution. It's just a little
6 higher level than -- or gives you a little more
7 protection than the federal constitution, is the way
8 this decision came down.

9 MR. SPIVEY: What --

10 THE COURT: But it's always been there, it's
11 just now being tweaked a little bit.

12 MR. SPIVEY: What Counts has done is created a
13 new precedent: You must have reasonable suspicion.
14 You know, that's obviously not written in our
15 constitution. That's the new interpretation of
16 right, per our Supreme Court, has always been there.

17 THE COURT: Per three members of the Supreme
18 Court.

19 MR. SPIVEY: Yes, sir, Your Honor. Davis v.
20 U.S. has been followed in South Carolina. This is a
21 newer case and I --

22 THE COURT: Davis is the case where it talks
23 about the precedent and --

24 MR. SPIVEY: Yes, sir. And it goes into -- you
25 know, the theory behind it is -- the whole analysis

1 behind it is whether -- you know, the fourth
2 amendment exclusionary rule is judicially created to
3 deter police from messing up, to put it --

4 THE COURT: Invading privacy.

5 MR. SPIVEY: Correct.

6 THE COURT: Or violating constitutional right
7 of privacy.

8 MR. SPIVEY: Yes, sir. So it's to deter the
9 police from trampling people's rights or barely
10 crossing the line or skating the thin, it's
11 basically to keep them in line. Here, the police
12 are acting legally at the time. State v. Wright was
13 decided in 2011. It's our really main case in South
14 Carolina on what is required for plain view.

15 But in -- and in this case, they talk about
16 what a police officer can and can't do. And State
17 v. Wright has a very lengthy -- or a paragraph or
18 two, at least, talking about what a police officer
19 can do and how a police officer has the same rights
20 as a member of public in terms of walking up to
21 somebody's door, knocking on it, and having
22 conversations with --

23 THE COURT: And that's what Toal and Pleicones
24 talked about in their dissent.

25 MR. SPIVEY: Yes, sir, Your Honor.

1 THE COURT: And they say that's still good law,
2 but now Beatty and Kittredge and Hearn say, no, you
3 have to have reasonable suspicion.

4 MR. SPIVEY: Correct. The law at the time of
5 this incident in January of 2014 was you could do
6 that; Counts has created new precedent, a new rule
7 of law, based upon an always-existing -- or at least
8 existing until whenever they wrote the constitution
9 or that amendment came about. I'm not exactly sure
10 when that was in there. But it's been there for a
11 while, the right to privacy. I don't know the date
12 of it, but it had been there a long time. But the
13 new interpretation happened a month ago.

14 THE COURT: I understand. I know exactly what
15 you're saying and what you're arguing when you say
16 the police officers were acting under the law as it
17 existed at that time and that they should be
18 accepted --

19 MR. SPIVEY: Yes, sir, Your Honor.

20 THE COURT: -- per the case that you cited.

21 MR. SPIVEY: Yes, sir, Your Honor. And then I
22 would say I think there is an argument for
23 reasonable suspicion. I've read the Green case,
24 I've read other cases on reasonable suspicion. It
25 does take more than just a mere anonymous tipster,

1 but it doesn't have to rise to the level of probable
2 cause, and you don't have to have, necessarily, a
3 proven reliable person. But there's a threshold
4 there we can meet.

5 But I think the high-crime area, the fact that
6 this was not an anonymous tip, does rise, to some
7 level, of being reasonable. The officers were going
8 out there quite often to this particular place, and
9 I think it was reasonable for them to suspect, hey,
10 we got more crime occurring at this hotel.

11 Your Honor, he addressed consent. I'm
12 disagreeing with the factual testimony. I do not
13 remember the officers stating that they went into
14 the room prior to Officer Garcia stating he got
15 consent. From what I remember, he said he got
16 consent and then they entered.

17 THE COURT: That was my recollection.

18 MR. SPIVEY: I do not remember that. There was
19 one other issue: I do agree that Officer Dougall
20 stated there were three people in the room and the
21 officers testified there were four; I do not,
22 however, remember anybody saying there were five. I
23 know that's sort of nit-picky. But I don't think it
24 was unclear about whether or not consent was given
25 prior to them entering.

1 I think they were very -- Garcia was very
2 clear. The person who got the consent was very
3 clear that a consent was obtained prior to anybody
4 entering. I do think they had a conversation with
5 Ms. Breedlove about her going in and out of the
6 bathroom and acting really nervous, and they did ask
7 her to stop, but I don't think they entered the room
8 to do that. I don't --

9 THE COURT: That was after they entered that
10 she kept sort of going back and forth.

11 MR. SPIVEY: Yes, sir. I disagree with that
12 point.

13 THE COURT: Well, let's do this: Let me sort
14 of take all of this under advisement tonight.

15 Do you want to respond, Mr. Johnson?

16 MR. JOHNSON: Just one -- briefly, Your Honor.

17 THE COURT: Sure.

18 MR. JOHNSON: And for Denno purposes I was
19 going to put something on the record for the Denno
20 because this is like a combo --

21 THE COURT: That's fine. Go ahead.

22 MR. JOHNSON: Actually, when I cross-examined
23 Wihlidal, Officer Gleaton put in his investigative
24 notes, says that officer came up, Wihlidal asked the
25 female to stop, and stepped inside when he saw the

1 female move to the bathroom. Then it goes on to
2 say, one of the occupants, John McFadden, advised
3 Garcia to come inside after Officer Wihlidal
4 admitted -- and then when I asked him about this
5 note, he admitted, yes, I went inside and the lady
6 ran to the bathroom. He admitted to it. And
7 Officer Garcia also said he stepped inside, Judge.
8 We can go back and check that. I believe it did
9 happen.

10 In response to -- well, to Davis, just pointing
11 out that the State is asking the Court to apply
12 Davis when the Supreme Court and Counts would not
13 apply Davis.

14 But as far as the Denno is concerned, there's
15 no testimony about any waivers, no paperwork being
16 filled out. Officers said that he gave Miranda
17 warning, Officer Gleaton -- Sergeant Gleaton. But
18 I'd argue that there was no testimony from the
19 officer who testified about seizing the wallet and
20 talking to my client there about the wallet and who
21 testified about talking to my client at the public
22 safety building, he didn't talk about the timing.
23 He didn't talk anything about when he talked to him
24 or how much time had passed between that Miranda --

25 THE COURT: But the wallet has in it the coffee

1 filter with the -- so that would be the only offense
2 that that would touch on; is that correct?

3 MR. JOHNSON: Well, I believe the State is
4 trying to bring in, in relation to manufacturing,
5 also the possession of pseudoephedrine, and they're
6 also trying to say that because he made a statement
7 saying, well, that looks like my wallet, and since
8 they're accusing him of manufacturing --

9 THE COURT: Yeah. But if I kept that out,
10 there's ample evidence to continue on with the
11 manufacturing; I mean, all the stuff in the room.

12 MR. JOHNSON: Yes, sir. And -- well, that
13 statement as well as the other statement about being
14 a meth manufacturer at the public safety building.
15 And they just didn't provide any evidence or
16 testimony about how much time passed. And under
17 Denno, I would argue that that would mean it was
18 insufficient and there was an involuntary statement,
19 Your Honor.

20 MR. SPIVEY: Your Honor, in terms of -- just
21 for the purposes of -- I referenced State v. Brown.
22 It's Justice Beatty, his opinion.

23 THE COURT: Are we picking on Justice Beatty
24 today?

25 MR. SPIVEY: No, no.

1 THE COURT: I don't mean picking on him. We've
2 been citing him all day long.

3 MR. SPIVEY: There's -- he's become a very
4 important member of our Supreme Court. He wrote
5 some good opinions.

6 But this one specifically states, citing
7 Davis v. U.S., the exclusionary rule did not apply
8 to exclude admission of drug evidence found in the
9 defendant's duffel bag because they were acting in
10 good faith among prior precedent. This dealt this
11 car shops and Arizona vs. Gant coming out. And, you
12 know, again, a right done reasonable search and
13 seizure in federal law always existed.

14 What changed in Gant was their interpretation
15 of the right to unreasonable search and seizures.
16 So this is exactly what we have in this particular
17 case. Quite frankly, Counts mentions nothing about
18 it applying to cases existing or --

19 THE COURT: Well, now he's back now talking
20 about -- we've done Counts. He's talking about
21 Miranda.

22 MR. SPIVEY: Yes, sir. Well, he touched on
23 that briefly and then moved to Miranda.

24 THE COURT: All right.

25 MR. SPIVEY: In terms of Miranda, Officer

1 Dougall stated that he heard his partner here,
2 Investigator Gleaton, Mirandize him. And he stated
3 that this -- the conversation he had about the
4 wallet occurred after that particular event.

5 In addition, you know, just in terms of
6 admissibility of the wallet, it, in fact, is
7 abandoned property. And I'm going to argue that his
8 statement and the fact that there was possession of
9 crushed pseudoephedrine in it, while that in itself
10 is a crime, it's also further evidence of
11 manufacturing methamphetamine. You can't cook
12 methamphetamine without pseudoephedrine. So that's
13 all I got for that point, Your Honor.

14 THE COURT: All right. I'll take that under
15 advisement. Is 9:00 in the morning okay with you
16 gentlemen so we can make a ruling on it and decide
17 where we're going?

18 MR. JOHNSON: Yes, sir. And, like I said, I
19 have several other motions we can argue if that
20 happens, Judge.

21 THE COURT: All right. Let me see y'all in
22 chambers.

23 (Court in recess at 5:07 PM on August 12,
24 2015.)

25 (The following proceedings were held on August

1 13, 2015.)

2 THE COURT: Good morning. All right,
3 gentlemen, after further review last night and
4 looking at the -- going back over the testimony and
5 all, I am going to respectfully deny the motions
6 that were before me and find that the Miranda
7 warnings, by preponderance of the evidence, were
8 given, and I'll let the jury decide whether or not
9 it was voluntary under the auspices of Jackson v.
10 Denno. So that's where we stand on it.

11 We've got this other trial starting here in
12 just a few minutes, and I've released the jury. I
13 will be back here -- don't mind saving this case for
14 me to try since I'm familiar and did all the
15 pretrial briefs in it. Does anybody know when I'll
16 be back?

17 MR. SPIVEY: September 5th and November 2nd.

18 THE COURT: September 5, boy, that's right
19 around the corner.

20 MR. SPIVEY: Yes, sir, Your Honor.

21 THE COURT: September when?

22 MR. SPIVEY: Our calendar downstairs says the
23 week of September 5th. That could be --

24 THE COURT: September 5 is a Saturday.

25 MR. SPIVEY: That's probably not it.

1 THE COURT: I'm not going to be here.

2 MR. SPIVEY: Perhaps it was the 7th, Your
3 Honor. Your Honor, I apologize. It's the 14th.

4 THE COURT: I've got being in Barnwell on the
5 14th. You should look at your calendar again. I
6 think it's October 5.

7 MR. SPIVEY: Okay. October. I apologize.

8 THE COURT: No problem. So October 5th and
9 November 2nd. So when do you want to set it for?

10 MR. SPIVEY: October 5th. The sooner, the
11 better, Your Honor.

12 THE COURT: All right. If you want to do it
13 the week of October 5th, we'll put it on the trial
14 roster that week. And at that time, I'll listen to
15 any other pretrial motions you may have, and go from
16 there.

17 Anything else, Mr. Johnson?

18 MR. JOHNSON: No, sir, Your Honor. We're just
19 going to talk to the solicitor real quick to see if
20 there's something can we can work out.

21 THE COURT: Very well. All right. I'll be
22 back in chambers.

23 (Hearing concluded at 9:10 AM on August 13,
24 2015.)

25 -- END OF TRANSCRIPT OF RECORD --

State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2014-GS-32-00971
	)	
James B. Miller	)	2015-GS-32-01585
	)	
<u>Defendant.</u>	)	

November 2-5, 12, 2015
Lexington, South Carolina
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge; and a jury.

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

Lester M. Bell, Jr., Assist. Solicitor
Casey Rankin, Assist. Solicitor
Attorneys for the State

Ola Johnson, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

1 supporting that?

2 MR. JOHNSON: No, sir. I just have the general
3 case law cited in my exhibit that talks about giving
4 the plain meaning.

5 THE COURT: All right. I will respectfully
6 deny that. It seems to me it's clear that it's --
7 the statutory language is clear. It says without
8 any ambiguity that it's unlawful for any person that
9 I just read to have ephedrine or pseudoephedrine in
10 any altered form.

11 MR. JOHNSON: Yes, sir.

12 THE COURT: It's pretty clear.

13 MR. JOHNSON: Yes, sir.

14 THE COURT: Respectfully denied.

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

16 Okay. Judge, I'm just going to read off --
17 under Court's Exhibit 1 marked for my motions, I'm
18 just going to go through the list. The second
19 motion was regarding motion to suppress, nuisance
20 letter. That is no longer applicable --

21 THE COURT: Didn't we go over all this before?

22 MR. JOHNSON: We did, I'm just putting it all
23 on the record. We handled that last time, so we
24 don't have to worry about it.

25 THE COURT: They're not going to mention that.

1 MR. JOHNSON: They're not going to mention
2 that, Judge. The other one was the move to suppress
3 all statements made under Denno. We had the Denno
4 hearing, Your Honor allowed in those two statements,
5 so that's been handled.

6 The next one was the motion to suppress
7 pseudoephedrine logs. These were buy logs presented
8 by Mr. Spivey, the solicitor at the time. Mr. Bell
9 has indicated they are not going to use the
10 pseudoephedrine buy logs, that's not applicable, so
11 we're not worried about that. And -- I'll just go
12 down the list real quick, Judge.

13 THE COURT: You don't have to do it quick.
14 Take your time.

15 MR. JOHNSON: We may have -- I think the
16 solicitor has already resolved this: This is a
17 motion to redact and suppress. There are two ID
18 cards with my client's name, and they had some drug
19 treatment centers listed on them. They're
20 presenting that as evidence, I believe, photographs
21 of those as evidence. And they've actually redacted
22 the names out on the photographs. And I think their
23 intention is just to offer the photographs, not the
24 physical IDs. And since you can't read them on
25 there, it's my understanding that's been redacted

1 appropriately and I'm not going to --

2 THE COURT: You don't want to prejudice your
3 client by him being in drug rehab somewhere?

4 MR. JOHNSON: That's correct, Your Honor.

5 THE COURT: Hold on a second.

6 Yes, sir?

7 THE DEFENDANT: I worked there. I wasn't in
8 rehab there.

9 THE COURT: I'm sorry. Being associated with
10 drug rehab. Do you want it in evidence or not in
11 evidence?

12 THE DEFENDANT: I bow to my attorney.

13 THE COURT: Well, he says he's not a patient
14 there.

15 MR. JOHNSON: Well, Your Honor, I've explained
16 to my client he can -- if he wants to represent
17 himself, he can. But in this situation, my call is
18 to object to it.

19 THE COURT: Very well.

20 MR. JOHNSON: In addition, there are several
21 photographs -- I believe, me and the solicitor here,
22 we went over this yesterday, we separated out 11
23 photographs that have content that I'm objecting to
24 based on relevance and prejudicial effect. They
25 contain pictures of syringes, pipes, things found in

1 the motel room, according to the police. And
2 there's also a photograph of what is a strip.

3 According to the solicitor, this is a litmus
4 test where they've done some sort of a test and
5 dipped it in liquid and say it contains a certain
6 amount of a chemical. My objection, overall, is
7 to --

8 THE COURT: What's he charged with?
9 Manufacturing meth --

10 MR. JOHNSON: Manufacturing methamphetamine and
11 possession of crushed pseudoephedrine.

12 THE COURT: Well, the litmus test might be
13 relevant. I don't know that the syringes and all
14 that are. Have y'all agreed on that?

15 MR. JOHNSON: Well, Your Honor, they also --
16 it's related to my other motion. I'm moving to
17 suppress any testimony by officers who are not
18 experts, not chemists, no analysis performed.
19 They've got in the report where they go through and
20 they talk about, well, this is acetone, this is
21 hydrogen peroxide, this is testing this chemical.
22 They performed no analysis.

23 The only analysis was the pseudoephedrine in a
24 report that was provided and the Rule 6 objection
25 that related to that. Everything else, there is

1 no -- there is no test. There's a strip -- they
2 claim that an officer used some strip where there's
3 no reports from an expert. And he's going to say,
4 well, this is acetone, this is that clear liquid,
5 but I think it's this. I would object to all that.

6 THE COURT: Well, you have to object when it's
7 coming in. I can't make a determination until I see
8 what kind of training and what kind of experience
9 and how you test -- well, most people know what
10 acetone is. It's written right there on the can,
11 you can smell it. But it may be something that you
12 don't need an expert for. I don't know. I'll have
13 to wait and see.

14 MR. JOHNSON: Yes, sir. And some of these --
15 some of these liquids are just in, like, unmarked
16 containers. And I'm objecting to them saying
17 this -- I spotted acetone. It would be like saying
18 I spotted a big pile of cocaine and there's no test
19 but they get to testify about it ahead of time. I
20 would just --

21 THE COURT: How about you spotted a bottle of
22 whiskey? Can't you do that?

23 MR. JOHNSON: Well, I'm referring to unmarked
24 containers and liquids that are not in marked
25 containers. They simply -- and if they say they saw

1 a container that said something on it, I'm not
2 objecting under that label, I'm just saying unmarked
3 containers and liquids that were --

4 THE COURT: Well, we'll have to see how that
5 goes. I can't make a pretrial determination on that
6 without having the testimony.

7 MR. JOHNSON: Okay. Well, I guess at this
8 point, we need to hash out about the photographs
9 that contain the syringes and the pipe and that
10 test. Those are the photographs -- those are the --
11 that's the basis for the relevance objection and the
12 prejudicial effect --

13 THE COURT: Let me see the photographs.

14 Which ones are you going to put in,
15 Mr. Solicitor?

16 MR. BELL: Your Honor, everything in this
17 envelope is what we intend to introduce. Currently
18 they're ordered how I intended to present them, so
19 Mr. Johnson will have to go through and pick out the
20 ones he --

21 MR. JOHNSON: Your Honor, do you want the State
22 to go ahead and mark these so that we can refer to
23 them on the record?

24 THE COURT: That would be the easiest way.

25 MR. JOHNSON: Yes, sir.

1 THE COURT: Let the State do it.

2 (State's Exhibit Nos. 1 through 28 marked for
3 identification.)

4 MR. JOHNSON: All right. We've got them
5 marked. I'm going to go ahead and reference them by
6 the exhibit number.

7 Your Honor, the first one would be -- it's
8 State's Exhibit 5. And this is, I believe, a
9 photograph of crushed powder within a coffee filter
10 that they're claiming is pseudoephedrine. You want
11 me to pass that up to you, Your Honor?

12 THE COURT: Yes, sir. What's your objection?

13 MR. JOHNSON: Just, obviously, we'd object to
14 that coming in based on we've got the Rule 6
15 objection, and unless they have foundation.

16 THE COURT: Well, I can't rule on it now.

17 MR. JOHNSON: Yes, sir. And, for the record,
18 all the other photographs, we'll renew our
19 objections for the search warrant motion made two
20 months ago. We renew that at the appropriate time.

21 Your Honor, I believe this State's Exhibit 9
22 appears to be some type of a pipe. And the
23 objection is relevance, prejudicial. This is a
24 manufacturing case, and that would not be
25 involved --

1 THE CLERK: Mr. Solicitor, why is this
2 relevant?

3 MR. BELL: Your Honor, if that's the one I'm
4 thinking of with the red coffee pot and red
5 instrument --

6 THE COURT: Looks like a straw.

7 MR. BELL: Yes, sir. Our expert who will
8 testify during the trial is going to indicate that
9 that is an implement that's usually used for either
10 sifting or stirring some of these reaction vessels.
11 And that is what that sort of lithium-tinged ashy
12 substance is coming out the end of it.

13 Your Honor, under the manufacturing statute
14 itself, Subsection D, I believe, Your Honor, it
15 specifically says that possession of equipment or
16 paraphernalia used in manufacturing methamphetamine
17 is evidence of intent to manufacture. So I --

18 THE COURT: Well, with the proper foundation,
19 it may come in, but I have to listen to it. I have
20 no idea what it is.

21 MR. BELL: And, Your Honor, we certainly
22 understand that.

23 THE COURT: But don't mention it in opening
24 until it becomes evidence.

25 All right. Move along.

1 MR. JOHNSON: Yes, sir. I apologize for the
2 delay.

3 Your Honor, I want to try to group these
4 together. This looks like 25 -- excuse me, 23, 24,
5 25. 23 appears to have small baggies that, I guess,
6 could indicate potential use for sales. 24,
7 baggies. And 25 has hypodermic needles, Your Honor.

8 THE COURT: All right. Mr. Solicitor, 23 is --
9 I'm not sure what it is.

10 MR. BELL: If it is the baggies, Your Honor,
11 with the --

12 THE COURT: I don't know what it is. It's a
13 black something.

14 MR. BELL: Yes, sir. It's a black casing with
15 small individual baggies. Once again, going back to
16 the paraphernalia argument, Your Honor, certainly
17 once they're done with the manufacturing process,
18 they have to be able to extract either the liquid or
19 the solid, depending on what method of ingestion
20 they plan on using. The baggies would be one way of
21 storing the solidified version of methamphetamine.

22 THE COURT: 24, which is -- I'm not sure what
23 that is. It's a clear plastic baggie with red
24 things in it.

25 MR. BELL: Your Honor, that's a close-up of the

1 baggies contained in the former picture you just
2 spoke of.

3 THE COURT: All right. And 25 is a syringe
4 and --

5 MR. BELL: Digital scales, I believe.

6 THE COURT: All kinds of stuff. But it looks
7 like -- main thing I see is the syringe. There
8 might be some other prejudicial -- how does the
9 syringe come into play?

10 MR. BELL: Your Honor, once again, there are
11 two methods, which we will have expert testimony and
12 our meth tech will also testify, of injection of
13 methamphetamine; you can either smoke it or inject
14 it intravenously. A lot of times when they are done
15 with the final portion of what they call snowing
16 meth, they will extract it into hypodermic needles
17 for storage and use. That is part of the
18 manufacturing process, as far as the State is
19 concerned.

20 As for the digital scale, there is a black,
21 small box in that picture as well. They measure out
22 pseudoephedrine powder and other ingredients to make
23 ensure the proper ratio of ingredients.

24 THE COURT: Please do not mention them in
25 opening statements. Be careful when you have your

1 witness identify them. Don't show them to the jury,
2 don't publish them until the objection can be made.

3 MR. BELL: Yes, Your Honor.

4 MR. JOHNSON: Briefly, Your Honor, the last
5 three, 26, 27, 28, they are all of needles.

6 THE COURT: So you might have a 403 cumulative
7 argument on these, if they're relevant?

8 MR. BELL: Your Honor, I believe they're
9 different needles. It's not multiple pictures of
10 the same needles.

11 THE COURT: Well, some of them -- I'm not sure
12 what the white thing in the drawer is.

13 MR. BELL: That is what's called an APR. It's
14 a respirator that's used to maintain safe breathing
15 air while maintaining dangerous chemicals.

16 THE COURT: And that would be 26. 27 is
17 Newport cigarettes and -- I'm not sure what all that
18 is. It looks like -- I'm not sure what it is.

19 MR. BELL: May I approach, Your Honor?

20 THE COURT: Sugar and trash and -- what's that?

21 MR. BELL: Your Honor, that is a trash bin
22 containing plastic tubing, the kind of tubing that
23 would be put inside what's called the acid
24 generator for part of the manufacturing.

25 THE COURT: And that would 28 as well, one of

1 them is just a close-up?

2 MR. BELL: Correct. I think they just sort of
3 tipped the trash can to further reveal the contents
4 in this picture.

5 THE COURT: All right. As to all the
6 photographs, please, that I just mentioned, be very
7 careful having your witness identify them, no
8 publication, give Mr. Johnson ample time to make
9 objections. I'll have to rule on them to see to
10 what's -- provided you can lay a foundation, and
11 then I'll make a 403 analysis dealing with
12 cumulative evidence as well as prejudicial more than
13 probative or probative more than prejudicial.

14 MR. BELL: Understood, Your Honor.

15 MR. JOHNSON: Thank you, Judge.

16 THE COURT: Don't show them in opening
17 statements.

18 MR. BELL: Yes, sir.

19 THE COURT: What else we got?

20 MR. JOHNSON: Well, just on that, we're also
21 objecting based on relevance.

22 THE COURT: Well, once again, he's got to lay
23 the foundation for relevancy.

24 MR. JOHNSON: Yes, sir.

25 We covered the photo IDs where, as I said, the

1 State has photos where they've redacted the name.
2 The motion following that was the testimony of
3 regarding chemical composition for people who are
4 not experts, the opinion testimony. And that's what
5 I mentioned before, Your Honor. I believe Your
6 Honor ruled you were going to wait and see what the
7 testimony was.

8 Following that motion was the motion regarding
9 the knock-and talk, which has been resolved by Your
10 Honor at our last hearing. And this was the
11 challenging of the search warrant of the knock-and
12 talk.

13 THE COURT: We've already been through all of
14 that.

15 MR. JOHNSON: We've already been through all
16 that, Judge. And, I believe, from that list of
17 motions, that's all I had. I would also bring up, I
18 asked the State to -- the sequestration of the
19 witnesses -- for the State's witnesses, if Your
20 Honor would allow that, to keep them from coming
21 in --

22 THE COURT: I'll allow sequestration except for
23 the main investigator.

24 MR. BELL: Your Honor, that would be Detective
25 Gleaton.

1 THE COURT: Who is behind you?

2 MR. BELL: This is our internal investigator.
3 He helps us pull in sequestered witnesses. He has
4 no part in the case factually or evidentiary.

5 THE COURT: Anything else?

6 MR. JOHNSON: Just -- well, I believe they are
7 intending on calling the sheriff's department
8 officer as an expert. And I -- based on -- it's my
9 understanding Your Honor would probably just prefer
10 that we make that objection at the time that they
11 offer him, unless you want to have the hearing now.

12 THE COURT: Well, what kind of an expert is the
13 sheriff's department?

14 MR. BELL: Your Honor, based on the Garcia case
15 that came out last year, we're kind of worried about
16 using one of our fact witnesses also as an expert in
17 the manufacturing process. He would come in
18 specifically to testify about --

19 THE COURT: How it's manufactured?

20 MR. BELL: -- clandestine meth labs. Yes, sir.

21 MR. JOHNSON: I'll just make the objection at
22 that time, Your Honor, if you wish.

23 The -- we'd -- Your Honor -- just the warrant,
24 Your Honor, there are some issues about priors the
25 State has provided me. If that comes up later --

1 but we won't address that at this point.

2 THE COURT: Priors?

3 MR. JOHNSON: Well, that -- we just talked
4 about what they -- they've charged this as a third.
5 But we can have that hearing at the appropriate
6 time, if necessary.

7 But other than that, Your Honor, if Your Honor
8 down the road has a mere presence charge, if that
9 becomes something Your Honor would grant. I didn't
10 know if Your Honor would have a mere presence charge
11 that you could allow us to use. Thank you, Judge.
12 I believe that's it.

13 THE COURT: Anything on behalf of the State?

14 MR. BELL: Your Honor, simply on the issue that
15 he briefly touched on, the prior convictions, if he
16 does believe there is an issue, I'd like to go ahead
17 and know so we can attempt to resolve that prior to
18 getting there and having to --

19 THE COURT: What's your objection on the prior
20 conviction?

21 MR. JOHNSON: Well, Your Honor, if I could
22 review the ones that were given to me by the
23 solicitor -- he's given me four, I believe -- I can
24 talk to my client briefly and see if there is an
25 issue.

1 THE COURT: Okay. Go ahead and do that.

2 But you have to have the priors for...

3 MR. BELL: For the purposes of sentencing only,
4 Your Honor.

5 THE COURT: That's correct. You're not going
6 to mention it in the trial of the case.

7 MR. BELL: Absolutely not.

8 MR. JOHNSON: No, sir. I just wanted to --

9 THE COURT: It's not like a burglary where you
10 have two prior convictions which is an element of
11 the crime.

12 MR. BELL: Correct, Judge.

13 THE COURT: This is just a manufacturing, and
14 the priors go to the sentencing as opposed to the
15 guilt or innocence --

16 MR. BELL: Yes, sir.

17 THE COURT: -- or an element of the crime. All
18 right. Anything else?

19 MR. BELL: Nothing from the State, Judge.

20 THE COURT: All right. We'll start at 1:00.

21 MR. JOHNSON: Yes, Your Honor.

22 (Trial in recess at 12:05 PM.)

23 THE COURT: Yes, sir.

24 MR. BELL: Judge, I wanted to clarify with
25 regards to the coffee filter containing the white

1 powder substance. The facts in the case will show
2 that they took that substance, they didn't know what
3 it was, they seized it, they sent it for testing,
4 and testing came back positive for pseudoephedrine.
5 In opening statement, is that allowable testimony?
6 That is factual.

7 THE COURT: If you're going to prove that.

8 MR. BELL: Yes, sir.

9 MR. JOHNSON: Your Honor, may I bring up
10 something? Well, I guess this is probably obvious,
11 but the other photographs the solicitor was going to
12 offer -- and I was going to renew an objection to
13 them during the trial.. I didn't mean to indicate
14 that I was not going to object again based on my
15 previous motion with the search warrant and
16 everything. I would object to all photographs based
17 on the previous knock-and talk case law and counsel
18 and search warrant and all that. So I'll renew
19 that.

20 THE COURT: Thank you. Please, as we go along,
21 you know, you have to make your objections
22 contemporaneous with the introduction or attempted
23 introduction. So don't forget to do that.

24 MR. JOHNSON: Yes, sir. I've just been handed
25 some photocopies by the solicitor just now. Othis

1 appears to be paperwork related to an Officer
2 Gleaton. And I believe the solicitor -- he's
3 actually going to try to use them as exhibits and
4 bring them in to evidence. So --

5 MR. BELL: Your Honor, I told Mr. Johnson that
6 I may use them as Court's exhibits only, if
7 necessary.

8 MR. JOHNSON: Okay. I didn't hear him
9 correctly. I thought he was going to -- okay.

10 THE COURT: No problem.

11 MR. JOHNSON: I guess at this point, there
12 does -- if the certification forms that he's going
13 to question the officer about include some of
14 these -- they don't appear to relate to
15 methamphetamine. And if the training does not
16 relate to a methamphetamine-type training, I'd
17 object to it as not relevant. There seems to be
18 some things regarding surveillance and other things.

19 I would just say, if it's not methamphetamine,
20 I'd argue it's not relevant, Your Honor.

21 THE COURT: We'll see.

22 MR. JOHNSON: Yes, sir.

23 Your Honor, I just had an issue. It's a
24 medical issue. My client did not eat lunch. They
25 didn't bring it up. I'm not sure why. He is

1 diabetic, Your Honor. And I didn't want this to
2 cause a problem in the middle of the trial. I asked
3 them about lunch, and they said they were unable to
4 bring it up for some reason with time. And he's got
5 an issue with that, as far as not having a reaction.

6 THE COURT: What does he need?

7 MR. JOHNSON: He needs to eat. He's diabetic.
8 And I asked them to bring the food, but for some
9 reason there was a delay. I'm not sure what it was.

10 THE COURT: Well, the jury is coming in now.
11 We'll get him some lunch in just a little bit.

12 Do you need a candy bar or something?

13 THE DEFENDANT: Anything, just to get me
14 through.

15 MR. JOHNSON: And he also has to use the
16 restroom, Your Honor.

17 THE COURT: All right. Have him just raise his
18 hand when he needs to go. We'll find him a Snickers
19 bar or something.

20 THE DEFENDANT: Thank you, Your Honor.

21 (The jury enters the courtroom at 1:09 PM.)

22 THE COURT: Good afternoon. Okay. We're going
23 to get started with the trial of this case. We'll
24 probably go til about 5:00 this afternoon, see how
25 far we can get down the road. I'm confident we'll

1 be through midday tomorrow or maybe earlier. Once
2 we complete this trial, you'll have no further jury
3 service this week, that will conclude your service
4 this week.

5 First thing we have to do is swear you in for
6 this particular case. So please stand and raise
7 your right hand, and the Clerk will swear you in for
8 this case.

9 THE JURY: I do.

10 (Jury sworn at 1:10 PM.)

11 THE COURT: Let me just make a brief opening
12 remark about where we're going and how we're going
13 to get there. Let me remind you once again, the
14 fact that Mr. James B. Miller has been charged,
15 arrested, and indicted on two offenses, one is for
16 the indictment for manufacturing methamphetamine and
17 the other one is having in his possession,
18 allegedly, an altered pseudoephedrine -- they'll
19 explain to you what that is -- please bear in mind
20 the fact that he's been arrested and charged and
21 indicted, that is not evidence in the case; this is
22 simply the formal charging document by way this case
23 comes into the courtroom. It's simply allegations
24 and is not evidence in the case.

25 He has pled not guilty to both indictments.

1 And by pleading not guilty, that affords him the
2 constitutional presumption of innocence, unless the
3 State is able to prove his guilt to you beyond a
4 reasonable doubt; in other words, prove each and
5 every element of the offenses to you beyond a
6 reasonable doubt.

7 Now, as I told you a little bit yesterday, you
8 and I have different functions to perform during the
9 trial of the case; my job is I'm the judge of the
10 law, so I will tell you what the law is, instruct
11 you or charge you on what the law is. And you've
12 taken an oath to accept the law as I give it to you.
13 Obviously, you have the most important job in the
14 courtroom because the 12 of you, collectively acting
15 as one, you're the judges of the facts or the judge
16 of the facts. So you'll have to be listening and
17 determine what the true facts are in the case.

18 In order to do that, obviously, you have to
19 judge the credibility or the believability of the
20 witnesses who testify in the case. And it could
21 very well be that some witnesses say one thing,
22 other witnesses say another thing, and you have to
23 determine what the true facts are. And the idea is
24 to take those true facts and apply it to the law as
25 I give it to you, and then you'll be in a position

1 to render a true and just verdict. So please pay
2 close attention to the testimony that comes from
3 witness stand or any other evidence that may be
4 introduced during the trial of the case.

5 Obviously the State has the burden of proof.
6 They have to prove each and every element, as I
7 said, to you beyond a reasonable doubt. Because
8 they have the burden of proof, they will go first.
9 So here's how the trial runs: I'll make my brief
10 opening statements. At the conclusion of my opening
11 statements, the solicitor has a right to make an
12 opening statement, followed by the defendant.
13 Please bear in mind that opening statements are not
14 evidence in trial of the case, it's just simply what
15 the lawyers contend the issues to be, what you're to
16 look after, sort of a roadmap to the case, what the
17 case is all about. But that is not evidence in the
18 case.

19 Once the opening statements are made, then the
20 State, because they have the burden of proof,
21 they'll call their witnesses first. At the
22 conclusion of all of the testimony from the State,
23 the defendant has a right to present his defense, if
24 he chooses to do so. If he does, then the State has
25 the right to put up any reply testimony.

1 Once we get through all that, the next step are
2 the final arguments, and then I'll charge or
3 instruct you on the law. I don't think this will be
4 a very long case. We may finish all of the
5 testimony this afternoon. I'm not sure. We'll just
6 see how we're running as we go along. But I ask
7 that you pay close attention.

8 A few housekeeping matters: I try to run an
9 efficient courtroom; I try to start on time, I try
10 to keep the witnesses coming without a lot of
11 downtime. One thing that may cause us a little bit
12 of interference this afternoon, the first case that
13 we tried, we finished it around 12:00 today, 12:15
14 maybe. The jury is eating lunch and deliberating
15 presently as we speak. So when they reach a
16 verdict, I have to take that verdict, so we may have
17 to break for just a little while to take that
18 verdict. But other than that, we should be able to
19 move right along.

20 Notwithstanding the fact we're trying to be
21 efficient, we're also not trying to run a race. So
22 if at any time you get uncomfortable, you get cold,
23 you get hot, you get thirsty, you need to stretch,
24 you need a bathroom break -- don't get
25 uncomfortable -- raise your hand, and we'll take a

1 break. Even if you don't ask me for a break, we'll
2 still take one after about an hour and a half or two
3 hours of testimony; we'll take about a 15- or
4 20-minute break during the middle of the afternoon.
5 And we'll probably go to around 5:00, unless that's
6 an imposition on anybody. And then we'll see where
7 we stand. Then we'll have sort of a conference
8 between me and you to see what time you want to
9 start in the morning.

10 I'll ask you that when we do take a break or
11 when y'all are in the jury room, please don't talk
12 about the case, don't start any deliberations. It's
13 not proper until all of the evidence has been
14 presented, final arguments are made, and I've
15 charged you.

16 I'd ask that at the first break if you would
17 please select a foreperson from the 12 regular
18 jurors. The foreperson is simply the person who
19 heads up the deliberations, presents any concerns to
20 me that the jurors may have. If you can't do that,
21 then I'll randomly select one.

22 So we're going to get started right now with
23 opening statements by the State and the defendant,
24 then we'll follow that up with testimony.

25 Any objections to my opening remarks, by the

1 State?

2 MR. BELL: None from the State, Your Honor.

3 THE COURT: By the Defendant?

4 MR. JOHNSON: No, sir.

5 THE COURT: Ma'am.

6 MS. RANKIN: Thank you, Your Honor. May it
7 please the Court.

8 THE COURT: Hold on one moment, please, ma'am.

9 (Brief pause in the proceedings.)

10 THE COURT: All right. Let's try it again.

11 MS. RANKIN: Thank you, Your Honor. May it
12 please the Court.

13 THE COURT: Yes, ma'am.

14 MS. RANKIN: On January 8th, 2014, law
15 enforcement responds to the Motel 6 in Cayce on Knox
16 Abbot Drive to a complaint. When they get there,
17 the door opens -- they knock several times, the door
18 opens, several individuals in there, including the
19 defendant James Miller, and they can immediately
20 smell a chemical odor. They clear the room. It's
21 the defendant and four other people in that room.
22 They're not there for a tea party; they're there to
23 make meth.

24 They get a search warrant for the room, they go
25 in, and they find a plastic bucket with liquid in it

1 that smelled like nail polish remover, Liquid Fire,
2 Coleman camp fuel, coffee filters, tubing, plastic
3 drink bottles, lye, muriatic acid, salt, lithium
4 batteries, instant cold packs. Now, ladies and
5 gentlemen, you'll hear from an expert that we'll
6 have, and they'll tell you how all those components
7 are used to make methamphetamine.

8 Now, right up in the middle of all of stuff in
9 that room is an ID with the defendant's name on it,
10 James B. Miller. The defendant, he conspired with
11 those four people in that room to manufacture
12 methamphetamine. When law enforcement spoke to him,
13 he told them, I'm a well-sought-after meth cook.
14 While he was detained, he threw a wallet behind the
15 vending machine. When law enforcement got the
16 wallet, there was an identification in it that said
17 James Miller, and there was a coffee filter with a
18 crushed-up white powder in it. They collected that,
19 sent it off to SLED.

20 You'll hear from the chemist and she'll tell
21 you when she tested it, it came back as
22 pseudoephedrine, one of the main components for
23 manufacturing methamphetamine. When law enforcement
24 asked him about the wallet, he said, I have one like
25 it.

1 Now, ladies and gentlemen, conspiracy, under
2 the law, doesn't mean a written agreement. It
3 simply means an understanding, an agreement, between
4 two or more people for the purpose of committing a
5 crime; here, manufacturing methamphetamine. It's
6 just an understanding for them to act together for
7 their mutual benefit. There's nothing signed. And
8 I submit to you that we will prove, through the
9 evidence in this case, that the defendant, James
10 Miller, did, in fact, manufacture methamphetamine,
11 and he did conspire with four other people in that
12 room to do the same, and that he did have
13 pseudoephedrine that had been altered from it's
14 original state. And at the end of this case, we'll
15 come back before you and ask you to find him guilty
16 on both. Thank you.

17 THE COURT: Mr. Johnson.

18 MR. JOHNSON: Thank you, Your Honor. May it
19 please the Court.

20 THE COURT: Yes, sir.

21 MR. JOHNSON: First thing let's do, let's kill
22 all the lawyers. Who said that? I think it was
23 Shakespeare, not that I read Shakespeare, because I
24 don't understand Shakespeare. But Shakespeare wrote
25 this play and he was talking about this guy who was

1 talking to his friend, and they wanted to take over
2 the government, they wanted to become the
3 government. And he was complaining and said, well,
4 these lawyers, they got their papers and they're
5 always shuffling them around and talking about
6 people's rights, so we got to get rid of those
7 lawyers, because the government is the entity that
8 takes away the individual rights, rights that
9 people, according to our system of government and
10 the constitution, rights that people are born with,
11 God gave them to you. The government has the power
12 to limit those rights.

13 And the government is sitting right there.
14 That's the government. Having worked as a solicitor
15 in this courthouse, I can tell you, these solicitors
16 have great power, they have great resources, they've
17 got investigative staff -- Mr. Wilson who is sitting
18 right there -- they got investigators who carry
19 badges and guns, they've got law enforcement
20 agencies who respond to their request for
21 assistance, they've got multiple floors of this
22 courthouse taken over.

23 They've got all these resources and this power,
24 and it's to do one basic thing: They've got to make
25 a decision about prosecuting someone based on

1 evidence they receive, and they've got to make a
2 decision about whether or not someone is guilty or
3 not and should they pursue it. Your ultimate choice
4 is to question guilt or innocence. The prosecutor
5 has to make the decision on whether or not to
6 prosecute.

7 Now, with all the resources that the solicitors
8 have, what are they trying to do? Well, they're
9 trying to take away the basic right. The Judge will
10 tell you about the presumption of innocence. Now,
11 my client, James Miller, as he sits right over
12 here -- and he's there and he's eating crackers
13 because he's diabetic. As Mr. Miller sits over
14 here, he has a presumption of innocence that we're
15 all born with, according to our system of government
16 and the theories that God gave it to us. We have
17 this presumption of innocence. And before the State
18 is allowed to rip that away from any citizen of the
19 United States, they've got to prove every element,
20 every charge, every indictment.

21 So how many indictments do we have? They've
22 called two indictments. They've called possession
23 of crushed pseudoephedrine, which is one charge, and
24 they've called manufacturing methamphetamine.
25 They've got to prove both of those.

1 Now, the Judge will instruct you as to the law.
2 So certainly look to the Judge to do that, not me.
3 But when they go through the elements, understand,
4 as the Judge will instruct you, as you hear the
5 evidence, you've got to decide, did the government
6 get it right? Because the government -- sometimes
7 the government can tell you the truth, sometimes the
8 government can lie to you, sometimes the government
9 can tell you something they think is true, but
10 they're wrong, because the government is made up of
11 people.

12 They told my father and his friends in Vietnam
13 they could spray Agent Orange all day long and it
14 would be just fine. They got that wrong. It wasn't
15 a good idea, wasn't healthy. That was the
16 government made a mistake. In this case, the
17 government is going to ask you to do a little
18 guessing game and to buy in to this theory and the
19 evidence and to -- and this guessing game that
20 they're going to present to you find my client
21 guilty of both indictments, every element that
22 they've got to prove beyond a reasonable doubt,
23 which is their burden, they're going to ask you to
24 rely upon this evidence and the testimony of these
25 officers. And that's what you're going to hear;

1 testimony of officers.

2 But I ask you to pay close attention before you
3 allow the government to strip this presumption of
4 innocence from my client. Just remember, every
5 element of every charge. If you feel he's guilty of
6 one charge, that doesn't mean he's guilty of both.
7 He could be not guilty of both, he could be not
8 guilty of one. That's how it works, the Judge will
9 explain that. But I ask you to focus on, we're
10 dealing with people; the solicitors and the law
11 enforcement officers. The City of Cayce assisted
12 them. And people do make mistakes.

13 People work these jobs as members of the
14 government, and they try to do these jobs, but
15 sometimes they get it wrong. I ask you to please
16 focus on the evidence, and I think the answer will
17 be clear. Thank you.

18 THE COURT: You may call your first witness.

19 MS. RANKIN: Thank you, Your Honor. The State
20 calls Jonathan Garcia.

21 JONATHAN GARCIA

22 being first duly sworn, testified as follows:

23 THE WITNESS: I do.

24 THE CLERK: Once you're seated, state your full
25 name, spelling your last on the record, please.

1 THE WITNESS: Jonathan Garcia, G-A-R-C-I-A.

2

3

DIRECT EXAMINATION

4

BY MS. RANKIN:

5

Q. What is your rank?

6

A. Patrolman.

7

Q. Patrolman. Officer Garcia, where did you work
8 in January of 2014?

9

A. I was employed with the City of Cayce Police
10 Department.

11

Q. Okay. Where do you currently work?

12

A. I work at the Lexington Police Department.

13

Q. Okay. And can you tell us a little bit about
14 your training and experience in law enforcement?

15

A. I was a patrolman, law enforcement five years
16 experience. I was also a firefighter. And I was
17 with the City of Cayce for four and a half years.

18

Q. All right. And how did you become involved
19 with this case?

20

A. We were dispatched to 613 Knox Abbot Drive,
21 which is the Motel 6, for a complaint.

22

Q. All right. And when you arrived, who else was
23 on scene?

24

A. It was myself and Officer Wihlidal.

25

Q. All right. And what did you observe when you

1 got there?

2 A. We went up to the room 126, which was the room
3 in question, I knocked on the door. There was a
4 gentleman that opened the curtains and shut the
5 curtains back up.

6 Q. Did someone open the door eventually?

7 A. Yes. After a few -- probably minute or two of
8 us knocking on the door, somebody eventually opened
9 the door.

10 Q. All right. And what did you observe about the
11 room?

12 A. There were four males and a female that were
13 staying there. The room was a mess, there was stuff
14 everywhere. When they opened the door, I noticed a
15 chemical odor coming from inside the room.

16 MR. JOHNSON: Objection, Your Honor, based on
17 previous argument and motion.

18 THE COURT: Overruled.

19 BY MS. RANKIN:

20 Q. All right. Officer Garcia, did you enter the
21 room?

22 A. Yes, I did.

23 Q. I think you said you saw four males and a --

24 MR. JOHNSON: Objection, Your Honor; leading.

25 THE COURT: Rephrase your question, ma'am.

1 BY MS. RANKIN:

2 Q. How many people did you see in the room?

3 A. I saw five people in the room; four males and
4 one female.

5 Q. Okay. You testified that you smelled an odor.

6 A. Yes, ma'am.

7 Q. Okay. And what did that smell like to you?

8 A. When I went in the room, I smelled -- like, it
9 was a fingernail polish remover.

10 Q. Once you observed that smell, what did you do?

11 A. At that time I told the occupants of the room
12 to exit the room.

13 Q. Once everybody exited the room, who else was on
14 scene with you at that time?

15 A. At that time, it was Officer Dougall,
16 Investigator Gleaton, and there were several other
17 officers.

18 Q. Okay. Did you assist in the search of that
19 room?

20 A. I did not.

21 MS. RANKIN: I beg the Court's indulgence.

22 Your Honor, may I approach the witness?

23 THE COURT: You may.

24 BY MS. RANKIN:

25 Q. Officer Garcia, I'm handing you what's been

1 marked for identification as State's Exhibits 1, 2
2 and 3. Can you take a look at those?

3 A. Yes, ma'am.

4 Q. Do you recognize those?

5 A. Yes.

6 Q. And what do they appear to be?

7 A. That was room 126 at the Motel 6 where the
8 people were staying at.

9 Q. All right. Has that been altered or
10 manipulated in any way?

11 A. No.

12 MS. RANKIN: Your Honor, at this time, the
13 State would move 1, 2 and 3 into evidence.

14 MR. JOHNSON: We'd object, Your Honor, based on
15 previous argument and motion.

16 THE COURT: Well, let me see.

17 All right. Overruled. 1, 2 and 3, subject to
18 his objections, admitted in to evidence.

19 (State's Exhibit Nos. 1, 2, 3 admitted in to
20 evidence.)

21 MS. RANKIN: Your Honor, permission to publish?

22 THE COURT: You may.

23 BY MS. RANKIN:

24 Q. Officer Garcia, you gave the address earlier.
25 What county is that in?

1 A. Lexington County, the city of Cayce.

2 Q. Thank you. I have no further questions.

3 Please answer anything the Defense might have.

4 THE COURT: Cross?

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Officer, what did you smell outside the room?

9 A. Nothing.

10 Q. Didn't smell anything outside the room?

11 A. That's right.

12 Q. Who was with you outside the room?

13 A. Officer Wihlidal.

14 Q. No other officers?

15 A. Not at that time.

16 Q. And was Officer Gleaton ever there?

17 A. Yes, he was.

18 Q. Okay. And tell me about when you set up a
19 surveillance of the traffic going in and out of the
20 room. How many hours did you sit and surveil?

21 A. None.

22 Q. Oh. Huh. Well, tell me about Jason Carroll.

23 What kind of fellow is Jason Carroll?

24 MS. RANKIN: Objection, Your Honor; relevance.

25 MR. JOHNSON: I'll rephrase.

1 BY MR. JOHNSON:

2 Q. Who is Jason Carroll?

3 A. I don't know.

4 Q. Don't know. Okay. What about security videos
5 that you tried to obtain from businesses surrounding
6 the location to show us exactly what happened? Tell
7 me about all you went through to get those videos.

8 A. I did not.

9 Q. Did not. Okay. Tell me about all of the
10 extensive efforts you put forth to fingerprint items
11 from the motel.

12 A. Zero.

13 Q. Zero. Thank you.

14 Well, surely now, of course, now we're going to
15 talk about all the testing you performed to find
16 residue or anything on my client's person related
17 to --

18 THE COURT: Mr. Johnson, please ask a question
19 without all that editorializing.

20 MR. JOHNSON: Yes, sir.

21 BY MR. JOHNSON:

22 Q. Tell me about the testing of my client to find
23 residue on him from manufacturing methamphetamine.

24 A. I did not test it, sir.

25 Q. Oh, okay. Well, what about all of the

1 witnesses you tracked down, people living at the
2 motel, who can talk about who's coming and going?

3 A. I didn't see anybody.

4 Q. You didn't see anybody. Well, tell me about
5 all of the doors you knocked on and all of the
6 people you interviewed who lived at the motel.

7 A. None. Just one door, sir.

8 Q. The one you testified about?

9 A. Yes, sir.

10 Q. Not the one on this side or this side, no other
11 rooms?

12 A. That's correct.

13 Q. And -- well, you didn't smell anything outside,
14 did you?

15 A. Not outside. No, sir.

16 Q. Okay.

17 MR. JOHNSON: No more questions, Your Honor.

18 THE COURT: Redirect, if any.

19 REDIRECT EXAMINATION

20 BY MS. RANKIN:

21 Q. Officer Garcia, the one door you did knock on
22 was the one that had the complaint; right?

23 A. Yes, ma'am.

24 Q. Thank you. Nothing further.

25 THE COURT: You may step down.

1 Next witness, please.

2 MS. RANKIN: State calls William Dougall.

3 Your Honor, the State would ask that Officer
4 Garcia be released.

5 THE COURT: Any objection, Mr. Johnson?

6 MR. JOHNSON: I have no objection to that.

7 WILLIAM DOUGALL

8 being first duly sworn, testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Have seat. Please state your full
11 name, spelling your last on the record.

12 THE WITNESS: My name is William Dougall,
13 D-O-U-G-A-L-L.

14 DIRECT EXAMINATION

15 BY MS. RANKIN:

16 Q. Where do you work?

17 A. Cayce Police Department.

18 Q. What is your rank there?

19 A. Currently ambassador public safety officer.

20 Q. Mind if I just call you Officer?

21 A. That's fine.

22 Q. Can you tell me a little bit about your
23 training and experience in law enforcement?

24 A. Yes, ma'am. I graduated the police academy in
25 2011. I've been with Cayce Police Department ever

1 since then. As far as my training, Cayce is a
2 public safety agency, so I'm cross-trained as a
3 firefighter and an EMT within our department.

4 Q. Officer Dougall, how did you become involved in
5 this case?

6 A. I became involved in this case after there
7 was -- after Officer Garcia was dispatched to the
8 Master's Inn for a report of a chemical odor near
9 room 126.

10 Q. When you arrived on scene, who else was there?

11 A. Officer Garcia was there along with Corporal
12 Wihlidal.

13 Q. All right. What did you do once you got on
14 scene?

15 A. I noticed that Officer Garcia had already moved
16 the occupants of room 126 out of the room. I asked
17 Garcia basically what -- Officer Garcia was there
18 approximately five minutes before I was. I asked
19 him to bring me up to speed as far as what had
20 transpired. Officer Garcia had removed --

21 MR. JOHNSON: Objection, Your Honor. This is
22 hearsay if he's talking about Officer Garcia's
23 statement.

24 THE COURT: Rephrase the question.
25

1 BY MS. RANKIN:

2 Q. Did you go in the room?

3 A. I did.

4 Q. What did you observe about the room?

5 A. I observed it to be in a general disarray. I
6 went just past the -- just into the room --

7 MR. JOHNSON: Objection, Your Honor, based on
8 previous motion and argument.

9 THE COURT: Overruled.

10 A. I went just over the threshold of the door and
11 basically stood just to the right of the doorway. I
12 was looking for any -- anything that would jump out
13 as obviously being illegal. And --

14 Q. Let me stop you right there. Were any
15 individuals detained when you got there?

16 A. Yes.

17 Q. Was the defendant detained?

18 A. He was.

19 Q. And what did you observe about the defendant,
20 his behavior?

21 A. Nothing. I don't remember anything
22 specifically standing out about his behavior. I did
23 not have any contact with him at that point. He was
24 standing outside the room and was being watched by
25 Officer Garcia. I didn't interact with Mr. Miller

1 in the beginning of -- up to this point.

2 Q. Did you interact with him later?

3 A. I did.

4 Q. What did you observe about him when you did
5 interact with him?

6 A. I observed that Mr. Miller was -- I had placed
7 Mr. Miller in handcuffs. He was placed into
8 investigative detention. I performed a pat frisk
9 for weapons, which is a normal procedure when
10 someone is detained.

11 We were waiting for some paperwork to be
12 completed so we could perform a -- continue our
13 search of the motel room. And as we were waiting
14 for that paperwork to be done, Mr. Miller was
15 detained. Mr. Miller was standing with his back to
16 a wall and a soda machine, I believe, on his left
17 side in a corner created by those two fixtures.

18 It took 15 minutes or longer for a warrant to
19 be typed and it had to be taken to a magistrate to
20 be signed. We were basically just in a holding
21 pattern while that process was taking place with
22 Mr. Miller detained. At some point while we were
23 waiting, I saw Mr. Miller he start making a very
24 distinct motion towards his waistband. It looked
25 like he was digging for something.

1 Q. Okay. And were you suspicious of that?

2 A. I was.

3 Q. And what did you do as a result?

4 A. I moved Mr. Miller away from the wall and pat
5 frisked him again because my first thought was I
6 missed a weapon during my first pat frisk and maybe
7 he's going for a weapon. It was just a behavior
8 that I noticed was very distinct; he was reaching
9 for something.

10 Q. All right. And what else did you observe?

11 A. As I moved Mr. Miller away from that corner, I
12 could see a wallet wedged between the soda machine
13 and the wall right where Mr. Miller had been
14 standing.

15 Q. And did you get that wallet?

16 A. I did. I pulled the wallet out from between
17 the wall and the soda machine, and I examined it.

18 Q. Officer Dougall, what did that wallet have in
19 it?

20 MR. JOHNSON: Objection, Your Honor, based on
21 previous argument.

22 THE COURT: Overruled.

23 A. The wallet contained an identification card
24 that had Mr. Miller's name, as well as his -- a
25 picture of him. It also contained a coffee filter

1 that was folded over several times. And as I opened
2 that coffee filter, I found that in the fold it had
3 a quantity of a white powder.

4 MS. RANKIN: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes, ma'am.

7 BY MS. RANKIN:

8 Q. I'm handing you what's been marked for
9 identification as State's 4 and 5. Do you recognize
10 what that is?

11 A. Yes. These are photographs of the wallet, the
12 identification card, and the coffee filter with the
13 powder that I found behind the soda machine.

14 Q. Okay. Have those photos been altered or
15 manipulated in any way?

16 A. No. They're a true and depiction of what I
17 found.

18 MS. RANKIN: Your Honor, at this time, the
19 State would move 4 and 5 in to evidence and
20 permission to publish.

21 THE COURT: Any objection?

22 MR. JOHNSON: Just based on previous motions
23 and objections, Your Honor.

24 THE COURT: Overruled.

25 (State's Exhibit Nos. 4 and 5 admitted in to

1 evidence.)

2 MS. RANKIN: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 (State's Exhibit No. 29 marked for
6 identification.)

7 BY MS. RANKIN:

8 Q. Officer Dougall, I'm handing you what's been
9 marked for identification as State's Exhibit 29.
10 Does that appear to be the coffee filter?

11 A. It does.

12 Q. And who did you give that filter to when you
13 collected it?

14 A. I gave it to Sergeant Gleaton.

15 Q. Okay. Did you alter or manipulate the contents
16 of that in any way?

17 A. I did not.

18 Q. Was it in substantially the same condition when
19 you took it from the wallet as when you gave it to
20 Sergeant Gleaton?

21 A. Yes, ma'am. All I did was I unfolded it. You
22 can see how this was folded into a rectangle. And
23 that was put inside of a wallet pocket. I had
24 unfolded the coffee filter, saw the powder that I
25 believe was potentially illegal, I refolded the

1 coffee filter, and handed it to Sergeant Gleaton in
2 that condition.

3 Q. Did you ask the defendant if the wallet was
4 his?

5 MR. JOHNSON: Objection, Your Honor; leading.

6 THE COURT: Please don't ask leading questions.
7 Rephrase it.

8 BY MS. RANKIN:

9 Q. Who did the wallet belong to?

10 A. I concluded that it belonged to the defendant,
11 Mr. Miller. It -- during the course of this, after
12 I found the wallet, I asked Mr. Miller, is this your
13 wallet, because it was right there where he was
14 standing. The wallet looked new. It didn't look
15 weather-damaged like it had been abandoned and left
16 there for months on end. I think that was my exact
17 question. It was: Is this your wallet? And his
18 answer was --

19 MR. JOHNSON: Objection, Your Honor, based on
20 previous motion.

21 THE COURT: Overruled.

22 A. And his answer was, quote, I have one like
23 that. He never denied ownership of it. He just
24 acknowledged he had a wallet like that. And then
25 when I opened the wallet, it had his photo ID in it.

1 Q. Did you write a report?

2 A. I did not.

3 Q. Why didn't you write a report?

4 A. In hindsight, that's something I should have
5 done. At the time I felt like my involvement in
6 this case was fairly minimal. Sergeant Gleaton, who
7 is the investigation supervisor and was at the time
8 of this incident for Cayce Police Department, he has
9 training, from what I've talked to him extensively,
10 experience in dealing with meth labs. Sergeant
11 Gleaton arrived shortly after I did, said that he
12 would handle --

13 MR. JOHNSON: Objection; hearsay.

14 BY MS. RANKIN:

15 Q. Officer Dougall, in hindsight, do you wish you
16 would have written a report?

17 A. Yes.

18 Q. Is what you testified to today what happened?

19 A. Yes, ma'am.

20 MS. RANKIN: Nothing further, Your Honor.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q. Officer, tell me about Jason Carroll.

25 A. I don't really have any recollection of him.

1 Q. Okay. Tell me about videos that you looked
2 for -- security videos to show you what happened at
3 the motel or who was coming and going from there.

4 A. From my experience from my previous responses
5 to the Motel 6, I don't believe they have a
6 functioning video surveillance system on the
7 property.

8 Q. Oh, you checked all of the businesses adjacent
9 to it?

10 A. No, sir. For the property, Motel 6, I don't
11 believe they have a functioning video security
12 system.

13 Q. You checked that day?

14 A. No, sir, I didn't check.

15 Q. Okay. And you checked with other businesses
16 though right up against the motel to see if their
17 video cameras were pointing in that direction to see
18 who's coming and going?

19 MS. RANKIN: Objection, Your Honor; leading.

20 THE COURT: It's cross-examination. You can
21 lead on cross-examination.

22 BY MR. JOHNSON:

23 Q. But you did that; right?

24 A. No, sir.

25 Q. Okay. And tell me about all the fingerprints

1 you tried to pull off all this evidence they're
2 talking about.

3 A. I'm not a crime scene investigator. I've never
4 recovered fingerprints. That's left to
5 investigators. I responded as a patrol officer.

6 Q. Okay. Did you interview people?

7 A. I spoke with --

8 Q. That's part of your job though; right? You
9 interview people?

10 A. In some points, yes.

11 Q. Okay. Tell me about all of the residents at
12 the motel that you knocked on their door and tried
13 to interview about this.

14 A. I didn't speak with anyone in adjacent motel
15 rooms.

16 Q. Did you attempt to?

17 A. No, sir.

18 Q. All right. And tell me about the surveillance
19 you conducted sitting outside the motel room to see
20 who stayed there.

21 A. We didn't conduct surveillance. We responded
22 to a complaint to that specific room.

23 Q. Okay. And what was the name of the person who
24 called in the complaint?

25 A. I believe it was dispatched as an anonymous

1 call. We never met with the complainant. And when
2 I arrived, the person who called was not on scene at
3 the same time I was.

4 Q. So it wasn't Jason Carroll?

5 A. I don't specifically remember who the
6 complainant was.

7 Q. Harder to remember things when you don't record
8 them in some way?

9 A. It can be at times. There's certain events --
10 you know, this was a more unique incident that I --
11 I can't tell you was it cloudy or sunny that day, I
12 can't tell you the exact temperature. I remember
13 good bits of this case. I don't remember every
14 minute detail.

15 Q. But I didn't ask about a weather report. I'm
16 talking about when you showed up -- you don't know
17 who reported the smell or manufacturing meth;
18 correct?

19 A. No, sir. That call was taken by dispatch and I
20 responded to it.

21 Q. And as a law enforcement officer, you guys have
22 got body mics, you've got individual handheld
23 recorders, you've got video cameras in your cars,
24 you've got all sorts of recording devices, don't
25 you?

1 A. We do have some recording devices, yes, sir.

2 Q. And how many of those did you employ to try to
3 use when you were talking to my client about this
4 vital piece of evidence you talked about behind the
5 Coke machine? Because you wanted to get that
6 recorded; right?

7 THE COURT: Ask one question at a time, please.

8 BY MR. JOHNSON:

9 Q. Tell me what you did to record it.

10 A. I don't believe we had our recording devices
11 activated.

12 Q. So you had them, but they were not activated?

13 A. Yes, sir.

14 Q. Gotcha. So did you attempt -- well, was that
15 the last conversation you had with my client?

16 A. Yes, sir.

17 Q. Okay.

18 MR. JOHNSON: No more questions, Your Honor.

19 THE COURT: Redirect, if any.

20 MS. RANKIN: Nothing from the State, Your
21 Honor.

22 THE COURT: All right. You may step down.

23 All right. Ladies and gentlemen of the jury,
24 I've got some news that stresses me about as much as
25 it's going to stress you. But it is what it is.

1 I'm trying to do two things at once, and sometimes
2 that backfires on you.

3 My jury who is deliberating has asked to have
4 certain testimony replayed from the trial, and I
5 suspect it will take about an hour and half to hear
6 it. And they have to come out here to hear it.
7 This is the only way I can do it. I can send you
8 home til tomorrow morning, I can let you take a
9 break til about 3:30 or 4:00 and we can come back
10 and keep going. I'm sorry. It's just one of those
11 things that's happening and I have to take care of
12 it. What's your pleasure?

13 JUROR: Keep going. We're here now.

14 THE COURT: I can't keep going now, I got to --

15 JUROR: No, no. We'll stay.

16 THE COURT: All right.

17 (Brief pause in the proceedings.)

18 THE COURT: All right. Call that witness out
19 of order.

20 MR. BELL: At this time, the State would call
21 Ms. Doris Yarbrough.

22 DORIS YARBROUGH

23 being first duly sworn, testified as follows:

24 THE CLERK: Once you're seated, state your full
25 name, spelling your last.

1 THE WITNESS: Doris Yarbrough,
2 Y-A-R-B-R-O-U-G-H.

3 DIRECT EXAMINATION

4 BY MR. BELL:

5 Q. Ms. Doris, do you have another name that you go
6 by?

7 A. I go by Dotie.

8 Q. Ms. Dotie, who are you employed by?

9 A. I'm employed with the South Carolina Law
10 Enforcement Division, also known as SLED.

11 Q. How long have you been with them?

12 A. Just over seven years.

13 Q. And what is your title there at SLED?

14 A. I'm a forensic technician in the evidence
15 control department.

16 Q. Okay. What does that mean?

17 A. We receive package and transfer evidence that's
18 submitted for forensic analysis from officers
19 throughout the state of South Carolina.

20 Q. What is your overall objective in that job?

21 A. To receive package and transfer evidence.

22 Q. Do you keep logs?

23 A. It's electronically monitored. It's logged in
24 through our computer system and followed -- and each
25 case is given a unique barcode, which we refer to as

1 the lab number, and it is electronically monitored
2 by that label.

3 Q. And what's the purpose of having that unique
4 tracking code?

5 A. To keep up with where it's going and who's had
6 their hands on it.

7 Q. Are you able to look at a piece of evidence and
8 see every person who's touched it?

9 A. That would be correct.

10 Q. And, Ms. Dotie, I'm going to hand you what's
11 marked as State's 29. Would you take a look at that
12 for me.

13 A. May I look at my notes?

14 Q. Yes, ma'am.

15 A. This yellow label indicates the lab number that
16 it was given at the time that it was submitted.

17 Q. Okay. And do you recall receiving that
18 package?

19 A. I do.

20 Q. Now, what is the control number on that
21 package, ma'am?

22 A. The control number -- it would be two places.
23 It's printed right here. It's B-237109. And it's
24 also printed the same place there.

25 Q. Now, with regards to that particular piece of

1 evidence with that lab number, did you keep a log
2 recording its movements through SLED?

3 A. Each time it was moved -- once it was logged
4 in, it's controlled by the computer, then it's
5 transferred to -- I put it in -- we have a special
6 drug evidence intake storage that's a secure,
7 limited-access unit. And it's placed there until
8 it's requested for analysis.

9 Q. Now, did you bring a copy of that log with you
10 today?

11 A. I have it right here.

12 Q. Is that log something you keep in the ordinary
13 course of your business?

14 A. It's within our computer system.

15 Q. Ane were you able to pull that off and bring it
16 with you?

17 A. I was.

18 Q. Now, how do you know that chain-of-custody form
19 matches that piece of evidence I just handed you,
20 State's No. 29?

21 A. It has the same number as this yellow barcode
22 label.

23 Q. And, once again, would you read that label into
24 the record?

25 A. It's L-14 -- which L is lab and 14 is the year

1 that it was submitted -- and the number that goes
2 with it is 01941.

3 Q. Now, when did you receive State's No. 29?

4 A. February 10th of 2014.

5 Q. And do you recall who you received it from?

6 A. I received it from Darwin Weaver of the Cayce
7 Department of Public Safety.

8 Q. And where did you retrieve it from?

9 A. He presented it for submission.

10 Q. Does that mean -- was that a personal transfer?

11 A. Yes, it was.

12 Q. After you took custody of it, where did the
13 package go then?

14 A. I then transferred it to our drug evidence
15 intake storage.

16 Q. Did it ever leave storage after you put it
17 there?

18 A. Not until it was requested by the forensic
19 scientist for analysis.

20 Q. And who transferred it at that point?

21 A. That would be Patricia Crooks.

22 Q. Now, who is Patricia Crooks?

23 A. She's now retired. She was our part-time
24 evidence room custodian at the time.

25 Q. Did you personally know Ms. Crooks?

1 A. I did.

2 Q. And do you know what her title was?

3 A. Evidence room custodian.

4 Q. Did she have the same duties as yourself?

5 A. She did not log in evidence, she just received
6 it back from the analyst and placed it in storage to
7 be stored or she transferred it back to them for
8 forensic analysis.

9 Q. Was she authorized to handle the evidence?

10 A. Yes, she was.

11 Q. After Ms. Crooks pulled it out of evidence, who
12 did she turn it over to?

13 A. She gave it to the forensic scientist, Willie
14 Smith.

15 Q. Do you know why that was transferred?

16 A. They would send a request to each one of us --
17 there are three other log-in technicians as well as
18 a part-time evidence room technician -- requesting
19 to pick up particular cases. She'll take that list
20 and go and pull that evidence and respond with the
21 e-mail that they may come down and pick up their
22 evidence.

23 Q. Now, ultimately, was that piece of evidence
24 returned back to Cayce?

25 A. It was.

1 Q. And do you have record of when that was?

2 A. March 11th of 2014.

3 Q. Now, aside from your name, Ms. Crooks' name,
4 and Mr. Smith's name, are there any other names on
5 that chain-of-custody log that touched the evidence?

6 A. There are not.

7 Q. Do you recognize all of the names on that
8 chain-of-custody form?

9 A. I do.

10 Q. Are they all authorized to handle evidence?

11 A. They are.

12 MR. BELL: I beg the Court's indulgence.

13 Nothing further.

14 THE COURT: Cross.

15 MR. JOHNSON: Just briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q. Ma'am, you have no idea of telling where this
19 item was at or who possessed it prior to the record
20 of the officer dropping it off; correct?

21 A. No, I do not.

22 Q. And does SLED have the ability to analyze
23 fingerprint evidence to determine who touched what?

24 A. They do.

25 Q. Are you aware of any requests made to your

1 agency regarding this case about fingerprint
2 analysis?

3 A. No, sir.

4 MR. JOHNSON: Thank you, Your Honor. No
5 further questions.

6 THE COURT: Any redirect?

7 MR. BELL: Nothing on redirect, Your Honor.
8 We'd request Ms. Dotie be released.

9 MR. JOHNSON: No objection.

10 THE COURT: All right. They want to hear it
11 all, so that takes us to 4:30. What time do you
12 want to start in the morning? 9:00? 9:30? 10:00?

13 THE JURY: 9:00.

14 THE COURT: I'm sorry. It's just out of my
15 control. I was trying to maybe get too much done.

16 We should be able to finish it tomorrow,
17 shouldn't we, gentlemen?

18 MR. BELL: The State believes so, Your Honor.

19 THE COURT: Well, let me ask you this: If we
20 get to 4:30 or 5:00 tomorrow, do you want to keep
21 pushing, stay over a little later tomorrow, or come
22 back Friday? We'll talk to y'all. All right.
23 We'll see y'all bright and early in the morning.
24 Don't discuss the case, don't allow anyone to
25 discuss it with you, and don't deliberate. Thank

1 y'all and I'll see you in the morning.

2 (The jury exits the courtroom at 2:07 PM.)

3 THE COURT: All right. We'll stand at ease
4 with y'all until 9:00.

5 (Trial in recess for the day at 2:08 PM.)

6 (The following proceedings were held November
7 5, 2015, beginning at 9:02 AM.)

8 THE COURT: Is the State ready to proceed?

9 MR. BELL: The State is ready, Your Honor.

10 THE COURT: Is the Defense ready to proceed?

11 MR. JOHNSON: Defense is ready, Judge.

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

14 (The jury enters the courtroom at 9:03 AM.)

15 THE COURT: Who is the foreperson?

16 THE FOREMAN: Me, number 87.

17 THE COURT: Mr. Johnson? Good morning. We
18 made the right call yesterday afternoon; we didn't
19 finish listening to the testimony until way after
20 5:00. So it would have been a long way for you. I
21 think you made the right call. Sometimes the jury
22 wants to rehear testimony. But two and a half hours
23 of re-listening to testimony you just heard weighs
24 on your patience a little bit. But we got through
25 it and we did fine. I'm sorry it didn't go the way

1 we wanted it to with y'all yesterday. So we'll keep
2 going.

3 You may call your next witness.

4 MS. RANKIN: State calls Findlay Wihlidal.

5 FINDLAY WIHLIDAL

6 being first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Have a seat, sir. Once you're
9 seated, state your full name, spelling your last on
10 the record, please.

11 THE WITNESS: Findlay Wihlidal,
12 W-I-H-L-I-D-A-L.

13 DIRECT EXAMINATION

14 BY MS. RANKIN:

15 Q. Officer Wihlidal, where do you work?

16 A. Cayce Public Safety.

17 Q. And how long have you been there?

18 A. Eleven years.

19 Q. And what do you do there?

20 A. I'm an SRO at this time.

21 Q. What were you doing at the time of this case?

22 A. I was an MPSO, officer on the road.

23 Q. How did you become involved in this case?

24 A. Through a call through dispatch.

25 Q. Okay. And where did you respond?

1 A. The motel -- was it motel -- I can't remember
2 the name of it. It used to be Master's Inn and then
3 they changed it shortly after.

4 Q. And who was on scene when you got there?

5 A. Officer Garcia.

6 Q. All right. And what did you and Garcia do when
7 you got there?

8 A. Knocked on the door. Through the complaint
9 that we had, there was a suspicious odor. Knocked
10 on the door, and an individual came to the window
11 and put the curtain back. He finally opened the
12 door after we knocked and few times. And at that
13 time, I smelled a very strong odor coming out the
14 door.

15 Q. And what did that smell like to you?

16 A. More like nail polish remover.

17 Q. Okay. It was a strong smell?

18 A. Yes, ma'am, it was.

19 Q. Did y'all go inside the room?

20 A. Yes, ma'am, we did.

21 Q. What did you observe when you went inside the
22 room?

23 A. The room was very befuddled, kind of a mess.
24 There were five individuals sitting there, one
25 female and four males. Garcia went in before I did.

1 At the time when we walked in, a young lady started
2 going towards the bathroom, and I asked her to stop.
3 We wanted to know what was going on in that room at
4 that time.

5 Q. Okay. What did you observe about their
6 behavior?

7 A. They were very nervous. You know, they were
8 kind of looking at each other, staring at each
9 other, they didn't really want to look at us. And a
10 couple of people were -- not shaking violently, but
11 they were trembling more than anything.

12 Q. Okay. At the time that you saw these people in
13 the room behaving nervous and you smelled that
14 smell, what did you do next?

15 A. Well, Garcia walked to the back of the room and
16 he saw a coffee pot --

17 MR. JOHNSON: Objection, Your Honor.

18 THE COURT: Sustained.

19 Disregard that, ladies and gentlemen.

20 BY MS. RANKIN:

21 Q. Just testify to what you did.

22 A. Okay. When I went in there, like I said, the
23 young lady started going back into the bathroom, and
24 I stopped her. And Garcia was in the back, and I
25 started walking to the back, and the smell became

1 much stronger at that time.

2 Looking around, there was a -- kind of a white
3 tub, like a pail, you know, where you put ice in it,
4 and the smell was very dominant in that area. It
5 was right in the corner by the bathroom. It was
6 a -- kind of a bluish color.

7 Because the smell was so strong -- we're also
8 firefighters. And I've been in places where that
9 smell was very ominent, so we asked everybody to
10 come outside. We didn't know what was going on.
11 With the nervousness people looking at each other,
12 and that smell being very strong and something I've
13 smelled before, we thought it would be safer to take
14 people outside the room.

15 Q. Okay. So once you got outside the room, did
16 you speak to the defendant?

17 A. I did. I did. When we brought him outside the
18 room, the young lady, we sat her in the chair. She
19 was not feeling well. And then the four men were
20 lined up. The motel is kind of strange. It was on
21 the inside of the motel, and there's a wall that had
22 a Coke or Pepsi machine there. And the gentlemen
23 were all kind of standing out front of there away
24 from the room, and I was standing beside Mr. Miller.

25 Q. Okay. And you said you spoke to him?

1 A. I did, just in general conversation, basically
2 like, how are you doing, da, da, da, just general
3 conversation. After some time, maybe, I don't know,
4 maybe five or six minutes of just chatting,
5 basically nothing, I don't know how it came up, but
6 he had mentioned that --

7 MR. JOHNSON: Objection, Your Honor, on
8 previous motions and arguments.

9 THE COURT: Overruled.
10 You may answer.

11 A. He had just come up with the comment that he
12 was a sought-after cook, meth cook. And I kind of
13 looked at him and thought that was very strange why
14 he would say something like that. And I don't know
15 if it was in a boasting way or not. I really don't
16 remember. But that comment did come up. And --

17 Q. So let me stop you there.

18 A. Sure.

19 Q. That comment, was that in response to any of
20 the questions you asked him?

21 A. No, it wasn't. Like I said, it was just in
22 general conversation. I never asked him any
23 specific questions on anything. When we have
24 different people out like that, to make conversation
25 just to make people feel at ease -- now, a lot of

1 people, when a police officer comes into their room,
2 they certainly don't feel comfortable." You know,
3 they see a police officer and, oh, my goodness, you
4 know. Just to make people seem more comfortable,
5 you just chat with them, maybe about the weather or
6 how the Gamecocks are doing, whatever, you know,
7 just general conversation.

8 Q. Okay. After he made that comment to you, did
9 you continue to talk with him?

10 A. Not really. I think we might have said a
11 couple words after that. But the conversation kind
12 of ended. There was other things going on, so --

13 Q. Did you have any further involvement in talking
14 with the defendant or searching?

15 A. No, ma'am. It was coming to near the end of
16 the shift and we're all about to get off, and other
17 people, I guess, came.

18 Q. Did you do a report in this case?

19 A. No, I didn't.

20 Q. In hindsight, do you wish you had?

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

22 Q. All right. So that's a mistake that you made?

23 A. Yes, ma'am, it was.

24 Q. All right. But you're owning up to it?

25 A. Yes, ma'am.

1 Q. And what you testified to today, that's what
2 happened?

3 A. Yes, ma'am.

4 Q. Thank you.

5 THE COURT: Cross.

6 MR. JOHNSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. JOHNSON:

9 Q. Officer, in investigating a potential meth lab,
10 does it matter if somebody says they're a meth cook?
11 Isn't that important?

12 A. I think if somebody tells me they're a meth
13 cook, it could be important. Yes, sir.

14 Q. And investigating a meth lab is really
15 important, isn't it?

16 A. To investigate it? Yes, sir.

17 Q. As evidence?

18 A. Yes, sir.

19 Q. So to record that statement would be pretty
20 vital, wouldn't it?

21 A. It would be.

22 Q. And you've got recording equipment just like
23 other officers, don't you?

24 A. No, sir. We -- I'm sorry. I did at that time.
25 I currently don't have that now. But, yes, sir.

1 Q. Okay. And you chose not to use it?

2 A. I didn't put it on. No, sir.

3 Q. And tell me about all the people you knocked on
4 doors looking for witnesses right next to this room
5 in your investigation.

6 A. No, sir. I didn't knock on any other door.

7 Q. Okay. Well, tell me about your surveillance of
8 the room to determine who was staying there.

9 A. There were five people in the room and we took
10 all five out. Yes, sir.

11 Q. I'm talking about surveillance where you
12 watched the room to see who was coming and going.

13 A. No, sir. We never watched the room. We got a
14 call from dispatch saying there was an odor coming
15 out of a room, and that's what we went to
16 investigate.

17 Q. Oh, so tell me about your interview with
18 Mr. Jason Carroll.

19 A. Jason Carroll?

20 Q. Do you even know who that is?

21 A. No, sir.

22 Q. Okay. Well, tell me about all the videos from
23 other businesses across the street that might have
24 cameras and all the people you talked to to get
25 those videos. Tell me about that.

1 A. I have no idea, sir. I didn't investigate the
2 situation. I was the road officer that goes and
3 takes care of the situation right there. And then
4 we have an investigation department that does the
5 investigation.

6 Q. Okay. Do you have statement forms that you
7 keep as a law enforcement officer?

8 A. Yes, sir.

9 Q. Show me the statement form where you had my
10 client write down that he was a meth cook, a famous
11 meth cook.

12 A. Nos, sir. I didn't have any statement form.

13 Q. You didn't use any statement form?

14 A. Exactly.

15 Q. Okay. And tell me about where you checked for
16 fingerprints on all these items you saw to make sure
17 who was handling -- who was making the meth.

18 A. Sir, I don't do that. Investigation comes down
19 and does that.

20 Q. Okay.

21 MR. JOHNSON: No more questions, Judge.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS. RANKIN:

25 Q. Officer Wihlidal, the motel that you responded

1 to, is it in Lexington County?

2 A. Yes, it is. It's city of Cayce.

3 Q. And your job is not necessarily to investigate,
4 it's to respond to calls as they come out; right?

5 A. No. Again, we go to the situation, take care
6 of the situation. But the investigation part is
7 through investigations; they actually go and
8 investigate it.

9 MS. RANKIN: Nothing further.

10 THE COURT: You may step down.

11 Next witness, please.

12 MR. BELL: Thank you, Your Honor. At this
13 time, the State calls Jimmy Gleaton.

14 JAMES GLEATON

15 being first duly sworn, testified as follows:

16 THE WITNESS: I do.

17 THE CLERK: Once you're seated, state your full
18 name, spelling your last on the record.

19 THE WITNESS: My name is James Gleaton,
20 G-L-E-A-T-O-N.

21 DIRECT EXAMINATION

22 BY MR. BELL:

23 Q. Sergeant, who are you employed by?

24 A. I'm employed by the Cayce Department of Public
25 Safety.

1 Q. How long have you been with them?

2 A. Approximately three years.

3 Q. In what capacity are you currently employed by
4 Cayce?

5 A. I'm the sergeant over the criminal
6 investigations division.

7 Q. What exactly does that mean?

8 A. I supervise investigations, narcotics,
9 evidence, victims assistance, and the school
10 resource officers for the department of public
11 safety.

12 Q. Do you have any other law enforcement
13 experience?

14 A. I do; approximately 18 years' worth.

15 Q. And what departments were those with?

16 A. I started out with the City of Orangeburg in
17 the '90s, worked there until I came to the Lexington
18 County Sheriff's Department. Here, I served as a
19 patrol officer and then was assigned to the
20 narcotics enforcement team; served three years
21 undercover on the narcotics enforcement team. After
22 that, I began running the meth response team for
23 Lexington County.

24 And then I left, went overseas to Afghanistan
25 to work for the Department of State International

1 Narcotics Enforcement Bureau, and then came back
2 here and worked with Lexington County Health
3 Services District Police Department as a supervisor
4 there, and then over to Cayce for the criminal
5 investigations division.

6 Q. Now, you mentioned working meth. Have you
7 responded to meth labs as a part of your job?

8 A. Yes, sir.

9 Q. Do you know approximately how many you've
10 responded to?

11 A. I'd say roughly 200 or more meth scenes I've
12 been on or worked.

13 Q. Now, are you actually involved in dealing with
14 the meth labs when you arrive, or do you just
15 document them and report them to someone else?

16 A. I can do all of it. I document what we do, I
17 supervise people who go in and actually process
18 them. I actually go in and process the labs -- I
19 have specific training to do that -- and basically
20 articulate and look at everything we've got to see
21 what they're doing.

22 Q. Can anybody on the police force respond to a
23 meth lab and handle it?

24 A. They can respond to it, but it's very
25 restrictive on who can handle a meth lab.

1 Q. Why is that?

2 A. Because of the dangers of the meth lab and what
3 it poses and all the chemicals.

4 Q. Now, have you received any specific training in
5 dealing with methamphetamine lab?

6 A. Yes, I have.

7 Q. And does that training authorize you to handle
8 meth labs?

9 A. It does.

10 Q. Tell us about that training.

11 A. Basically, the training involves learning how
12 the process works. You're basically taught then on
13 each chemical as far as how they smell, what their
14 reactions are, what the volatilities are, what type
15 of protection you need from what chemicals it is
16 that they're using.

17 Q. How much training have you received
18 specifically relating to meth and meth labs?

19 A. Approximately 170, 180 hours specific to meth
20 labs.

21 Q. And who are those courses provided by?

22 A. Through several different national
23 organizations as well as state organizations.

24 Q. Are the methods that you've been taught and
25 qualified under nationally accepted methods?

- 1 A. Yes, sir, they are.
- 2 Q. Is there any dispute about those methods?
- 3 A. No, sir. None that I'm aware of.
- 4 Q. Do you have certifications on those courses
- 5 that you went to?
- 6 A. I do, yes, sir.
- 7 Q. Are you up to date on all of your
- 8 certifications?
- 9 A. Yes, sir.
- 10 Q. All of those certifications culminate in
- 11 qualifying you as what?
- 12 A. As a meth tech.
- 13 Q. And that simply means what?
- 14 A. That means that I have, under OSHA's
- 15 guidelines, the ability to go in and dismantle and
- 16 render safe any type of meth labs that are
- 17 operational.
- 18 Q. As part of that training, do they educate you
- 19 on the components typically involved with
- 20 manufacturing methamphetamine?
- 21 A. Yes, sir, they do.
- 22 Q. Do they teach you various methods used to
- 23 manufacture methamphetamine?
- 24 A. They do.
- 25 Q. Do they train you on how to safely handle

1 things related to manufacturing methamphetamine?

2 A. They do.

3 Q. Do you have to wear any special gear when
4 dealing with these situations?

5 A. We do, depending on the situation, yes, sir.

6 Q. What kind of gear is that?

7 A. It could be anything from an APR, which is an
8 air purifying respirator, to an SCBA, which is a
9 self-contained breathing apparatus, and a Level B
10 suit or a Level A suit if needed, or Tyvek suits.
11 It just depends on what's present.

12 Q. And why are those pieces of equipment
13 important?

14 A. Because the chemicals, when they mix them,
15 there's several types of hazards; one is what you
16 breathe in, what you may touch; you may get it on
17 your skin just inadvertently, you know, bumping into
18 something, so we have to wear a lot of gear to
19 protect ourselves.

20 Q. In 2014, last year, did you have reason to
21 respond to the Motel 6 in Cayce?

22 A. I did.

23 Q. And what county is that in?

24 A. It's in Lexington County, South Carolina.

25 Q. Is that within Cayce Department of Public

1 Safety's jurisdiction?

2 A. It is.

3 Q. Do you happen to recall the address of that
4 hotel?

5 A. I want to say -- it's on Knox Abbot Drive.
6 maybe.

7 Q. What was the reason for your response that day?

8 A. Well, I was actually out with another
9 investigator. We were working on a different case
10 and we heard the road patrol was dispatched to a
11 possible meth lab at room 126 at the Motel 6. So
12 knowing I'm the one that's going to respond to it, I
13 just finished up what I was doing and we headed in
14 that direction.

15 Q. Did you respond to that call?

16 A. I did.

17 Q. How long after the call came in did you arrive
18 on scene?

19 A. I want to say probably five, maybe ten minutes
20 tops. It wasn't very long. They had just removed
21 the people from the room when I drove up.

22 Q. When you say they, who?

23 A. Officer Wihlidal and Officer Garcia.

24 Q. Now, who was the highest ranking officer on
25 scene at that point?

1 A. At that point it would have been me.

2 Q. How many people on scene would have been under
3 your command?

4 A. Probably five or six at that point.

5 Q. Now, upon arrival, where did you pull your
6 vehicle up to?

7 A. There's a breezeway where they were. They were
8 in -- actually, at the end of the breezeway. I
9 pulled up on the other end of the breezeway.

10 Q. Just to clarify, when you say they, are you
11 speaking about law enforcement?

12 A. The law enforcement officers, yes, sir.
13 Officer Wihlidal and Officer Garcia.

14 Q. And were those officers already at the
15 complaint area?

16 A. Yes, sir.

17 Q. Do you recall if there was a particular room
18 that you were sent to respond to?

19 A. I think it was room 126.

20 Q. And is that the room that the officers were
21 gathered around?

22 A. Yes, sir.

23 Q. Had they already made contact with the room?

24 A. They had. They already made contact with
25 several individuals and had them outside.

1 Q. Do you recall how many individuals you saw?

2 A. I think it was four men and one woman.

3 Q. Were they in handcuffs at that time?

4 A. I don't believe they were in handcuffs at that
5 point.

6 Q. Now, as you approached those individuals and
7 your officers, anything out of the ordinary catch
8 your attention?

9 A. I did smell an odor initially when I first got
10 out of my vehicle, which is probably, you know, 20
11 or 30 feet from where they were. My original
12 thought was it was a chemical odor. And I couldn't
13 exactly distinguish it at that point. And as I got
14 to the room, I was able to distinguish the smell
15 once I got, you know, right there where the door was
16 open.

17 Q. Very generally, did that smell ring any bells
18 to you?

19 A. Absolutely. The smell -- there are certain
20 smells that we're taught that are consistent with
21 methamphetamine production or the chemicals used in
22 methamphetamine. This one was spot-on. It smelled
23 just --

24 Q. Is there --

25 A. -- like a nail polish -- I'm sorry.

1 Q. Is there a household item that that smell is
2 attached to?

3 A. Yes, sir.

4 Q. And what is that?

5 A. Nail polish.

6 Q. Now, as you approached and that smell became
7 stronger, was it overwhelming? Was it faint? How
8 strong was the odor at that point?

9 A. It was pretty strong at the door. But as I
10 walked in -- first thing I did was stop and ask
11 Officer Garcia, what did you see, what do you have,
12 because they had already removed everybody, which
13 tells me they saw something. And he immediately
14 said --

15 MR. JOHNSON: Objection, Your Honor; hearsay.

16 THE COURT: Don't testify about what he said.

17 A. And once he gave me the information on what he
18 saw, I asked him to point it out to me, and he did,
19 which is the white container that was on top of
20 the --

21 Q. Let's slow down.

22 A. I'm sorry.

23 Q. You approach room 126. Do you enter the room?

24 A. I did not enter until after I spoke with
25 Officer Garcia.

1 Q. Do you eventually go into room 126?

2 A. Yes, sir.

3 Q. Who was in that room?

4 A. At that point, no one was in there.

5 Q. Why would they have been evacuated out of that
6 room?

7 A. The officers had concerns based on what --

8 MR. JOHNSON: Objection, Your Honor; hearsay.

9 THE COURT: Don't testify about what other
10 people said. As a result of what you learned, what
11 did you do?

12 BY MR. BELL:

13 Q. Are you trained to remove people from a room
14 when you have a chemical odor --

15 MR. JOHNSON: Objection, leading.

16 THE COURT: Overruled.

17 A. Yes.

18 Q. As you went into room 126, how did you go about
19 canvassing the area?

20 A. The first thing I do is look around, don't
21 touch anything, just visually looking to see any
22 items that may contain chemicals. And when I
23 noticed certain items that I thought were --

24 MR. JOHNSON: Objection, Your Honor; opinion.

25 THE COURT: What?

1 MR. JOHNSON: Opinion testimony based on
2 previous argument and motion. I believe he's about
3 to go into opinion testimony about these contents.
4 He's talking about some substance in the room and
5 what it might be.

6 MR. BELL: Your Honor, he testified that it
7 smelled like nail polish remover. There was no
8 objection at that time. We're not asking for any
9 further information on that topic right now.

10 THE COURT: You can answer it.

11 A. I saw items that were consistent with what we
12 would normally find associated with meth labs.

13 Q. And is that based on all of your training as a
14 meth tech?

15 A. Yes, it is.

16 MR. BELL: I beg the Court's indulgence.

17 BY MR. BELL:

18 Q. Sergeant --

19 MR. BELL: Your Honor, permission to approach
20 the witness?

21 THE COURT: Yes, sir.

22 BY MR. BELL:

23 Q. Sergeant, I'm handing you a series of photos;
24 State's 17, 16, 15, 14, 13, 12, 11, 10, 22, 21, 20,
25 19, 18, 8, 7 and 6. Would you please review all of

1 those pictures. And at this point, do not comment
2 on them aside from reviewing them. Once you've had
3 a chance to look at them, please let me know.

4 A. Okay.

5 Q. Have you had a chance to review those, sir?

6 A. Yes, sir.

7 Q. Are those pictures from the scene on January
8 8th of last year?

9 A. They are.

10 Q. And were you present when those pictures were
11 taken?

12 A. I was.

13 Q. Do they fairly and accurately represent
14 everything that was found on that evening?

15 A. Yes, they do. Some of them they're moved from
16 the original spot.

17 Q. Who moved them?

18 A. I did.

19 Q. Are they in substantially the same condition as
20 you found them?

21 A. They are.

22 Q. Now, when you went into the bathroom, what did
23 you see in there immediately?

24 A. The first thing I saw was the white container
25 up on top of the -- I believe it's the coat rack

1 that Officer Garcia had told me about it.

2 Q. Could you tell if there was anything inside of
3 it?

4 A. I could. It had a liquid in it with a blue
5 tint. You could see it through the side of the
6 container.

7 Q. Did you take that bucket and do anything with
8 it?

9 A. I had -- because I'm a little shorter and it
10 was high up, I had Officer Garcia grab it and hand
11 it down to me.

12 Q. I'm handing you State's 6. Does that reflect
13 the location of that bucket when you found it?

14 A. Yes, sir.

15 Q. State's 7, is that ultimately where you
16 relocated that bucket to?

17 A. It is.

18 MR. BELL: Your Honor, at this time the State
19 would move State's 6 and 7 in to evidence.

20 THE COURT: Any objection?

21 MR. JOHNSON: We'd object based on previous
22 argument and motion, Your Honor.

23 MR. BELL: Do you wish to see them, Your Honor?

24 THE COURT: Yes. But is that the argument of
25 prejudicial or probative?

1 MR. JOHNSON: These were based on the motion
2 that was filed, Your Honor, regarding search warrant
3 and case law related to the search.

4 THE COURT: All right. Overruled.

5 MR. JOHNSON: Just for those two photos.

6 THE COURT: That's right, just 6 and 7.

7 MR. BELL: Your Honor, permission to publish
8 State's 6 and 7?

9 THE COURT: Certainly.

10 (State's Exhibit Nos. 6 and 7 admitted in to
11 evidence.)

12 BY MR. BELL:

13 Q. Sergeant, I'm showing you State's 6. Are you
14 able to see that?

15 A. Yes, sir.

16 Q. Is that the bucket that you located?

17 A. That is.

18 Q. Is that the exact location you located it in?

19 A. Yes, sir.

20 Q. And what room is that in at Motel 6?

21 A. That's in room 126.

22 Q. Okay. For clarification's sake, please circle
23 with that laser pointer the item you're referring
24 to.

25 A. That one right there (indicating).

1 THE COURT: That's exhibit what?

2 MR. BELL: 6, Your Honor.

3 THE COURT: Thank you.

4 BY MR. BELL:

5 Q. Sergeant, I'm now showing you State's 7. Is
6 that where you ultimately relocated that bucket to?

7 A. Yes, sir.

8 Q. The liquid inside of that bucket, is that in
9 the same condition as when you found it?

10 A. It is.

11 Q. Did you pour anything in that bucket after you
12 found it?

13 A. No, sir.

14 Q. And what tint did you say that liquid had?

15 A. It has a bluish tint to it.

16 Q. After pulling that bucket out, what did you
17 continue to do?

18 A. To go back into the room and continue to look
19 for other items that were related to manufacturing
20 or other chemicals.

21 MR. BELL: I beg the Court's indulgence.

22 BY MR. BELL:

23 Q. Now, did you agree with removing the occupants
24 from the room at that point in time?

25 A. Yes. Actually, once I went in there and viewed

1 the stuff, I told everybody nobody was allowed back
2 in the room.

3 Q. Based on that finding, did you obtain a search
4 warrant?

5 A. I did, yes, sir.

6 Q. How long did it take for that to come back?

7 A. It was probably about 30 minutes or so, maybe a
8 little longer.

9 Q. Ultimately, who executed the search of the
10 room?

11 A. I did, once the search warrant was obtained.

12 Q. Was anybody else with you?

13 A. Not for the first part of it. Detective
14 Pereira did come in a little bit later.

15 Q. And is Detective Pereira a meth tech?

16 A. He is.

17 Q. Were any non-meth techs present in the room?

18 A. Not inside the room, no, sir.

19 Q. Did you have to dawn protective gear?

20 A. I did. An APR with Nitrile gloves was what I
21 chose to use that day.

22 Q. What are Nitrile gloves?

23 A. Nitrile gloves are a specific type -- basically
24 your normal rubber gloves, but they're specific
25 because the Nitrile, the chemicals can't eat through

1 them.

2 Q. Can you spell that word for us, the Nitrile.

3 A. N-I-T-R-I-L-E.

4 Q. And the purpose of those gloves is to protect
5 you from what?

6 A. From the chemicals.

7 Q. And the APR, what is the purpose of that item?

8 A. It's for the fumes or any gases that may be
9 present in the room. It just keeps us from
10 ingesting them.

11 Q. Does the process of manufacturing
12 methamphetamine yield dangerous fumes?

13 A. It does.

14 Q. Now, did your search yield any other items or
15 components from that room?

16 A. It did.

17 Q. Go ahead and start telling us what you recall
18 seizing that seemed suspicious to you.

19 A. The first thing after the white bucket that I
20 saw was a coffee pot that was inside of like a
21 Walmart bag. And as soon as I opened the bag up --
22 this was before I actually had my APR -- I could
23 smell the same smell of nail polish coming from it.
24 So I left it alone until I got everything on that I
25 needed on, and then went in and found the coffee

1 pot, I found Liquid Fire, which is sulfuric acid, I
2 found --

3 MR. JOHNSON: Objection, Your Honor. It's
4 opinion, Your Honor, if he's talking about the
5 content of some canister of some liquid. He said it
6 contained sulfuric acid. I'm objecting to him
7 offering his opinion.

8 BY MR. BELL:

9 Q. Sergeant, through your meth tech training, are
10 you trained to identify the different components
11 used in manufacturing?

12 A. I am.

13 Q. Did -- the Liquid Fire bottle that you found,
14 was it labeled what it was?

15 A. It was.

16 Q. What was it labeled as being?

17 A. Liquid Fire, which is sulfuric acid.

18 MR. BELL: I beg the Court's indulgence.

19 THE WITNESS: Do you want me to continue with
20 what else I found?

21 MR. BELL: Just one moment.

22 Your Honor, at this time, the exhibits that
23 were moved for State's identification purposes
24 through Sergeant Gleaton, we would move those in to
25 evidence at this time.

1 THE COURT: Any objection?

2 MR. JOHNSON: Your Honor, I'm objecting, and
3 I'll just read the exhibit numbers, if you don't
4 mind. This is 17, 18, 19, 20, 21, 22, 10, 11, 12,
5 13, 14, 15, 16, and 8. I'm objecting to those based
6 on previous motion and argument, Judge.

7 THE COURT: Overruled.

8 (State's Exhibit Nos. 8, 10-22 admitted in to
9 evidence.)

10 MR. BELL: Permission to publish those items,
11 Your Honor?

12 THE COURT: You may.

13 BY MR. BELL:

14 Q. Sergeant, I'm showing you State's 12. What is
15 that a picture of?

16 A. That is a bottle of Liquid Fire.

17 Q. Is that the item that you found in that room?

18 A. It is, yes, sir.

19 Q. Do you recall where in the room you located it?

20 A. It was in a bag with the canister of -- labeled
21 Coleman camp fuel. And that was down near the
22 refrigerator in the room.

23 Q. Sergeant, I'm showing you State's Exhibit 10.
24 What are we looking at?

25 A. This is the room. That right there is the

1 Liquid Fire we were just talking about, and this is
2 the bag. That's Coleman camp fuel.

3 Q. State's 11, Sergeant, is this a close-up of the
4 picture we were just looking at?

5 A. It is. That would be the Liquid Fire there and
6 the Coleman fuel there (indicating).

7 Q. Anything else of note in that picture?

8 A. There's tubing down in here (indicating)..

9 Q. Is it visible in that picture?

10 A. I don't think it is.

11 Q. Was it ultimately documented?

12 A. Yes, sir.

13 Q. Sergeant, I'm showing you State's 8. What is
14 this a picture of?

15 A. This is the coffee pot that I was referring to
16 earlier.

17 Q. And why is that relevant?

18 A. Well, it had an odor of nail polish coming from
19 it.

20 Q. Was it the same odor you detected from the
21 bucket?

22 A. It was.

23 Q. The other bags that were in the former picture,
24 did you end up searching those bags?

25 A. Yes, sir, I went through all of the bags.

1 Q. State's 18, would you please point out what
2 items are relevant to you here.

3 A. In this picture, the funnel would be relevant
4 for manufacturing, the coffee filters would be
5 relevant for manufacturing, the cold packs would
6 be -- I can't really see what that is right there;
7 looks like just paper towels, maybe.

8 Q. Anything else in that picture, sir?

9 A. No, sir. Other than the bags themselves would
10 be relevant for -- that's usually how they transport
11 the stuff.

12 Q. It doesn't show up well in that picture,
13 Sergeant. I'm handing you what's been entered as
14 State's 18. Would you take a close look at what you
15 identified as being a pack of coffee filters. Are
16 you able to tell what color those coffee filters
17 are?

18 A. Yes, sir. They're brown, like a tannish brown.

19 Q. Are all of those items that you're trained to
20 identify as being components of manufacturing?

21 A. Yes, they are.

22 Q. State's 16, Sergeant, what are we looking at
23 here?

24 A. That is a gallon jug. And I believe it's
25 muriatic acid, based on my training.

1 Q. When you said you believe, why do you believe
2 that?

3 A. The size of the jug would be consistent with
4 muriatic acid. And if you see this small piece of
5 paper right here, that's a pH paper.

6 Q. What is pH paper?

7 A. It's a paper that indicates whether something
8 is --

9 MR. JOHNSON: Objection, Your Honor.

10 THE COURT: Overruled.

11 Q. Are you trained to use pH paper as part of your
12 meth tech training?

13 A. I am.

14 Q. State's 17, Sergeant, what are we looking at?

15 A. This is the pH paper here.

16 MR. JOHNSON: Your Honor, same objection.

17 THE COURT: Overruled.

18 Q. Can you tell us the relevance of this picture?

19 A. Yes. The reason why it's red is because it
20 shows a high acidity level. It would be, like, a
21 darker color if it was a base. So acidity would
22 mean it's more of a -- would mean it's an acid.

23 Q. And what did you apply that pH paper to?

24 A. The -- right around the rim right here on the
25 container (indicating).

1 Q. And that is the container we were just talking
2 about?

3 A. Yes.

4 Q. And what did you say that container had in it?

5 A. I believed it to be muriatic acid.

6 Q. Would your pH test lend support to that?

7 A. It would.

8 Q. Sergeant, State's 15, please identify what
9 we're looking at.

10 A. This is lye, also drain opener, as it's
11 commonly known, and this is regular table salt.

12 Q. Are you trained that these items are also used
13 in the manufacturing of methamphetamine?

14 A. They are. Yes, sir.

15 Q. State's 14, Sergeant, what are we looking at?

16 A. This is a cold pack. And you can see here it's
17 been cut open so the internal stuff out of it has
18 been taken out.

19 Q. As part of your training as a meth tech, do you
20 know why cold packs are relevant?

21 A. They contain ammonium nitrate, which is needed
22 in the proces to complete the methamphetamine
23 product.

24 Q. State's 13, Sergeant, please identify those
25 items.

- 1 A. This is starting fluid, and this is Coleman
2 camp fuel.
- 3 Q. Now, this picture is a little fuzzy. Are you
4 100-percent certain that's what those items were?
- 5 A. Yes, sir.
- 6 Q. Was the labeling clear when you saw them on
7 that evening?
- 8 A. Yes, sir.
- 9 Q. Are those containers the containers that are
10 typically used for those items?
- 11 A. Yes, sir.
- 12 Q. Are those also relevant components to
13 manufacturing?
- 14 A. They are.
- 15 Q. Sergeant, State's 20, why are these plugs
16 relevant?
- 17 A. I don't know that the plugs would be
18 100-percent relevant, but a lot of times they use
19 mobile stuff, and they --
- 20 Q. Do the plugs have any relevance at all to
21 manufacturing?
- 22 A. Not to manufacturing, but --
- 23 Q. Does anything in that picture have relevance to
24 manufacturing?
- 25 A. This battery does right here.

1 Q. And what kind of battery is that?

2 A. It's a lithium battery.

3 Q. How do you know it's a lithium battery?

4 A. Well, it's identified as lithium. But you can
5 also tell by the colors of it.

6 Q. What color?

7 A. Silver.

8 Q. Is that color typically used to identify
9 lithium batteries?

10 A. It is.

11 Q. Did you find a device in that room that would
12 run off of lithium batteries?

13 A. I did not.

14 Q. Or that particular size of battery?

15 A. Not that particular size, no, sir.

16 Q. And is lithium a relevant component of
17 manufacturing?

18 A. It is.

19 Q. State's 19, Sergeant, why are Coke bottles
20 relevant?

21 A. These are what they used to combine the
22 components in, the larger ones. The smaller ones
23 would be generally used to make an acid generator,
24 which is part of the process.

25 Q. In your 200-or-so meth labs you responded to,

1 what are the two most common sizes of bottles you
2 find in these labs?

3 A. For the one-pot cooks, you're almost always
4 going to see the two-liter bottles like this. And
5 then for the acid generators, generally speaking,
6 they're going to use the smaller 20-ounce bottles.

7 Q. Why would the cap be missing on the smaller
8 one?

9 A. What they do is they take the cap off and they
10 poke a hole in the top of it and enter a tube into
11 it and then secure it down, because the acid
12 generator is actually producing a gas that they want
13 to filter into the meth liquid that comes out.

14 Q. Were all of the items that we've just discussed
15 located in room 126?

16 A. They were, yes, sir.

17 Q. Please identify the individuals that were all
18 present in the room when law enforcement arrived.

19 A. As far as their names?

20 Q. Correct.

21 A. Mr. Miller, Mr. Crawly [phonetic], McFadden,
22 Ms. Breedlove. And I can't remember the name of the
23 last one.

24 Q. But there was one additional person there?

25 A. There was.

1 Q. Now --

2 A. Quarrels [phonetic] was his name.

3 Q. Did you have any indication that Mr. Miller was
4 more than just a passing occupant of the room?

5 A. I did. When we were -- the picture you showed
6 earlier where the lithium battery was, when I opened
7 that particular little bag, there was an ID in
8 there --

9 MR. JOHNSON: Objection, Your Honor, based on
10 previous motion and argument.

11 THE COURT: Overruled.

12 BY MR. BELL:

13 Q. Referring to State's 20, is this the container
14 you were speaking of?

15 A. Right. This bag, it's like a two-sided little
16 bag, so it's got all kind of little things in it.
17 And inside that bag was an ID.

18 Q. Do you recall what the ID -- the name on the
19 ID?

20 A. I want to say it said James Miller -- Bruce --
21 James Bruce Miller.

22 Q. Was it a picture ID or just have a name on it?

23 A. It did have a picture on it.

24 Q. Showing you State's 22, what is that a picture
25 of?

1 A. That would be the ID that was in that bag.

2 Q. Did that picture match the individual you
3 identified as James Miller in the room?

4 A. It did.

5 Q. When you identified the individuals, were you
6 able to confirm that his birth date was the same as
7 what is reflected on that ID?

8 A. Yes, sir, I believe so.

9 Q. Were there any items missing that would be
10 needed for the manufacturing process, based on your
11 training as a meth tech?

12 A. As far as inside the room?

13 Q. Was there anything at all that you seized and
14 we looked at pictures of that would be missing for
15 the purposes of manufacturing?

16 A. The only thing missing out of there would be
17 the pseudoephedrine.

18 Q. Okay. Now, the individuals were removed from
19 the room. Where were they taken?

20 A. All of them were put in the breezeway and they
21 were stood out there until we got finished.

22 Q. Was James Miller also taken out there?

23 A. He was.

24 Q. And do you recall who was handling him
25 primarily?

1 A. Dougall -- Officer Dougall had him when I
2 walked out. I was in and out of the room. But I
3 remember seeing him over there with Officer Dougall
4 watching him.

5 Q. Did Officer Dougall come to you and give you
6 anything?

7 A. He did. He brought me the --

8 Q. What did he bring you?

9 A. The wallet with the coffee filter to ask me,
10 you know, what it was.

11 Q. Did you look inside the wallet?

12 A. I did.

13 Q. What did you see inside the wallet?

14 MR. JOHNSON: Objection, Your Honor, based on
15 previous argument and motion.

16 THE COURT: Mr. Johnson, you know the rules
17 about standing up to make an objection.

18 MR. JOHNSON: Yes, sir. I'm sorry.

19 THE COURT: Overruled.

20 A. Inside the wallet was the coffee filter, as
21 well as the ID with Mr. Miller's name and picture on
22 it.

23 Q. Sergeant, I'm showing you what's marked and
24 entered as State's 4. The item on the left, is that
25 what Officer Dougall gave you?

1 A. It is.

2 Q. Okay. The two items on the right side, without
3 going into much detail, what are those?

4 A. The coffee filter and that was the ID that was
5 in the wallet. And the coffee filter was in there
6 as well.

7 Q. Does that coffee filter, based on its color and
8 size, match the other coffee filters that you found
9 elsewhere in the room?

10 A. It does.

11 Q. Did you further investigate the coffee filter?

12 A. I -- well, Officer Dougall showed it to me and
13 then he opened it up and said --

14 MR. JOHNSON: Objection, Your Honor; hearsay.

15 Q. Did you see it with your own two eyes?

16 A. I did.

17 Q. State's 5, without any detail, is that the
18 inside of the coffee filter?

19 A. It is.

20 Q. Would you please circle what's relevant in that
21 picture.

22 A. This is what we were suspicious of here
23 (indicating).

24 Q. Did you collect that, as you called it,
25 suspicious substance for evidence?

1 A. I did.

2 Q. Tell us about that. How do you go about
3 collecting evidence from a scene?

4 A. With something like that, we simply take it and
5 put it back into evidence. It goes into a BEST kit
6 to be submitted to SLED.

7 Q. So when Officer Dougall gives you that coffee
8 filter, that wallet, and that ID, where did you take
9 it?

10 A. To evidence.

11 Q. On scene, what did you do with it?

12 A. I secure it in my vehicle.

13 Q. How do you secure it?

14 A. I place it in a bag and then put it in my
15 vehicle. Usually it's -- well, it may not have been
16 the vehicle right then. It may have been with all
17 the -- you know, anything else we may have been
18 taking.

19 Q. Did you ever give that evidence to anybody else
20 on scene?

21 A. No.

22 Q. After it was transferred to you, was it in your
23 sole care, custody, and control?

24 A. It was.

25 Q. Now, after leaving the scene, where does that

1 evidence go?

2 A. Generally I'll take it back and put it into the
3 evidence locker.

4 Q. Is it transported in your vehicle?

5 A. Yes, sir.

6 Q. Does anybody else have access to your vehicle?

7 A. No, sir.

8 Q. Are you the only one with a key to your
9 vehicle?

10 A. Other than our city shop, yes, sir.

11 Q. Was your vehicle in your custody the entire
12 time that this evidence was in your vehicle?

13 A. Yes, sir.

14 Q. Please don't hold this up to the jury at this
15 time. I'm showing you State's 29. The contents of
16 that bag, are they familiar to you?

17 A. They are.

18 Q. What are the contents of that bag?

19 A. It's consistent with a white powdery
20 substance --

21 Q. Is that the same contents that you put into
22 evidence from the scene?

23 A. It is.

24 Q. After transporting the evidence in your
25 vehicle, where did you take it to?

- 1 A. To our headquarters.
- 2 Q. Where is that?
- 3 A. On 2 Lavern Jumper Drive in Cayce.
- 4 Q. How far away from the scene is that?
- 5 A. Maybe a mile and a half.
- 6 Q. Did you log it in to evidence at that time?
- 7 A. I don't know if I did a chain of custody, but I
- 8 put it in the locker.
- 9 Q. Okay. Who has access to that locker?
- 10 A. Our evidence custodian.
- 11 Q. Anybody else?
- 12 A. No.
- 13 Q. What's the purpose of utilizing that locker?
- 14 A. To be able to secure it, so that nobody else can
- 15 have access to it.
- 16 Q. Are you able, on your own, to go back into that
- 17 locker and manipulate evidence you submitted?
- 18 A. I am not.
- 19 Q. Did you eventually seal the evidence in BEST
- 20 kit?
- 21 A. I did.
- 22 Q. Did you write identifying information on that
- 23 BEST kit?
- 24 A. I did.
- 25 Q. What exactly is a BEST kit, Sergeant?

1 A. A BEST kit is a kit that you submit to SLED of
2 basically anything that you want to have analyzed as
3 far as narcotics related, other than marijuana -- or
4 it actually can be marijuana too. And that's a
5 control kit that you send to SLED that they will
6 send back to you once they --

7 Q. You call it a control kit. Why is that?

8 A. Because it has a control number on it. So all
9 your forms and the bag and everything, as well as
10 the envelope on the outside, all have to match up.

11 MR. BELL: Permission to approach the witness,
12 Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. BELL:

15 Q. Is that the BEST kit you sealed the evidence
16 in?

17 A. It is.

18 Q. What is the control number there?

19 A. B-237109.

20 Q. All the other components that we just looked at
21 that you pulled from that room, did you put all
22 those in to evidence?

23 A. No.

24 Q. Why not?

25 A. Anything that comes out of a meth lab, if it's

1 not an absolute -- like a finished product or some
2 very, very vital piece of intelligence, it's all
3 disposed of because of the severity of the chemicals
4 and the mixtures. Just purely having it around and
5 the fumes that come off of it can hurt you. So all
6 of it is controlled and -- it's like a hazardous
7 waste. And SLED -- we have to call SLED and they
8 send out a cleanup crew that comes out and disposes
9 of all of these items. They're not entered in to
10 evidence at all.

11 Q. Is that discretionary or are you required to do
12 that?

13 A. I'm required to do it that way.

14 Q. Why didn't you send that wallet that had James
15 Miller's ID in it and that substance for DNA or
16 fingerprint testing?

17 A. It was found in the vicinity of him and had his
18 ID in it, and he said he had one just like it.

19 Q. Why not pull surveillance from surrounding
20 businesses?

21 MR. JOHNSON: Objection, Your Honor. This is a
22 leading question, Your Honor.

23 THE COURT: Overruled.

24 A. There would be really no need at that point to
25 pull any surveillance video. The patrol officers

1 responded to a specific location about a specific
2 complaint, and they found exactly what the specific
3 complaint entailed. And we were able to identify
4 everybody in the room and identify, you know, what
5 was in the room and what they were doing. So not
6 much need for surveillance.

7 Q. Were you the commanding officer of those
8 officers on scene?

9 A. I was.

10 Q. Are you responsible for what they do or do not
11 do?

12 A. I am.

13 Q. Should they have written reports?

14 A. Absolutely.

15 Q. Were you satisfied with your report?

16 A. I was.

17 Q. Could you have been more in-depth?

18 A. I could have.

19 Q. Aside from the report itself, what other
20 documentation of the scene did you make?

21 A. We have a search warrant that we document all
22 the items that we take out of there, as well as a
23 hazardous waste manifest that pretty much lists
24 everything that we take out of there. We photograph
25 and I document it in the actual report itself.

1 Q. One final question, Sergeant: Are you required
2 by law or trained to use recording equipment in
3 responding to a meth lab?

4 A. I am not.

5 Q. Please answer any questions Mr. Johnson may
6 have for you.

7 THE COURT: I need to address a quick matter
8 with my other jury. How about you step down and
9 we'll come back to you in just a few minutes.

10 Mr. Foreman, ladies and gentlemen of the jury,
11 step back in your jury room just a second. I got a
12 quick matter that I got to do with this other jury.
13 This is going to happen maybe a time or two today.
14 I'm sorry. Don't discuss the case and don't
15 deliberate.

16 (The jury exits the courtroom at 10:02 AM.)

17 THE COURT: Bring my jury back in, please.

18 (The jury enters the courtroom at 10:20 AM.)

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. JOHNSON:

23 Q. Officer, you said you were pleased with your
24 report. Could you tell me about your interview with
25 Jason Carroll?

- 1 A. I did not interview that individual.
- 2 Q. Do you know who he is?
- 3 A. If I'm not mistaken, he's the one identified on
- 4 the CAD report from dispatch as the caller.
- 5 Q. The caller who reported a potential meth lab?
- 6 A. Right.
- 7 Q. So in investigating a potential meth lab, you
- 8 didn't feel it was important to make contact with
- 9 the person who called about the potential meth lab?
- 10 A. If I'm not mistaken, I didn't learn about it
- 11 until afterwards. And we tried, but we were unable
- 12 to contact him.
- 13 Q. So you learned about it afterwards. Who
- 14 maintained the record about the phone call and the
- 15 identity of the caller?
- 16 A. The CAD report does.
- 17 Q. Who is that?
- 18 A. That's the computer system that dispatch uses
- 19 that they -- when they take information from the
- 20 call.
- 21 Q. Police dispatch?
- 22 A. Right.
- 23 Q. And you're a police officer?
- 24 A. That's right.
- 25 Q. So nobody hid it from you?

1 A. That's right.

2 Q. You chose not to find out what that man had to
3 say?

4 A. We tried. We couldn't get a response.

5 Q. When did you try to contact Mr. Carroll?

6 A. We called back the number, I think it was the
7 day after, to try to get more information, and
8 nobody answered the number.

9 Q. Okay. And you have no means of locating
10 Mr. Carroll other than that?

11 A. I have no idea who he is other than what the
12 dispatch information has.

13 Q. Does he work at the motel?

14 A. I don't know any more information about him
15 other than his name.

16 Q. Did you ask anybody at the motel if he worked
17 there?

18 A. No, I did not.

19 Q. Okay. And did you bother to check who is
20 registered to the room?

21 A. No, we did not.

22 Q. Okay. And did you bother to sit back and do
23 any surveillance to see who is coming and going from
24 the room every day?

25 A. No, I did not.

1 Q. Okay. And tell me about -- with all this
2 strong evidence that you had, when did you choose to
3 seek an arrest warrant for the possession of
4 pseudoephedrine and serve that on my client?

5 A. It wasn't an arrest warrant, it was a direct
6 indictment.

7 Q. So you never sought an arrest warrant for
8 possession of pseudoephedrine against my client?

9 A. No, sir.

10 Q. Okay. And please tell me what you did to
11 obtain fingerprints for all the items that you
12 described in the motel room?

13 A. I didn't take any fingerprints from the items.

14 Q. All right. And please tell me what you did to
15 collect or check for any methamphetamine residue
16 from the clothing or from the person of my client.

17 A. I did not.

18 Q. All right. And could you explain how many
19 people you interviewed or how many doors you knocked
20 on at the motel to determine what was going on in
21 that room or who stayed there?

22 A. I didn't do any.

23 Q. Okay. Now, you talked about what was seized
24 and your records and you were happy with your
25 records, and you mentioned a search warrant and a

1 return. Now, are you aware that there's no ID
2 listed on the return of the search warrant, no ID
3 found of Mr. Miller?

4 A. The search warrant return would be items taken.

5 Q. Okay. But you're aware that no IDs were listed
6 on that?

7 A. The IDs were not taken.

8 Q. You never took IDs?

9 A. They were photographed.

10 Q. And it wasn't listed on the search warrant;
11 correct?

12 A. That's correct.

13 Q. And when you talk about lithium batteries, were
14 lithium batteries listed on the return of the search
15 warrant?

16 A. I believe they were, yes.

17 Q. Are you sure?

18 A. If you give me the search warrant, I'd be happy
19 to review it.

20 Q. Would it refresh your recollection to review
21 the return?

22 A. It would.

23 Q. Okay. (Tenders document to the witness).

24 A. (Witness perusing document).

25 Q. Is your memory refreshed?

- 1 A. Yeah. It's the top line here.
- 2 Q. Okay. And does it say anything about lithium
- 3 batteries?
- 4 A. No. It says AA -- or AAA batteries.
- 5 Q. Okay. Tell me about all of the
- 6 methamphetamine -- finished methamphetamine product
- 7 you found.
- 8 A. We did not find any finished product.
- 9 Q. Okay. And please tell me about the recordings
- 10 you made of statements -- these important statements
- 11 that the officers testified about that they claim
- 12 were made by my client. Tell me about how you
- 13 recorded or attempted to record these statements.
- 14 A. Well, I tried to talk with your client, but he
- 15 refused to cooperate or talk with me.
- 16 Q. Did you tell that officer to provide an audio
- 17 recording, a sit-down, about the previous statement
- 18 or to take a written statement? Did you tell him to
- 19 do that? The officers who testified before about my
- 20 client's statements, did you tell them to record
- 21 statements?
- 22 A. No. They wouldn't do that. I would be the one
- 23 to do that.
- 24 Q. Okay. And how many people were in that room?
- 25 A. Four men and one female.

1 Q. Okay. Now, Mr. Quarrels, when was Mr. Quarrels
2 arrested?

3 A. I don't know. I'd have to look back at my
4 notes.

5 Q. Can you do that?

6 A. I mean --

7 MR. JOHNSON: Your Honor, I'm happy for him to
8 review his notes if he's got them.

9 THE COURT: Well, do you have your --

10 THE WITNESS: The -- the report should tell
11 you.

12 THE COURT: This is not Mr. Quarrels' case.
13 Have you got it here in the courtroom?

14 THE WITNESS: Yeah. I'll just grab the report.
15 Which one are you asking about; Quarrels?

16 THE COURT: The question was, when was he
17 arrested?

18 MR. BELL: Objection to relevance, Your Honor.

19 THE COURT: Hold on a second.

20 How is it relevant?

21 MR. JOHNSON: Well, I just -- he mentioned that
22 there are these other people in the room, Your
23 Honor, and he's talking about the accuracy of his
24 record. I thought I would be allowed to delve into
25 that, but if Your Honor --

1 THE COURT: Well, how is whether or not
2 Quarrels, when he was arrested or if he was
3 arrested, how is that relevant to your client's
4 case?

5 MR. JOHNSON: Your Honor, they're relying upon
6 their record and the officer testified about how
7 happy he was about his record. If his testimony is
8 he relied upon it, I thought I'd be able to --

9 THE COURT: Well, I'm going to let you. I'm
10 just asking for you to explain it to me.

11 MR. JOHNSON: For general purpose, Your Honor.

12 THE COURT: You got an arrest record on
13 Quarrel's in there? When was he arrested?

14 THE WITNESS: I've got --

15 THE COURT: Or do you need to go somewhere else
16 to get that.

17 THE WITNESS: Well, I've got the original
18 warrant I got on him, but it doesn't have the arrest
19 date. I got the date I got the warrant, if that's
20 what you're asking. I mean, I don't --

21 BY MR. JOHNSON:

22 Q. When did you serve it on him?

23 A. I couldn't tell you. I'm not prepared for that
24 case.

25 Q. You said Mr. Quarrels was there, didn't you?

1 A. I did.

2 Q. You sure he was there?

3 A. Christopher Ryan Quarrels, is that who you're
4 talking about?

5 Q. I don't know. Is that who you're talking
6 about? Is that who was there?

7 THE COURT: Come on, Mr. Johnson, ask your
8 question.

9 MR. JOHNSON: Well, that's a question: Are you
10 sure he was there or did you get a warrant and serve
11 it later for some other reason?

12 THE COURT: No. The question was, was he
13 there. Then you got another question --

14 MR. JOHNSON: I'm sorry, Judge.

15 BY MR. JOHNSON:

16 Q. Was he there? Are you sure he was at the
17 motel?

18 A. Give me a second. Let me read it. In the
19 arrest warrant I'm saying in here, it's -- and there
20 again, I don't have his case file. But it shows he
21 was the listed renter of the room.

22 Q. Oh.

23 A. And that he was implicated as one of the cooks
24 by the codefendants.

25 Q. Oh. So let me --

1 THE COURT: Is that a question, oh?

2 MR. JOHNSON: I'm sorry, Your Honor. I'm just
3 stunned.

4 THE COURT: You've said it two or three times.
5 Come on now.

6 BY MR. JOHNSON:

7 Q. So you arrested Mr. Quarrels because you had a
8 record that he rented the room?

9 A. Yes. I'm assuming we did at the time.

10 Q. So just to get an answer to the question, are
11 you sure he was there that day?

12 A. Yeah. If he wasn't there, I wouldn't have had
13 the arrest warrant on him, or he had some
14 involvement in it.

15 Q. Or he had some involvement. So are you saying
16 that you may have got the arrest warrant because he
17 was the one renting the room, not because he was
18 there?

19 A. Well, I can't tell you. You're asking me a
20 question I can't give you an answer to because I
21 don't have the file on him here.

22 Q. Well, I'm simply asking, was he there?

23 A. As far as I know. I mean, I'm not looking at
24 all the information, I'm just looking at this.

25 Q. I understand. But based on your personal

1 memory, because you stated, when I pulled up, you
2 listed the people who were there, and you said
3 Quarrels because you said you pulled up and they had
4 them out of the room.

5 MR. BELL: Objection, Your Honor; testimonial.

6 MR. JOHNSON: Well, it's a leading question.
7 I'm on cross.

8 THE COURT: He can lead, but ask a question.

9 BY MR. JOHNSON:

10 Q. Okay. Didn't you say that Quarrels was there
11 when you testified?

12 A. He asked -- I think the prosecutor actually
13 asked me who all was arrested for this offense.

14 THE COURT: Let's make it simple: Do you have
15 a recollection as to whether or not Quarrels was
16 there?

17 THE WITNESS: I'm assuming he was there. I
18 cannot tell you for sure right this second.

19 BY MR. JOHNSON:

20 Q. Assuming.

21 A. Assuming.

22 Q. That's your answer? Okay.

23 A. Correct.

24 Q. Okay. Now, are you also assuming that the
25 location of these IDs is accurate?

- 1 A. No.
- 2 Q. Okay. And is there any way for you to be
3 certain of the names of the other people who were
4 there?
- 5 A. If I pulled each one of their case files, I
6 could be certain.
- 7 Q. Okay. And right now, you're assuming who was
8 there, other than Mr. Quarrels. You assumed him,
9 but the other people, that's also an assumption on
10 your part?
- 11 A. As far as who else was in the room?
- 12 Q. Or who else was on scene or in the room.
- 13 A. No. I specifically spoke with your defendant,
14 I specifically spoke with another defendant.
- 15 Q. Who was that?
- 16 A. Ms. Breedlove.
- 17 Q. Who else did you speak with?
- 18 A. Nobody else would talk to me.
- 19 Q. What are the names of the other people who were
20 there?
- 21 A. The ones that I tried to talk to? Mr. Miller,
22 Ms. Breedlove, and Mr. McFadden are the three I
23 remember directly talking to.
- 24 Q. So there were three people there that you know
25 for sure?

1 A. Yes. There were other people there. But
2 you're asking me a specific question, I'm giving you
3 a specific answer.

4 Q. Okay.

5 A. That's who I specifically tried to talk to --

6 Q. Okay. You gave me three names. So --

7 THE COURT: Hold on just a second.

8 (Brief pause in the proceedings.)

9 THE COURT: All right. You may continue.

10 MR. JOHNSON: Thank you, Your Honor.

11 THE COURT: I'll explain in a little bit what's
12 going on. But we got it settled.

13 BY MR. JOHNSON:

14 Q. Officer, you gave me three names. Are those
15 the only three people that you're sure that were
16 there?

17 A. They were the three that I spoke with. There
18 were other people there. But the officers -- I
19 mean, my job was to work on the meth lab at that
20 particular point in time. Once I determined what I
21 had, you know, I said, this person is cooperating,
22 this person is not, you can go on and transport them
23 to the jail. The patrol officers would then give me
24 the information of who they were, if I didn't get it
25 before they left. I was doing something else at

1 that point.

2 Q. If you conducted surveillance or obtained
3 fingerprints, would you have a better handle on who
4 was there in that room?

5 A. Yes.

6 Q. All right. If you interviewed Mr. Carroll, do
7 you feel that you'd have a better idea of what was
8 going on in that room?

9 A. Sure.

10 Q. And if you went down and got security videos in
11 this commercial area, motel off of the main drag
12 there, do you feel that security videos could
13 possibly assist you in finding out who's going in
14 this room, who was staying in this room?

15 A. Sure.

16 Q. Okay. What is the method called Red P Nazi,
17 Red P method for cooking methamphetamine? What is
18 that?

19 A. You're talking about in the bottom of my
20 supplemental report? Is that what you're referring
21 to?

22 Q. I'm just asking -- yeah. I'm just asking you,
23 what is that?

24 A. The Nazi Anhydrous Ammonia method --

25 Q. What is that?

1 A. -- is that what you're asking?

2 Q. Yes.

3 A. That is the method in which you use an
4 anhydrous or ammonium nitrite with lithium to cause
5 a reaction to make methamphetamine from
6 pseudoephedrine.

7 Q. What is the shake-and-bake method?

8 A. That is where you combine all of them.

9 Q. Okay. Are they the same thing?

10 A. The one-pot versus the, what did you call it,
11 shake-and-bake?

12 Q. Well, I'm asking you. Is there another method
13 called shake-and-bake?

14 A. It is. It's where you simplify the process.

15 Q. Okay. So as you mentioned, you had listed Red
16 P Nazi anhydrous ammonia, these methods, as used.
17 Did you list that as the method used in this
18 incident to produce methamphetamine?

19 A. No. I used -- the way I referenced them in my
20 report is that these are all equipment that could be
21 used for either one.

22 Q. Okay. Did you put on that same report anything
23 about shake-and-bake?

24 A. No.

25 Q. Okay.

1 MR. JOHNSON: No more questions, Your Honor.

2 THE COURT: Redirect.

3 MR. BELL: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BELL:

6 Q. Sergeant, I'm handing you what's been marked
7 for State's ID purposes as 28, 27, 23, 24, 25 and
8 26. Would you please review those without making
9 any comments on them.

10 MR. JOHNSON: Your Honor, at this time, just
11 for the record, I would object. I believe the
12 solicitor is going outside the scope of
13 cross-examination.

14 THE COURT: I don't know what these are.

15 MR. BELL: May we approach, Your Honor?

16 THE COURT: Yes, sir. You can only redirect on
17 what he brought up on cross.

18 (Sidebar conference.)

19 THE COURT: All right. The objection is that
20 this goes outside the scope of cross and that the
21 photographs are more prejudicial than probative?

22 MR. JOHNSON: Yes, sir, Your Honor. And also
23 relevance and outside the scope, also based on
24 previous motion regarding search warrant, Your
25 Honor.

1 THE COURT: All right. Let the record reflect
2 that yesterday when we went through these, I looked
3 at the photographs and I found that they were more
4 probative than prejudicial. They're accurate
5 depictions of what was there found. And I find that
6 you opened the door on cross before allowing them
7 to. Move along.

8 MR. BELL: Thank you, Your Honor.

9 BY MR. BELL:

10 Q. Did you have a chance to review those pictures?

11 A. I did.

12 Q. Were you present when they were taken?

13 A. I was.

14 Q. Are all the items depicted fairly and
15 accurately based on what you saw that night?

16 A. They are.

17 Q. Sergeant, a lot has been brought up about an
18 individual named Jason Carroll. Once again, do you
19 know who that is?

20 A. He was identified on the CAD report as the
21 caller who called the original complaint in.

22 Q. And what was the original complaint?

23 A. That there was an active meth -- I think meth
24 lab is actually the way it was stated in the CAD
25 report. I'd have to look at it and see. But I

1 think it was actually stated that there was a meth
2 lab in room 126 at the Motel 6.

3 Q. Ultimately was his complaint -- or the
4 complaint of the individual named Jason Carroll
5 corroborated?

6 A. It was.

7 Q. Did he give a specific room that he was
8 complaining about?

9 A. He did; room 126.

10 Q. Is that the room you responded to?

11 A. That is.

12 Q. Now, do hotels or motels typically keep
13 surveillance inside of rooms?

14 A. No. They can't. That would be privacy.

15 Q. We spoke earlier about OSHA regulations. Could
16 you test something like clothing for meth residue?

17 A. You could, but it would be very difficult
18 because it could -- because of -- the chemicals that
19 come off of it could possibly mess up a machine.

20 Q. Are you trained or advised to test those kinds
21 of items for meth residue?

22 A. No.

23 Q. And, once again, why is that?

24 A. Just because of the -- they're contaminated.

25 Q. Now, you brought up that you listed packs of

1 AAA batteries in your search return. Would you
2 seize normal batteries?

3 A. No. Normal batteries would have no bearing on
4 it.

5 Q. So why would you seize batteries and note it in
6 your search warrant?

7 A. Because if they're lithium batteries, lithium
8 is very highly reactive and we'd have to seize that
9 to turn it over to the cleanup crew.

10 Q. Did you instruct your officers to formally
11 question Mr. Miller?

12 A. Absolutely not.

13 Q. Is there any reason at that time that they
14 should have been sitting down with written
15 statements?

16 A. No.

17 Q. Was the response -- are you aware of whether
18 the response I'm a well-sought after meth cook was
19 in response to questioning?

20 A. I'm not aware of any questioning that went on.

21 Q. Was the defendant being interrogated at that
22 time?

23 A. No, sir.

24 Q. Did you go to law school?

25 A. I did not.

1 Q. Is it your job to indict cases?

2 A. It is not.

3 Q. Who ultimately indicted the pseudoephedrine
4 charge?

5 A. The solicitor's office.

6 Q. Did you get an arrest warrant for
7 pseudoephedrine on or near the incident date for
8 possessing altered pseudoephedrine?

9 A. No, I don't think I did.

10 Q. Had the substance been tested at that time?

11 A. No, it had not. You're talking about the day
12 we got it?

13 Q. Correct.

14 A. No, it had not been tested. It has to be sent
15 to SLED to be tested.

16 Q. Are you able to create a warrant and have
17 probable cause for a warrant without knowing what
18 the substance is?

19 A. I am.

20 Q. Did you know what it was on that night?

21 A. I did not.

22 Q. Please answer any questions Mr. Johnson --

23 THE COURT: He's already crossed.

24 You may step down.

25 Next witness, please.

1 MR. BELL: Thank you, Your Honor. At this time
2 the State would call Darwin Weaver to the stand.

3 DARWIN WEAVER

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: Have a seat, sir. Once you're
7 seated, state your full name, spelling your last,
8 please.

9 THE WITNESS: My name is Darwin Weaver,
10 W-E-A-V-E-R.

11 DIRECT EXAMINATION

12 BY MR. BELL:

13 Q. Sir, who are you employed by?

14 A. City of Cayce.

15 Q. What is your rank and title there?

16 A. I'm an investigator. And I handle evidence and
17 crime scene.

18 Q. How long have you been with law enforcement?

19 A. Twenty-one years.

20 Q. How long with Cayce?

21 A. Twenty-one years.

22 Q. Now, what exactly are the job duties that your
23 title entails?

24 A. I take all the incoming evidence and store it,
25 make sure I log it, and if anything needs to be

1 processed or analyzed, I do the processing; if it
2 needs to go somewhere else for analysis, then I
3 transfer it to whatever other agencies we have to
4 send it to to get it tested.

5 Q. Is any officer allowed to take care of those
6 duties?

7 A. No, sir. I take care of all those duties.

8 Q. Are you the only one that takes care?

9 A. Yes, sir.

10 Q. Can you walk us through the process, generally,
11 of when evidence is brought to you, how you handle
12 it?

13 A. Well, basically, when the investigators or
14 officers recover evidence, they package it up and
15 turn it in to an evidence locker, which once they
16 close it, it is secured and no one else has access
17 to it but me. I'm the only one who has a key to it.

18 Once it's there, I open the locker, retrieve
19 the evidence, log it into the system, sign off on it
20 where it's placed, and then put it in a storage
21 location or transfer it to wherever it needs to go.

22 Q. Investigator, I'm handing you what's marked as
23 State's 29. Without holding it up, can you identify
24 what that is?

25 A. It's a BEST kit that's returned from SLED.

1 Q. Did you handle that BEST kit?

2 A. Yes, sir.

3 Q. Now, what is the control number on that BEST
4 kit?

5 A. The control number is B-237109.

6 Q. Now, do you keep a log or do you track a chain
7 of custody for evidence that comes into your
8 possession?

9 A. Yes, I do.

10 Q. Is that log something you would keep in the
11 ordinary course of your business?

12 A. Yes.

13 Q. Did you bring that with you today?

14 A. Yes, I did.

15 Q. Does that log reflect when you initially
16 received that bag?

17 A. When I received it was on February 10th of 2014
18 is when I removed it from evidence.

19 Q. Does it say who initially deposited it?

20 A. Yes. It was initially deposited in to evidence
21 by Sergeant Gleaton.

22 Q. Does that BEST kit appear to be in
23 substantially the same condition as when you
24 retrieved it?

25 A. When I retrieved it from SLED, yes.

1 Q. Now, did that bag, after coming into your
2 custody, ever leave the Cayce Department of Public
3 Safety?

4 A. When I took it to SLED is the only time that it
5 left the department.

6 Q. And when was that?

7 A. That was February 10th, 2014.

8 Q. And who was that transferred to?

9 A. It was transferred to SLED.

10 Q. Do you have any idea who it was?

11 A. I don't remember who the evidence intake
12 officer was. If we had SLED's chain, I could tell
13 you exactly who took it in.

14 Q. Do you know who you typically take it to or is
15 there --

16 A. There are four different technicians there, so
17 when I take it to SLED, it's just whichever one is
18 available who takes it.

19 Q. Do you recall their names?

20 A. Yeah. Dotie, Amy, Jennifer, and there's a new
21 young lady there.

22 Q. Does Dotie refer to Doris Yarbrough?

23 A. Yes.

24 Q. To your knowledge, she's a tech at SLED?

25 A. Correct.

1 Q. Ultimately, did you receive that BEST kit back
2 in to evidence at Cayce Department of Public Safety?

3 A. Yes, I did.

4 Q. And when was that?

5 A. I received it back from SLED on March 11th,
6 2014.

7 Q. Has it left your sole care, custody, and
8 control since coming back to Cayce?

9 A. Only for court.

10 Q. And when you say for court, could you explain
11 that?

12 A. Yeah. When it comes time to bring it to court,
13 it's logged back out of evidence on my chain. And
14 I'm the only one who has possession other than once
15 it got here to court.

16 Q. Please answer any questions the defense may
17 have.

18 THE COURT: Any questions, Mr. Johnson?

19 MR. JOHNSON: Briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Officer, you can't testify as to what any other
23 person did prior to or after you had possession of
24 this exhibit you're being questioned about; correct?

25 A. No, sir, I cannot.

1 Q. Okay. You have no knowledge of how careful
2 they were with it or where it was stored or anything
3 like that?

4 A. No, sir.

5 Q. Where did you store it as you transported it to
6 SLED?

7 A. Where did I store it as I transported it?

8 Q. Yes.

9 A. In my vehicle with me with other evidence that
10 I have to carry out there.

11 Q. Was it maintained in a specific part of the
12 vehicle?

13 A. Usually it's right in the front seat beside me.

14 Q. Okay. And on your custody report where you say
15 you took it to SLED, is your final number on there
16 for the date, is that February 10th or May 10th?

17 A. No, sir. That's February 10th.

18 Q. Okay. All the way at the bottom there, the
19 bottom number on your custody report, does it appear
20 to be a 5 or is that supposed to be a 2?

21 A. All the way at the -- on the '14? I have a
22 continuation, I believe, after yours. You're
23 talking about here (indicating)?

24 Q. One moment.

25 Thank you, Officer. No more questions.

1 THE COURT: Anything on redirect?

2 MR. BELL: No, sir.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Mr. Foreman, ladies and gentlemen,
6 I've got a verdict in the other case. I'm not going
7 to do anything but receive the verdict so I don't
8 hold y'all up. It will take me about ten minutes to
9 receive the verdict. Step back in the jury room.
10 This will be the last break we'll take on the case
11 I've got going, so we'll be just one jury from here
12 on out. Don't discuss the case and don't
13 deliberate.

14 (The jury exits the courtroom at 10:57 AM.)

15 (Trial in recess at 10:57 AM until 11:16 AM.)

16 THE COURT: Is everybody ready to proceed?

17 MR. BELL: The State is ready, Your Honor.

18 MR. JOHNSON: Yes, Your Honor.

19 THE COURT: Bring the jury in, please.

20 (The jury enters the courtroom at 11:19 AM.)

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 thank you for your patience. We received the
23 verdict. I delayed the rest of the proceedings,
24 which would take about an hour, until after you
25 finish your job so I won't hold you up any more. So

1 we're going to move along with our testimony. I'll
2 let you know when your lunch gets here, and we can
3 break at your convenience. We'll go as long as
4 you'd like.

5 Next witness, please.

6 MR. BELL: Thank you, Your Honor. The State
7 would call Willie C. Smith to the stand.

8 WILLIE SMITH

9 being first duly sworn, testified as follows:

10 THE DEFENDANT: I do.

11 THE CLERK: Please be seated. State your full
12 name and spell your last.

13 THE WITNESS: Willie C. Smith, III, S-M-I-T-H.

14 DIRECT EXAMINATION

15 BY MR. BELL:

16 Q. Agent Smith, who are you employed by?

17 A. South Carolina Law Enforcement Division, also
18 known as SLED.

19 Q. How long have you been with them?

20 A. I've been with them 15 years and 4 months.

21 Q. Any other law enforcement experience?

22 A. I've done three to four years -- about three
23 years, eight months with the City of Columbia.

24 Q. And what is your job title and job duties there
25 at SLED?

1 A. A chemical analyst, criminalist, and agent
2 assigned to the drug analysis department.

3 Q. What exactly does that entail?

4 A. What I do is I receive samples from across the
5 state and identify what substance is it, is it
6 supposed to be on a molecular level, and I send a
7 report identifying the substance.

8 Q. Tell us a little bit about your education.

9 A. I have degrees in biology and chemistry from
10 the University of South Carolina, taken additional
11 graduate coursework for the purposes of drug
12 analysis, I went through the Criminal Justice
13 Academy to become a sworn law enforcement officer
14 within the state of South Carolina, and I also went
15 through a year of training to become a certified
16 analyst, and I also attend classes to update me on
17 new drugs.

18 Q. Now, the certifications that you've had with
19 regards to chemical analysis are they nationally
20 accepted methods?

21 A. Yes, they are.

22 Q. Are they considered reliable nationally?

23 A. Yes, they are.

24 Q. Are you aware of any dispute as to their
25 validity?

1 A. No. That's why we usually go to meetings; we
2 discuss the changes that we'll make across the
3 nation as far as drug chemistry goes.

4 Q. Now, have you ever testified in court in your
5 capacity as a forensic chemist?

6 A. Yes, I have.

7 Q. How many times?

8 A. Seventy-six times in the state of South
9 Carolina.

10 MR. BELL: Your Honor, at this time we'd seek
11 to move Agent Smith as an expert in forensic
12 chemistry.

13 THE COURT: Any cross-examination as to his
14 qualifications?

15 MR. JOHNSON: No cross, no objection.

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen of the jury, I'm going to qualify this
18 witness as an expert in the field of forensic
19 chemistry. Normally our rules of evidence do not
20 allow a witness to give opinions or conclusions.
21 There's an exception when someone, because of
22 training, skill, or experience, is trained in a
23 certain professional field, such as chemistry, which
24 is outside the ordinary scope of people's ordinary
25 knowledge, like mine, they'll be allowed to give

1 opinion testimony. And I'll instruct you at the
2 conclusion of the case about what type of weight you
3 can give to that type of testimony.

4 MR. BELL: Thank you, Judge. Permission to
5 approach the witness?

6 THE COURT: You may.

7 BY MR. BELL:

8 Q. Agent, I'm handing you what's marked as State's
9 29. Without holding it up, could you please
10 identify what that is?

11 A. It's a BEST bag -- it's a heat-sealed pack
12 containing a BEST bag. And what a BEST bag is, it's
13 an evidence bag that we send to agencies across the
14 state of South Carolina to secure the evidence
15 before I analyze it, and it contains evidence I
16 receive for a certain case.

17 Q: Did you, in fact, receive that particular BEST
18 kit?

19 A. Yes, I did receive this BEST kit. And it was
20 sealed and intact on the day that I did my analysis.

21 Q. Now, how do you know that it necessarily
22 belongs to the case regarding the defendant James
23 Bruce Miller?

24 A. When we do send out these BEST kits to all
25 these agencies across the state, we send out a BEST

1 form where they can put the subject's name and the
2 items that were submitted in the case. And on this
3 case right here, the BEST form stated the subject in
4 the case was James Miller, and it corresponds to the
5 BEST number and lab number that our laboratory has
6 assigned to the case.

7 Q. And what is the lab number assigned to that
8 package?

9 A. The laboratory number that was assigned to this
10 case was L14-01941.

11 Q. And what is the BEST kit's control number?

12 A. The control number is B-237109.

13 Q. Do you recall when you received that package?

14 A. I picked up this evidence from our log-in
15 department on February 11th, 2014.

16 Q. And who do you pick it up from at the log-in
17 department?

18 A. One of the evidence technicians. In this
19 particular case, it was Patricia Crooks.

20 Q. And who is Patricia Crooks?

21 A. Patricia Crooks is one of the evidence
22 technicians that was working in the back room to
23 hand out evidence to all analysts.

24 Q. Are there any other techs that work?

25 A. Yes. There are several other technicians that

1 work in the log-in department that all can give us
2 evidence whenever we send an e-mail down there to
3 pick up the evidence. Even though they give us the
4 evidence, they do not have any -- cannot touch --
5 because the BEST bag is sealed intact, they can
6 touch the BEST bag, but they cannot touch the
7 evidence that's inside the BEST bag. And that's
8 sealed from when I get the evidence. Because if it
9 wasn't sealed, I would return it.

10 Q. Does that mean that they can transfer it, but
11 not manipulate it?

12 A. That's correct. They can touch the BEST bag,
13 but the BEST bag is sealed with the evidence in
14 there.

15 Q. Do you know anybody named Doris Yarbrough?

16 A. Yes. Doris Yarbrough is one of our evidence
17 technicians.

18 Q. Does she go by any other names? Have you ever
19 heard the name Ms. Dotie?

20 A. Yes. Sometimes we call her that.

21 Q. Now, when you received that particular piece of
22 evidence, did -- do you examine it to see whether
23 it's compromised or damaged in any way?

24 A. That's the first thing I do with the evidence.
25 If the evidence is tampered with in any way

1 whatsoever, I would not do the analysis. And in
2 this case, I put the words sealed intact, and I put
3 the date 2/25/14 when I did my analysis, and
4 initialed it on the BEST bag to show that the
5 evidence was sealed and intact and the BEST bag had
6 not been tampered with.

7 Q. Now, after you pick it up out of log-in, where
8 do you take it?

9 A. I take it into our temporary storage for my
10 area until I do my analysis. In this case, I did my
11 analysis on February 25th, 2014.

12 Q. And how long was that after you initially
13 picked it up?

14 A. I picked it up on the 11th of February, and I
15 did my analysis on the 25th of February.

16 Q. During that period of time, where was that
17 evidence?

18 A. It was in my custody in our drug vault.

19 Q. Does anybody else have access to that vault?

20 A. Just the analysts. But no one has access to
21 the actual evidence itself that was submitted inside
22 the BEST bag.

23 Q. When you retrieved the evidence from the vault
24 on the 25th to test it, was it in substantially the
25 same condition as you received it?

1 A. Yes, it was, in the exact same condition. The
2 seal was still sealed and intact before I even
3 opened the BEST bag.

4 Q. Now, how exactly do you go about examining or
5 testing a substance such as what's in that bag?

6 A. The first thing I do is open it up, take an
7 inventory of what's inside the BEST bag, and next I
8 would do a presumptive test, which is a basic
9 chemical color test, and then I test it on a
10 molecular level because I want to figure out what it
11 is on a molecular level.

12 Q. How long does that sort of testing take?

13 A. For this case -- a normal case like this right
14 here would take me about half an hour to do the prep
15 work. The instrumentation takes about another two
16 hours to figure out exactly what it is on a
17 molecular level, because not only do I test the
18 substance, I treat every item as an unknown item.
19 And once I'm able to identify it, I want to run a
20 known standard to prove that they're both the same
21 with the unknown and the known so that I can prove
22 exactly what it is on a molecular level.

23 Q. Did you test the substance in that particular
24 BEST kit?

25 A. Yes, I did. I tested the substance and

1 identified it on a molecular level.

2 Q. Did you generate or store a report that
3 reflects the methods you used to test it, as well as
4 the results?

5 A. Yes. I issued an official report of the
6 results in this case.

7 Q. Did you bring that report with you here today?

8 A. Yes, I did bring a report here for this case
9 for my results.

10 Q. Is that report something that you would store
11 in the ordinary course of your business?

12 A. Yes, it is.

13 (State's Exhibit No. 30 marked for
14 identification.)

15 MR. BELL: Permission to approach, Your Honor?

16 THE COURT: Yes, sir.

17 MR. BELL: Thank you, sir.

18 BY MR. BELL:

19 Q. Agent, I'm handing you back what you handed to
20 me what is now marked for ID purposes as State's 30.
21 Is that the report that you generated in this
22 particular case?

23 A. Yes, this is the report that I generated for
24 SLED Lab No. L14-01941. And it also has the
25 corresponding BEST number which is B-237109 for this

1 case for the evidence that was submitted for this
2 BEST bag.

3 Q. Are those numbers how you know that report
4 belongs to that BEST kit?

5 A. Yes. That's how I'm able to identify the
6 report with the evidence.

7 Q. Are BEST kit numbers ever re-used?

8 A. No.

9 Q. And are lab numbers ever re-used?

10 A. No. It's a one-time use for BEST numbers and
11 lab numbers.

12 Q. Now, does that reflect what methodologies you
13 used to test that substance?

14 A. Yes. It identifies the instrumentation that I
15 used to test it on a molecular level.

16 Q. And what sort of testing did you do on that
17 substance?

18 A. In this substance, as I indicated in my report,
19 I did a chemical test on it, which is a basic color
20 test, and I did gas chromatography and mass
21 spectrometry which identified it on a molecular
22 level.

23 Q. And are those the accepted standards for
24 testing something like this.

25 A. Yes. It's one of the most recognized standards

1 that's known across the world to identify substances
2 like this.

3 Q. Did your testing yield results in this
4 particular case?

5 A. Yes. I did figure out exactly what this
6 unknown substance was.

7 Q. And what exactly was that substance?

8 MR. JOHNSON: Objection, Your Honor, based on
9 previous motions, objection to Rule 6.

10 THE COURT: Overruled.

11 BY MR. BELL:

12 Q. And what exactly was that substance?

13 A. This substance -- it was a powder substance,
14 and it was ephedrine/pseudoephedrine, and it had a
15 weight of 0.91 grams.

16 Q. And what sort of confidence level do you hold
17 to that result being correct?

18 A. It's a 99.7 confidence level, as far as the
19 weight goes --

20 Q. After --

21 THE COURT: Hold on.

22 A. As far as the weight goes in this case. As far
23 as the substance goes, I'm 100-percent confident
24 that this is the substance that it is. As far as
25 the weight goes, the weight is 0.91. But the

1 substance, I'm 100-percent confident that this
2 substance is ephedrine/pseudoephedrine.

3 MR. BELL: Your Honor, at this time, the State
4 would seek to move State's 30 in to evidence.

5 THE COURT: Same objection?

6 MR. JOHNSON: Same objection, Your Honor.

7 THE COURT: Overruled.

8 (State's Exhibit No. 30 admitted in to
9 evidence.)

10 MR. BELL: Permission to publish, Your Honor?

11 THE COURT: You may.

12 MR. BELL: Thank you, Judge.

13 BY MR. BELL:

14 Q. Agent, I'm showing you what's marked as State's
15 30. Is that the report you generated for this case?

16 A. That's correct. That is my official report
17 that I generated for this case with this evidence.

18 Q. I'm going to zoom in on a particular portion.

19 Now, by line item 1.1, it says:

20 Ephedrine/pseudoephedrine with OTC in parentheses.

21 What is OTC?

22 A. Over the counter.

23 Q. What exactly does that mean?

24 A. That means that someone can just go into a
25 store and buy ephedrine/pseudoephedrine.

1 Q. After finishing testing of the item, what do
2 you do with it then?

3 A. Once I finish testing all my evidence for the
4 case, I seal it in this heat-sealed pack, I write my
5 initials and put the date on here so when I get to
6 court, I can see this evidence is still in the same
7 condition from when I tested this evidence on
8 February 25th, 2014.

9 Q. And are those markings intact?

10 A. Yes. The markings are still intact and the
11 evidence is still intact from when I did my testing
12 back on that date.

13 MR. BELL: Your Honor, at this time the State
14 would move State's 29 in to evidence.

15 MR. JOHNSON: Your Honor, same objection; Rule
16 6 and prior motions and objections.

17 THE COURT: Overruled.

18 (State's Exhibit No. 29 admitted in to
19 evidence.)

20 MR. BELL: No further questions, Your Honor.

21 THE COURT: Cross.

22 MR. JOHNSON: Thank you, Your Honor.

23

24

25

CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q. Mr. Smith, just briefly, you can't testify
3 about what other people in the chain at SLED did or
4 did not do to the substance, correct, to the bag
5 that you testified about?

6 A. The only thing I can testify is from when I
7 received the evidence until when I finish doing my
8 testing on the evidence.

9 Q. And you're not aware of any requests or
10 anything in place about fingerprint testing or
11 requests made to SLED regarding that and the bag in
12 question?

13 A. No. If it was requested, I would have sent it
14 to that department.

15 MR. JOHNSON: No more questions, Your Honor.

16 MR. BELL: Nothing from the State, Your Honor.

17 THE COURT: You may step down.

18 May he be excused from his subpoena?

19 MR. BELL: No objection from the State.

20 MR. JOHNSON: No objection.

21 THE COURT: Next witness, please.

22 MR. BELL: The State would call Lieutenant
23 Samuel Gunter to the stand.

24

25

SAMUEL GUNTER

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat, sir. Once you're
4 seated, state your full name, spelling your last,
5 please.

6 THE WITNESS: Samuel B. Gunter, G-U-N-T-E-R.

7 DIRECT EXAMINATION

8 BY MR. BELL:

9 Q. Sir, who are you employed by?

10 A. Lexington County Sheriff's Office.

11 Q. How long have you been with them?

12 A. Twenty-four years.

13 Q. Is that how long you've been in law enforcement
14 in general?

15 A. It is.

16 Q. And what is your rank and title over there at
17 the Lexington Sheriff's Department?

18 A. I am lieutenant over the narcotics unit.

19 Q. Now, does that unit have a name?

20 A. Narcotics Enforcement Team.

21 Q. What sort of things do you deal with, with the
22 Narcotics Enforcement Team?

23 A. Anything related to drugs, vice, prostitution.

24 Q. How many people do you have under your command
25 in the NET team?

1 A. Twelve.

2 Q. Now, have you dealt with methamphetamine labs
3 before?

4 A. I have.

5 Q. Do you know roughly how many?

6 A. Well over 500.

7 Q. And typically what kind of meth labs are those?

8 A. In the -- well, my career spans such a
9 timeframe, they've actually changed over time. In
10 the beginning, you dealt with mainly anhydrous
11 ammonia labs, what we refer to as the Nazi labs.
12 Now we're seeing more of -- the predominant method
13 of manufacturing now is what we call a one-pot lab
14 or a shake-and-bake.

15 Q. Can you tell us a little bit about your
16 education in general?

17 A. I attended Northern Illinois University,
18 graduated from the South Carolina Police Academy in
19 1991, attended numerous classes. I am a certified
20 meth lab technician; was the first one in Lexington
21 County back in around 2000. I've attended narcotics
22 commander school.

23 Q. Now specifically related to methamphetamine and
24 clandestine methamphetamine labs, what kind of
25 training have you received?

1 A. I was -- I'm certified as a meth lab -- as a
2 clandestine lab technician.

3 Q. And how long have you been certified as such?

4 A. About 15 years.

5 Q. And are you current on your certifications?

6 A. I am.

7 Q. The standards upon which you've been taught,
8 are they nationally accepted standards?

9 A. They are.

10 Q. Are you aware of any dispute as to their
11 validity?

12 A. No, sir, I'm not.

13 Q. As part of all that training, do you learn
14 about different components used in these
15 manufacturing processes?

16 A. I do.

17 Q. Do you learn trade names as well as chemical
18 names or one or the other?

19 A. A little bit of both.

20 Q. Are you taught how all these components are
21 combined together to produce methamphetamine?

22 A. Yes, sir.

23 Q. What are the two methodologies --

24 MR. JOHNSON: Objection, Your Honor --

25 Q. -- or how many --

1 MR. JOHNSON: He's --

2 MR. BELL: Excuse me.

3 MR. JOHNSON: -- asking leading questions. I
4 have to object to him asking leading questions.

5 THE COURT: Don't ask leading questions.

6 BY MR. BELL:

7 Q. How many methodologies are there for ingesting
8 methamphetamine?

9 A. You can take it orally, you can smoke it, you
10 can inject it --

11 Q. What are the most common --

12 A. -- you can snort it.

13 Q. -- methods?

14 A. Most of what we see is smoking it or injecting
15 it.

16 Q. And are you trained -- are you aware of how
17 they typically go about doing those two things?

18 A. Yes, sir, I am.

19 Q. Have you testified as an expert as it relates
20 to methamphetamine and methamphetamine labs?

21 A. I have.

22 Q. And where have you testified?

23 A. Federal court.

24 Q. Were you ultimately qualified?

25 A. I was, yes, sir.

1 Q. How many times have you testified as an expert?

2 A. Four or five, and then for the federal grand
3 jury as well.

4 Q. Have you testified as an expert relating to
5 those topics in state court?

6 A. Not methamphetamine. Other drug issues, I
7 have.

8 Q. What other drug issues?

9 A. Drugs in general. One was on the -- one time
10 it was in reference to how drugs were paid for and
11 such as that.

12 Q. Have you ever been moved to be qualified in
13 state court and found to be unqualified?

14 A. I have not.

15 MR. BELL: Your Honor, at this time the State
16 would seek to move Lieutenant Sam Gunter as an
17 expert in clandestine methamphetamine labs.

18 MR. JOHNSON: Your Honor, may I ask a few
19 questions?

20 THE COURT: Absolutely.

21 VOIR DIRE EXAMINATION

22 BY MR. JOHNSON:

23 Q. Officer, how many times have you been present
24 when methamphetamine was produced from beginning to
25 end?

1 A. Once.

2 Q. And if your expertise -- well, you said you
3 have certification. Your certification is
4 up-to-date to this year?

5 A. Yes, sir.

6 Q. Okay. Do you have that certification on you?

7 A. No, sir, I do not.

8 MR. JOHNSON: Your Honor, we'd object to
9 qualifying him as an expert based on the fact that
10 he's only had one experience witnessing
11 manufacturing of methamphetamine.

12 THE COURT: All right. I'm going to allow him
13 to be qualified as an expert in this field. He'll
14 be allowed to give opinion and/or conclusion
15 testimony. And I'll explain to you, like I said
16 earlier when the other expert was qualified, at the
17 conclusion when I charge you as to how to handle an
18 expert witness.

19 MR. BELL: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 (Continued)

22 BY MR. BELL:

23 Q. Lieutenant, do law enforcement seminars
24 actually go through the process of manufacturing
25 very often during training?

1 A. Are you talking about like his question, from
2 beginning to end?

3 Q. I'll rephrase. How many opportunities have
4 been made available for you to actually see the
5 entire process, start to finish?

6 A. Once. That was in meth lab clandestine
7 certification at the DEA headquarters in Quantico.

8 Q. Now, why don't they go through that process
9 more often?

10 A. As far as in training?

11 Q. Correct.

12 A. It's somewhat dangerous.

13 Q. Let's talk about that. Why are clandestine
14 methamphetamine labs dangerous?

15 A. The chemicals that are mixed and the gases that
16 are given off, they're explosive, they're
17 carcinogenic, they can kill you.

18 Q. When you say explosive, what kind of explosion
19 are we talking about?

20 A. Depends on where they're at in the process as
21 to when it blows up. Typically you're going to have
22 a solvent that is used in the manufacturing process.

23 Q. Before we go into that, just generally, in your
24 500-or-so meth lab cases, have you ever heard of a
25 meth lab exploding?

1 A. I've been at meth labs that have exploded.

2 Q. Is it a minor explosion?

3 A. Some more so than others. Obviously the
4 anhydrous ammonia labs, which are, by nature, larger
5 in scale than a one-pot method, the explosions are
6 more severe there than they were at a one-pot lab
7 that had blown up.

8 Q. Do one-pots have the ability to be a serious
9 explosion?

10 A. They do.

11 Q. Have you ever to respond to a house or
12 apartment on fire due to one of these explosions?

13 A. The fire is usually over by the time we get
14 called. But I've actually been sitting outside when
15 a house ignited because of one..

16 Q. Was that confirmed to be due to a
17 methamphetamine lab?

18 A. It was, yes, sir.

19 Q. Now, in your training and experience, should
20 the components used for combination in a
21 methamphetamine lab be seized and put into evidence
22 when they're found at the scene of a methamphetamine
23 lab?

24 A. No, sir.

25 Q. And why is that?

1 A. Because they're dangerous, they're explosive,
2 they're caustic, they need to be mediated and
3 disposed of properly.

4 Q. What does mediated mean?

5 A. Made safe.

6 Q. Is that discretionary or is that regulatory?

7 A. Regulatory.

8 Q. When dealing with these methamphetamine labs or
9 the chemicals involved with these labs, do you have
10 to wear protective gear?

11 A. Yes, sir.

12 Q. Could you tell us about that?

13 A. Depending on the lab and where it's at in the
14 manufacturing process, it can be anything from a
15 respirator and Tyvek suit to a full-blown SCBA
16 breathing apparatus.

17 Q. And the purpose of that gear is to what?

18 A. To maintain -- where the technicians that are
19 dismantling the lab can be as safe as possible for
20 them.

21 MR. BELL: Permission to approach the witness?

22 THE COURT: Yes, sir.

23 BY MR. BELL:

24 Q. Lieutenant, without going into the contents,
25 will you please look through all of these.

1 A. Yes, sir.

2 Q. Have you had a chance to review those?

3 A. I have.

4 Q. What does that appear to be a print-off of?

5 A. It's the different steps and components --

6 MR. JOHNSON: Your Honor, I have to object if
7 he's going to testify about content. There's no
8 exhibit number. And there's no foundation, and
9 relevance. I'm not sure if the solicitor is going
10 to assign an exhibit number to them.

11 THE COURT: He's just asking to identify them.
12 Are you going to introduce them?

13 MR. BELL: After -- I wanted to set the
14 foundation for it, Your Honor. I have one more
15 question.

16 THE COURT: Sure. Go ahead.

17 BY MR. BELL:

18 Q. Did you assist in the editing and preparation
19 of this presentation?

20 A. Yes, sir, I did.

21 Q. And is it fair and accurate to the process of
22 manufacturing?

23 A. It is.

24 THE COURT: Are you going to introduce it as a
25 package or --

1 MR. BELL: A package exhibit, Your Honor, and
2 as a Court's exhibit.

3 (Court's Exhibit No. 2 marked for
4 identification.)

5 MR. BELL: Your Honor, at this time the State
6 would seek to publish Court's Exhibit 2 as a
7 demonstrative aid.

8 THE COURT: Any objection?

9 MR. JOHNSON: No objection, Your Honor. That
10 appears to be what we reviewed before.

11 BY MR. BELL:

12 Q. Lieutenant, I'm going to go through this
13 PowerPoint print-off with you. This is marked as
14 Court's No. 2. What exactly, generally, is the
15 shake-and-bake method?

16 A. It's a method of manufacturing where everything
17 is put in to one container, one pot -- they call it
18 a one-pot method as well -- instead of doing
19 different steps in different containers and then
20 combining. It's all done in one container.

21 Q. Now, the second line says plastic Coke bottle.
22 Does it have to be a Coke bottle?

23 A. No, sir.

24 Q. And what are the typical sizes that you find
25 when dealing with these plastic containers?

1 A. I -- depending on what they -- they use it for
2 different things. Anywhere from a two-liter plastic
3 soda bottle or drink bottle to a 20 or 16 ounce.

4 Q. Now, the over-the-counter pseudoephedrine as
5 well as these household chemical products, where can
6 they be purchased?

7 A. Typically, big-box stores such as Target,
8 Walmart, or any hardware store, except for the --
9 you're not going to find the pseudoephedrine at a
10 hardware store.

11 Q. Now, once you have all of those pseudoephedrine
12 and household chemicals, what do you do with them?

13 A. You start your process of cooking and putting
14 them into the bottle. You put them in a certain
15 order and you end up making meth.

16 Q. Okay. I want to walk through the process with
17 you. How is pseudoephedrine relevant to the
18 process?

19 A. That's the -- you have to have it. No matter
20 what -- which process you use to manufacture your
21 meth, whether it be a one-pot method or some other
22 type, you have to have pseudoephedrine.

23 Q. Lieutenant, I'm going to hand you a laser
24 pointer. The top button turns on the laser. Now,
25 what is this device on the right side of that slide?

1 A. A coffee grinder.

2 Q. And what is the purpose of that?

3 A. More often than not, the person manufacturing
4 their meth will take the pseudoephedrine pills and
5 put them into a coffee grinder and grind them down
6 to a powder form.

7 Q. Now, is using a coffee grinder the only
8 possible way to do that?

9 A. No, sir. You could take a hammer and hit the
10 pills with it if you want to.

11 Q. Tell us what we're looking at and why it's
12 relevant.

13 A. Solvents. This laser pointer and I aren't --

14 THE COURT: I think you have the red side in
15 your hand.

16 THE WITNESS: Oh, that could be why.

17 THE COURT: There you go.

18 A. The starter fluid, typically what they're going
19 to do if they're going to use that is they're going
20 to turn the can upsidedown, bleed the pressure off
21 of it, punch a hole in the bottom, and pour out the
22 ether that is inside it. Or Coleman fuel, they can
23 use that. They can use any type of solvent. In
24 reference to -- at this point, acetone, denatured
25 alcohol. But those two are the most common.

1 Q. You mentioned acetone. What sort of products
2 is acetone contained in?

3 A. Most common is probably fingernail polish
4 remover.

5 Q. Does that have a distinct odor, in your
6 experience?

7 A. It does.

8 Q. In large quantities, can it be smelled
9 throughout a room?

10 A. Yes, sir.

11 Q. I'm showing you what's marked as State's 13.
12 It's slightly fuzzy, but can you identify the items
13 in this picture?

14 A. You've got -- I can tell the one on the right
15 is Coleman fuel. The one on the left, while I can't
16 read it, appears to be ether; engine-starting fluid,
17 which contains ether.

18 Q. Handing you State's 13, the item we just viewed
19 on the projector. Would you just confirm that item
20 on the left, what you believe that is?

21 A. Yes. That's starting fluid. I can read it.

22 Q. Are the two items in this picture, State's No.
23 13, analogous to these two items on the slide?

24 A. Yes, sir.

25 Q. Tell us why cold packs mean anything.

1 A. Cold packs, typically, when you crush them
2 together and they get extremely cold, well, what
3 you've got inside is ammonium nitrate and water.
4 And when those two things mix, it makes it cold. In
5 the process of manufacturing meth, they're going to
6 tear that package apart, and inside is the ammonium
7 nitrate and a little bag of water. They don't want
8 the water, they want the ammonium nitrate. They
9 need that in the manufacturing process.

10 Q. Now, in State's 14, can you identify what is in
11 this picture?

12 A. Instant cold. It's a cold pack.

13 Q. Why does that matter?

14 A. Because that's what contains the ammonium
15 nitrate.

16 Q. And is the item pictured there analogous to
17 what's present in this slide?

18 A. Yes, sir, it is.

19 Q. Can you tell what sodium hydroxide does with
20 the process?

21 A. It's a lye. You need a lye in it in the
22 process. You're going to take your pills, you're
23 going to put the solvent -- you're going to put them
24 in the solvent, you're going to add your lye. The
25 biggest thing that they have to be careful of when

1 they're doing it is they have to have a solvent that
2 has no water in it, hence the ether or Coleman fuel.

3 Q. In State's 15, did any of items in this picture
4 match up as being lye or sodium hydroxide?

5 A. The drain cleaner there does.

6 Q. Where does lithium batteries come into play?

7 A. You need the lithium out of the battery to
8 manufacture, to put in your pot in your cooking.
9 That's why you cannot have any water in your
10 solvent. Lithium and water is explosive. Water
11 comes in contact with lithium sodium metals, it
12 explodes. So they have to have a water-free
13 solvent. They will take the batteries and cut the
14 casings on them, peel them apart to get the lithium
15 out of them.

16 Q. Do lithium batteries typically have a
17 particular coloring to them?

18 A. You talking about the casing?

19 Q. The branding and the design on the batteries.

20 A. They're typically going to be a silver-colored
21 battery.

22 Q. Do they typically have green stripes on them?

23 A. I'm not familiar with -- each manufacturer can
24 make the outside of their battery look -- typically,
25 you're going to see the blue. It's been my

1 experience to see silver and blue, is typically a
2 lithium battery.

3 Q. Could you point out the blue you're
4 referencing?

5 A. Right there, the blue stripes on the sides.

6 Q. In State's 20, do you see one of those lithium
7 batteries?

8 A. Right there.

9 Q. And what color is that battery?

10 A. Silver and blue.

11 Q. If you saw that, how would you identify it on a
12 scene?

13 A. Well, other than picking it up and reading that
14 it's a lithium battery, it would be -- the blue and
15 the silver would be an indicator.

16 Q. Now, once you have all the items we just went
17 over, tell us about the next step.

18 A. You put all those items into your two-liter or
19 your plastic drink bottle, you add a cap full or so
20 of water, just a touch, to start the process --
21 hopefully it doesn't land on the lithium -- and it
22 will start the cooking process, as we call it.
23 There's actually no heat added to it, but we refer
24 to it as the cooking process. It will start the
25 chemical reaction to manufacture methamphetamine.

1 It will start bubbling. You will have to -- whoever
2 is doing it will have to, what we call, burp it;
3 they will have to release pressure off the top of
4 the container or the container will fail and
5 explode.

6 Q. Does the venting process create any odor?

7 A. It does, yes, sir.

8 Q. State's 19, which of these two bottles would be
9 utilized for that mixing part we just talked about?

10 A. That one (indicating).

11 Q. Is that typical?

12 A. Yes, that's typical. The smaller bottle
13 typically would be used in the, what we call,
14 gassing off stage where you're crystallizing the
15 liquid meth that you get from the two-liter bottle.

16 Q. Now, once the cooking part has been done and
17 the venting, what do they do next?

18 A. The meth -- we call that meth oil, the liquid
19 on top. The methamphetamine is actually in that
20 liquid. So you pour the liquid off, the rest of
21 this is waste, because you need the clear liquid --
22 well, somewhat cloudy liquid -- but that's what you
23 want right there.

24 Q. Now, is that the end of the process?

25 A. No, sir.

1 Q. What happens next?

2 A. Now, you do have -- that is methamphetamine.
3 But it is not ingestible by the human body at that
4 point.

5 Q. So what do they do next?

6 A. They typically take a professional strength
7 drain cleaner, mix table salt with it to get
8 hydrochloric acid gas. They pump that gas into the
9 liquid and the reaction will cause the
10 methamphetamine to crystalize.

11 Q. Does this slide accurately reflect what you
12 were just telling us?

13 A. It does.

14 Q. Now, could you identify the items on the
15 left-most pictures.

16 A. That's the sulfuric acid, like I was saying,
17 the professional strength drain cleaner, table salt.
18 And when you mix those two together, the gas that is
19 given off is hydrochloric acid gas.

20 Q. What size bottle does that appear to be on the
21 on the right side?

22 A. 16-ounce or 20-ounce drink bottle.

23 Q. Now, once you get to that picture on the far
24 right, does that have a name to it? Do you call
25 that anything?

1 A. We call it the acid generator.

2 Q. We'll show you State's 12. What does that
3 appear to be?

4 A. A sulfuric acid, a professional strength drain
5 cleaner.

6 Q. Is that similar to the products in the slide?

7 A. It's the same product as that right there
8 (indicating).

9 Q. Now, in State's 19, which one of those bottles
10 would be utilized for the acid generator portion?

11 A. The smaller Coke bottle.

12 Q. Now, do they typically have to do anything to
13 the smaller bottle to make it ready to be an acid
14 generator?

15 A. Well, not to the bottle itself. But the top to
16 it, they're going to drill or put a hole in the top
17 of it and run aquarium pump tubing into it, is
18 typically what's done.

19 Q. What sort of implement do they use for tubing,
20 typically; anything in particular?

21 A. What type of tubing?

22 Q. Correct.

23 A. I call it the clear tubing that you typically
24 find -- see in aquariums.

25 Q. Does it have to be any particular kind of

- 1 tubing?
- 2 A. No, sir.
- 3 Q. State's 15, what is the item on the right side?
- 4 A. That's the table salt.
- 5 Q. And does that particular kind of salt also work
- 6 in the process?
- 7 A. It does, yes, sir.
- 8 Q. Now, once you have your acid generator as well
- 9 as the two-liter mixture, what happens then?
- 10 A. You -- the gas that's given off, you would put
- 11 that hose down into your liquid while the
- 12 hydrochloric acid gas is being given off, and it
- 13 will cause the liquid to begin -- it will cause the
- 14 meth that's in there to crystalize. It will appear
- 15 like it's snowing.
- 16 Q. Does this slide accurately reflect that?
- 17 A. It does.
- 18 Q. So, once again, where would that tube be
- 19 placed?
- 20 A. Into the liquid.
- 21 Q. And reference what liquid we're talking about.
- 22 A. The meth oil.
- 23 Q. Now, does it have to be any particular type of
- 24 container the meth oil is stored in?
- 25 A. No.

1 Q. What is the result of the snowing process?

2 A. You're getting crystal methamphetamine.

3 Q. Tell us about the coffee filters. Why are they
4 relevant?

5 A. To filter out the solid that you would have in
6 the -- once you crystallize it, there's still liquid
7 in there. You have to pour it through something to
8 extract the methamphetamine from it.

9 Q. Does it have to be any particular kind of
10 coffee filter?

11 A. No, sir.

12 Q. State's 18, can you point out coffee filters
13 here?

14 A. There (indicating). I can't really tell what's
15 in that plastic bag.

16 MR. BELL: Permission to approach the witness,
17 Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. BELL:

20 Q. I'm showing you State's 18. Take a closer
21 look.

22 A. Yes, sir. That would be coffee filters as
23 well.

24 Q. Putting State's 18 back up now that you've had
25 a chance to look at it off the projector, can you

1 readily identify what are coffee filters in the
2 picture?

3 A. Yes, sir. Those are coffee filters
4 (indicating).

5 Q. Now, once that filtering process occurs with
6 that coffee filter, what do they do with it then?

7 A. They have methamphetamine. Typically they're
8 going to let it dry a little bit, and then it's
9 ready for them to ingest.

10 Q. Now, we spoke on ingestion earlier. What are
11 the two most common methods?

12 A. Smoking and injecting.

13 Q. And could you tell us how they continue the
14 process to get it into those two forms?

15 A. Smoking it, they're just going to -- typically
16 they put it on aluminum foil and light it and inhale
17 the smoke that comes off of it. When it comes to
18 injecting it, much like other drugs, they're going
19 to combine it with water, they may add a little heat
20 to it to get it to dissolve, and then they're going
21 to take it into a hypodermic needle and inject it.

22 Q. Does it have to be a particular kind of needle?

23 A. No, sir.

24 Q. Are you familiar with pH paper?

25 A. I am.

1 Q. Can you tell us a little about what that is?

2 A. It's a test paper that will tell you whether
3 something is acidic, basic, or neutral.

4 Q. Does pH paper have any way or any involvement
5 in dealing with methamphetamine labs?

6 A. We test liquids with it where we have some
7 ideas about exactly what we're dealing with when
8 we're dismantling a lab.

9 Q. Lieutenant, I'm showing you State's 16. Does
10 that particular jug mean anything to you?

11 A. I can't tell what it is from here.

12 Q. If you have an item that is unidentifiable on
13 the scene how do you go about trying to identify it?

14 A. We're going to pH it. That's going to be the
15 first step in the process.

16 Q. Tell us about how that works.

17 A. We're going to take whatever container, take
18 our pH paper, dip a little bit of it into the
19 liquid, and look at the reaction that -- whatever
20 color it turns the pH paper is what we're looking
21 for.

22 MR. BELL: Permission to approach the witness,
23 Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. BELL:

1 Q. Lieutenant, I'm showing you State's 17. Would
2 you take a close look at that before I publish it.

3 A. Yes, sir.

4 Q. State's 17, are you able to identify what that
5 center mass is?

6 MR. JOHNSON: Objection, Your Honor; opinion.

7 THE COURT: Overruled.

8 A. It's a pH paper that's been dipped showing an
9 acid reaction.

10 Q. So what exactly does --

11 A. The pink color -- pH paper, typically, when
12 it's in its neutral state is yellow. It's either
13 going to turn blue or pink, depending on whether
14 you're putting it into a base or an acid solution.
15 Or if it's water, then it will remain yellow.

16 Q. If you do a pH test that yields this result on
17 a container, such as in State's 16, what does that
18 indicate to you?

19 A. That whatever liquid is in that container is an
20 acid; it has the character characteristics of an
21 acid.

22 Q. And is it possible to be used in the
23 manufacturing process?

24 A. It is.

25 Q. The pictures that we've gone through related to

1 this PowerPoint, if you found all of those items in
2 a motel room, what would you believe to be
3 occurring?

4 A. They're manufacturing methamphetamine.

5 Q. Have you ever run into a legitimate use to have
6 all of these items in the same place?

7 A. I have not.

8 Q. Have you been trained to look out for any
9 legitimate use?

10 A. Yes, sir.

11 Q. And have they told you these items could be
12 combined to a legitimate use?

13 A. No, sir.

14 Q. Of all the items we've looked at, is there any
15 item missing that needs to be used in the
16 manufacturing process?

17 A. Are we talking from the PowerPoint? No, sir.

18 Q. From the pictures that you've identified from
19 this particular case?

20 A. I don't remember seeing any pseudoephedrine.

21 Q. Thank you.

22 You spoke earlier about a respirator. Once
23 again, what is that?

24 A. It's a mask with a filter on it.

25 Q. And why is that useful?

1 A. To protect yourself from the fumes and the
2 gases that are given off during the manufacturing
3 process.

4 Q. Do you ever find respirators at meth lab sites?

5 A. Yes, sir.

6 Q. When measuring out all these different
7 ingredients, do they just eyeball it or do they have
8 to specifically measure it?

9 A. Some eyeball it and some people fancy
10 themselves as a chemist and want to measure
11 everything that they do.

12 Q. And what sort of measurement tools or devices
13 do they use?

14 A. Some type of scale, some type of volume where
15 they can measure volumes as well. But some type of
16 scale would be typically what they use.

17 Q. Upon completing the manufacturing process, if
18 they wish to keep it in solid form, how do they
19 typically store it?

20 A. Plastic bags, aluminum foil. Just any number
21 of ways.

22 MR. BELL: Your Honor, at this time we believe
23 sufficient foundation has been laid for State's 24,
24 25, 26, 28, 27, and 23 to move in to evidence.

25 MR. JOHNSON: Your Honor, may we approach?

1 THE COURT: Yes, sir.

2 (Sidebar conference.)

3 MR. JOHNSON: Your Honor, just for the record,
4 objection based on previous motion and prejudicial,
5 relevance, probative, and previous objection and
6 motion.

7 THE COURT: Same ruling.

8 (State's Exhibit Nos. 23-28 admitted in to
9 evidence.)

10 BY MR. BELL:

11 Q. Lieutenant, I'm showing you what's been entered
12 as State's 27. Using your laser pointer, could you
13 circle or indicate any items in that picture that
14 you think would be relevant.

15 A. Can I see it closer than that, please?

16 Q. Certainly.

17 Lieutenant, this is State's 27. Anything that
18 you deem to be relevant to our discussion, could you
19 please point it out?

20 A. The crystals right there, that would be
21 relevant. That, I'm not -- obviously, you got
22 plastic bags which could be relevant to the
23 manufacturing process.

24 Q. What are the brown items on the bottom left of
25 that picture hanging out that trash can?

1 A. Right here (indicating)?

2 Q. Correct.

3 A. Can I see the photo again? I can't --

4 Q. I'll also hand you another angle of the same
5 photo, which is State's 28.

6 A. Okay.

7 Q. Referencing 27, what are those items on the
8 bottom left in that trash can?

9 A. Appear to be coffee filters.

10 Q. Now, the sort of bright yellow or green object
11 in sort of the top middle of that picture, what does
12 that appear to be?

13 A. That's the top to some type of liquid
14 container. Could be a soda can or soda bottle or
15 even a -- some type of plastic container.

16 Q. Does this item in here appear to be of any
17 value?

18 A. From here -- there again --

19 Q. It's perfectly fine if you don't see anything,
20 Lieutenant.

21 A. No. From here, I can't tell you -- it looks
22 like a -- to me right now, it just looks like a
23 piece of a plastic bag.

24 Q. Okay. Showing you State's 28, which you also
25 just reviewed, just another angle of the same photo,

1 does anything else stick out to you?

2 A. There again, can I --

3 THE COURT: He wants to see it. He can't tell
4 from back here.

5 A. Obviously, I see the hypodermic needle, which
6 would be used in the ingesting process. From here I
7 can't -- that could be some things. I can't tell
8 from here.

9 Q. Handing you State's 28 again to review. Can
10 you look in the top left of that picture for me that
11 you have in your hand.

12 A. (Witness complies).

13 Q. After closer review, do you see anything at all
14 that stands out to you?

15 A. That's a coffee filter that's still damp where
16 it would have been used in the filtering process.
17 That's the biggest thing that stands out to me, and
18 the hypodermic needle.

19 Q. Showing you State's 24. Can you tell us what's
20 in this picture?

21 A. The only thing I can tell from here is some
22 type of baggie with something that appears to be
23 pinkish or red inside it.

24 Q. Okay. I'm showing you what's marked as 24.

25 A. Okay.

1 Q. Could you also examine State's 25.

2 A. Okay.

3 Q. Looking at State's Exhibit 24, are you able to
4 identify anything in that picture?

5 A. Yes, sir. That's going to be a digital scale
6 that would typically be used. If you look closer
7 into that plastic bag there, you can see what
8 appears to be a white, powdery substance, a small
9 amount of it in it.

10 Q. I believe that's just glare you're referring
11 to, Lieutenant.

12 A. Okay.

13 Q. In State's Exhibit 25 that you just reviewed,
14 can you point out items of interest in this picture?

15 A. You have digital scales, hypodermic needles,
16 plastic baggies, small containers with more plastic
17 baggies in it.

18 Q. Are those baggies consistent with what
19 solidified methamphetamine would be stored in?

20 A. Yes, they are.

21 Q. And are those syringes and needles consistent
22 with how you would draw liquid methamphetamine?

23 A. How you would ingest it, yes.

24 Q. Okay. The larger syringe by the scissors,
25 could you point that out with your laser pointer?

1 A. Yes, sir.

2 Q. Could that be used to draw?

3 A. I'm not sure I understand what you mean by
4 draw.

5 Q. To draw the liquid out of a container.

6 A. Yes, sir.

7 Q. Ultimately, why is manufacturing
8 methamphetamine so dangerous?

9 A. Because of the -- there's an element of
10 explosive nature of it, the gases that are given off
11 can be caustic. That's the two main reasons to why
12 it's dangerous.

13 Q. One final question: Showing you State's 26,
14 can you -- if you need me to bring this up to you, I
15 will.

16 A. Yes, sir, I do.

17 Q. State's Exhibit 26. Can you identify that
18 object?

19 A. No, sir.

20 Q. Okay. As far as respirators go, do they make
21 different models?

22 A. Yes, they do.

23 Q. Please answer any questions the Defense may
24 have for you.

25 THE COURT: Let me see y'all up here a second.

1 (Sidebar conference.)

2 THE COURT: All right. Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. Officer, you said you were involved in 500 meth
7 labs?

8 A. And more than that, I'm sure.

9 Q. More than 500?

10 A. Yes, sir.

11 Q. And how many of those meth labs did you conduct
12 surveillance on?

13 A. I have no idea.

14 Q. Is surveillance a technique that you use to
15 watch meth labs?

16 A. Typically not, no, sir.

17 Q. You don't conduct surveillance as a law
18 enforcement officer?

19 A. As a law enforcement officer, I do. Yes, sir.

20 Q. You're telling me that you've never conducted
21 surveillance of a potential meth lab, never done
22 that?

23 A. I didn't say I never done that.

24 Q. Okay. What is the value of doing that?

25 A. To know when they're cooking meth.

1 Q. Don't you also want to know who stays in a
2 particular location to know if they live there
3 maybe, who's cooking meth?

4 A. Typically I'm going to find that out when -- if
5 they're cooking, I'm going to find that out when I
6 raid their lab.

7 Q. Okay. Is it important to know if someone lives
8 at a location or if someone walked into a location
9 five minutes before police showed up? Is that
10 important at all?

11 A. Sure.

12 Q. Would it be helpful to have videos of a
13 location, like from security cameras?

14 A. I'm not -- I'm not sure I understand what
15 you're asking me.

16 Q. If you had a video from a camera --

17 A. Yes, sir.

18 Q. -- that showed a location you suspected to be a
19 meth lab, would that be helpful?

20 A. Sure.

21 Q. Okay. Would it help you to have fingerprints
22 pulled off all these items and containers that you
23 testified about that you say were involved in
24 potential -- could be involved in a meth lab?

25 A. Typically we're not going to pull fingerprints

1 off those containers.

2 Q. Would it be helpful for you to know whose
3 prints are on those containers?

4 A. Sure.

5 Q. Okay. And Red P method or Nazi or
6 shake-and-bake, these are different methods for
7 producing methamphetamine; correct?

8 A. Correct.

9 Q. Okay. You had a conclusion about a
10 shake-and-make method you think was used; correct?

11 A. Correct.

12 Q. And so if someone said another a method was
13 used, you would not agree with that?

14 A. For this particular incident?

15 Q. Uh-huh.

16 A. No, sir, I would not.

17 Q. Okay. And if you were trying to investigate
18 one of these 500 meth labs, would it be important to
19 you to have some documentation showing who lived in
20 a particular residence or stayed in a particular
21 motel room where meth was being produced?

22 A. Yes, sir.

23 Q. Okay. And would it be important to you to have
24 some documentation to show exactly who was caught on
25 seen when you raid, when you went in, as opposed to

1 assuming later?

2 A. There again, I'm going to have documentation of
3 who is caught on scene.

4 Q. And officers should. But if an officer doesn't
5 have that documentation, that could cause you a
6 problem later on trying to assume who was there,
7 correct, if you didn't have the documentation?

8 A. I don't know that you assume if someone was
9 there or not there. But...

10 Q. But that would be troublesome if you didn't
11 have the proper documents?

12 A. Yes, sir.

13 Q. And methamphetamine, as a drug, leaves residue,
14 does it not, that could be tested? Detected
15 residue?

16 A. Depends on what you're talking about. Where?

17 Q. Okay. On fabric?

18 A. Typically -- I can tell you I've never pulled
19 meth residue off fabric before.

20 Q. Okay. Can meth residue be detected on a cheek
21 swab?

22 A. Pardon me?

23 Q. Cheek swab.

24 A. Not that I'm aware of, no, sir.

25 Q. You cannot test someone to see if they've

1 ingested methamphetamine?

2 A. Not through their mouth, no, sir. Not that

3 I -- I've never done that.

4 Q. You've never done it?

5 A. Never heard of having it being done.

6 Q. How do you ingest methamphetamine?

7 A. You can take it orally, you can snort it, you
8 can smoke it, and you can inject it.

9 Q. And so if you take it orally, that means by?

10 A. Your body is going to metabolize the meth in
11 your mouth. The digestion process starts when you
12 take it into your mouth. Your saliva is going to
13 metabolize it, so I wouldn't think you're going to
14 find much residue there or any residue in their
15 mouth.

16 Q. What about if someone calls you and says
17 there's a meth lab being operated? Is that person
18 an important witness to you?

19 A. Yes, sir.

20 Q. You'd like to talk to them, wouldn't you, if
21 you were investigating a lab where someone called --

22 A. If they're willing to talk to me, yes, sir.
23 Most times they're anonymous complaints.

24 Q. Oh, but if it's not anonymous and you have
25 their name, you'd like to track them down and talk

1 to them as part of -- because you've done this over
2 500 times and you're very good at it. So that's
3 something you'd do?

4 A. As part of the investigation, yes, sir.

5 Q. Okay. Thank you.

6 MR. JOHNSON: No further questions, Your Honor.

7 THE COURT: Anything on redirect?

8 MR. BELL: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BELL:

11 Q. Based on the items that you saw from this
12 particular incident, were those components likely to
13 be used in the manufacturing of methamphetamine?

14 A. Yes, sir.

15 Q. Does it matter what you call it?

16 A. No, sir.

17 MR. BELL: No further questions, Your Honor.

18 THE COURT: You may step down.

19 Next witness, please.

20 MR. BELL: Your Honor, at this time, the State
21 would rest.

22 THE COURT: Mr. Foreman, ladies and gentlemen
23 of the jury, that concludes the State's
24 presentation. I'm informed that we have one
25 additional witness from the defense side, so let's

1 go eat our sandwiches or whatever you ordered. And
2 once we do that, we will conclude the testimony, and
3 then we'll be a position for final arguments and my
4 charge. I'm going to be right next door to you
5 eating mine. Just let the bailiffs know when you're
6 finished eating and we can start right back up then
7 or we can take a specified amount of time and let
8 you go outside and get some fresh air.

9 Mr. Foreman, you just let me know how y'all
10 want to handle it. Don't discuss the case while
11 you're eating. You let us know.

12 (The jury exits the courtroom at 12:28 PM.)

13 THE COURT: Any motions by the State?

14 MR. BELL: None from the State, Your Honor.

15 THE COURT: Mr. Johnson?

16 MR. JOHNSON: Taking all previous motions,
17 objections, consideration of all evidence, I make a
18 motion for directed verdict of not guilty on behalf
19 of the defendant, Your Honor.

20 THE COURT: All right. I respectfully deny it.
21 Obviously at this point of the trial we're concerned
22 with the existence not the weight of the evidence.
23 If the jury finds the testimony and the exhibits to
24 be credible, there would be sufficient evidence to
25 sustain a verdict of guilt. So it's a jury question

1 at this point in time. So I respectfully deny your
2 motion.

3 Mr. Miller, would you raise your right hand for
4 me, please.

5 JAMES MILLER

6 being first duly sworn, testified as follows:

7 THE DEFENDANT: Yes, sir.

8 EXAMINATION

9 BY THE COURT:

10 Q. Mr. Miller, we've reached the stage of the
11 trial now where you have the opportunity to present
12 your side of the story or your defense. And you can
13 do that by calling witnesses on your behalf, you can
14 do that by introducing relevant exhibits, and you
15 can do that by taking the witness stand and
16 testifying in your own defense.

17 In that regard, you will have the
18 constitutional protection provided to you by the
19 Fifth Amendment of the United States Constitution
20 which says that no one can be compelled to give
21 testimony in a case where they're charged with a
22 crime. You have the absolute right to remain
23 silent.

24 If you exercise that right to remain silent,
25 then I'll tell the jury when I instruct them that

1 they can't even consider the fact that you did not
2 testify when they deliberate your guilt or
3 innocence.

4 I would further tell them that's a matter that
5 can't be discussed in the jury room, no inferences
6 can be drawn from the fact that you didn't testify.
7 You do not have to prove anything. The State has
8 the burden of proof. You do not have to prove your
9 innocence. So you can remain silent and they can't
10 infer anything from it.

11 Do you understand your right to remain silent?

12 A. Yes, sir.

13 Q. On the other hand, if you decide to testify,
14 which you have the absolute right to do so, you'll
15 be subjected to the same rules as everyone else who
16 testified; you can be cross-examined by the State on
17 all relevant issues.

18 Does he have a record for impeachment?

19 MR. BELL: Your Honor, for the purposes of
20 impeachment -- one moment, Your Honor.

21 THE COURT: I know he must have a couple prior
22 drug offenses.

23 MR. BELL: He does, obviously, Your Honor.
24 Unless the door is opened, it's not going to come
25 in.

1 THE COURT: If they're for the same thing, I
2 normally would find them to be more prejudicial than
3 probative.

4 MR. BELL: Your Honor, I apologize. Just one
5 moment.

6 Your Honor, a 2010 shoplifting and a 2007
7 fraudulent checks.

8 THE COURT: Do you intend to use those to
9 impeach him?

10 MR. BELL: Your Honor, I think they qualify.
11 Whether or not I'll use them, at this time, I'm not
12 sure.

13 THE COURT: Well, they do. They're a crime of
14 dishonesty. Do you intend to do it?

15 MR. BELL: I think we'd argue that a fraudulent
16 check is and stealing something that isn't yours
17 does equate to dishonesty. But I'll need to review
18 case law at recess.

19 THE COURT: That it does not qualify?

20 MR. BELL: That it does, Your Honor.

21 THE COURT: Well, we just found that an armed
22 robbery is not a crime of dishonesty, so how could
23 shoplifting be?

24 MR. BELL: Your Honor --

25 THE COURT: Recent case that just came out.

1 MR. BELL: Yes, sir.

2 THE COURT: All right.

3 BY THE COURT:

4 Q. Mr. Miller, you have a record that may qualify
5 allowing the jury to hear about your prior record
6 dealing with the forgery, simply to use it to attack
7 your believability or credibility. If you take the
8 witness stand, that prior record could be made known
9 to the jury, if I make a determination that it's
10 more probative than prejudicial. So that may be an
11 issue that you might want to talk to your lawyer
12 about. But do understand your right to testify and
13 your right to remain silent?

14 A. Yes, sir.

15 Q. Okay. I need to know whether or not you wish
16 to exercise that right, if you want to testify or if
17 you don't want to testify and exercise your right to
18 remain silent.

19 Now, one other thing that goes along with that:
20 If you testify, then the State has the final
21 argument in closing arguments; if you don't testify,
22 you have the final arguments.

23 A. I'd like to testify.

24 Q. Very well.

25 THE COURT: All right. When we come back from

1 lunch, we will conclude the trial with his
2 testimony, and then we'll be in a position to argue
3 and charge.

4 MR. JOHNSON: Your Honor, may I just ask you to
5 clarify? You're indicating these two convictions
6 are the only convictions that would be allowed --

7 THE COURT: I didn't say that. I said I have
8 to make a determination, if the State tries to use
9 them, as to whether or not I'm going to allow them.
10 And I assume you're talking about a shoplifting and
11 a --

12 MR. BELL: Two fraudulent checks, Your Honor.

13 MR. JOHNSON: I just ask if I need to open up
14 on direct, you're indicating you're going to let us
15 know prior to --

16 THE COURT: Well, are you going to use them?

17 MR. BELL: My inclination is no, Your Honor.
18 Now, if he elicits on direct what I believe to be
19 sort of the angel defense and tries to make it sound
20 like he doesn't have a record, then certainly I may
21 walk through the door on cross. But I --

22 THE COURT: Stay away from it and he'll stay
23 away from it.

24 MR. JOHNSON: Yes, sir. If he talks about his
25 record, certainly. So they're not attempting to use

1 any of the drug offenses?

2 THE COURT: He just said he's not unless you
3 open the door.

4 MR. JOHNSON: No prior. Okay. Thank you.

5 THE COURT: All right. We'll take however long
6 the jury needs. Don't get far.

7 (Luncheon recess at 12:35 PM.)

8 THE COURT: All right. Before I bring the jury
9 in, any particular jury charge the State wants other
10 than what we've already been over?

11 MR. BELL: Your Honor --

12 THE COURT: Have you got a charge on
13 manufacturing?

14 MR. BELL: I can certainly get one for you. I
15 don't have it on me, Your Honor. We're not asking
16 for a particular charge on manufacturing. I know
17 your typical --

18 THE COURT: Well, I'm just going to say that
19 the State has to prove beyond a reasonable doubt
20 that the defendant manufactured the drug
21 methamphetamine, manufacturing meaning to produce,
22 prepare, process a drug naturally or chemically.

23 MR. BELL: We'd ask that the conspiracy
24 language, the aid, abet, conspire to manufacture
25 also, which is also in the statute, also be included

1 in that charge.

2 MR. JOHNSON: And certainly we're not asking
3 for that, Judge.

4 THE COURT: Sir?

5 MR. JOHNSON: Certainly we'd prefer that
6 language not be in there.

7 THE COURT: In other words, you want the
8 defendant -- must prove beyond a reasonable doubt
9 that the defendant knowingly manufactured marijuana
10 or provided financial assistance or otherwise aided,
11 abetted, attempted, or conspired to manufacture?

12 MR. BELL: Yes, sir. You could, of course,
13 eliminate the financial part. If you want to just
14 do the aid, abet, conspire, the State is satisfied,
15 Your Honor.

16 MR. JOHNSON: Your Honor, I'd just argue that
17 under the indictment, it saying knowingly or
18 intentionally manufacture. It does not have that
19 language.

20 MR. BELL: The State's response, Your Honor:
21 An indictment is a general notice document. It does
22 have the specific statutes section he's being
23 indicted on which does clearly state in the body of
24 that subsection that it is to manufacture or aid,
25 abet, or conspire to manufacture.

1 THE COURT: And then the pseudoephedrine is
2 just a statute?

3 MR. BELL: Yes, Your Honor, correct.

4 THE COURT: Hand me your statute, please, that
5 you handed up yesterday.

6 MR. BELL: May I approach, Your Honor?

7 THE COURT: You certainly may.

8 And, Mr. Johnson, you wanted the mere presence?

9 MR. JOHNSON: That's correct, Your Honor.

10 MR. BELL: Your Honor, additionally from the
11 State, we would ask for a charge that the inference
12 of possession of paraphernalia -- excuse me. That
13 possession of equipment or paraphernalia can create
14 an inference of intent to manufacture. I do have a
15 copy of that proposed charge, Your Honor.

16 THE COURT: Hand it up to me, please.

17 MR. BELL: Additionally, on this proposed jury
18 charge, Your Honor, is a request to charge
19 conspiracy, to explain to the jury exactly what
20 conspire means.

21 MR. JOHNSON: And, obviously, Judge, we'd
22 object to both of those requested charges.

23 THE COURT: All right. I'll charge the
24 statutes in the mere presence that you've requested,
25 Mr. Johnson, inference of possession of equipment,

1 and conspiracy, as outlined in the proposed charge.
2 You're protected on the record and noting your
3 objection. Anything else?

4 MR. JOHNSON: Nothing from the Defense.

5 THE COURT: The verdict form is simply we find
6 the defendant not guilty or we find the defendant
7 guilty of each indictment, and the indictment is
8 stated.

9 Bring the jury in, please.

10 (The jury enters the courtroom at 1:21 PM.)

11 THE COURT: You may call your first witness.

12 MR. JOHNSON: Thank you, Your Honor. The
13 defense calls Mr. James Miller.

14 JAMES MILLER

15 being first duly sworn, testified as follows:

16 THE DEFENDANT: I do.

17 THE CLERK: Once you're seated, state your full
18 name, spelling your last please, sir.

19 THE DEFENDANT: My name is James Bruce Miller.
20 My last name is spelled M-I-L-L-E-R.

21 DIRECT EXAMINATION

22 BY MR. JOHNSON:

23 Q. Mr. Miller, how old are you?

24 A. Sixty-four.

25 Q. Where did you grow up?

1 A. I was born in Louisville, Kentucky and spent
2 til about 13 there, and then my family moved to
3 Columbia.

4 Q. Okay. What did you do for a living?

5 A. I'm sorry?

6 Q. Your profession?

7 A. Real estate development, real estate broker --
8 originally real estate broker and then real estate
9 development. I had my own real estate development
10 company, and worked primarily in tax credit and bond
11 construction.

12 Q. Tell me about your education.

13 A. University of South Carolina under-grad and
14 grad, psychology.

15 Q. What type of degree?

16 A. Industrial psych.

17 Q. Okay. And how many children do you have?

18 A. I have two sons, both grown.

19 Q. Now tell me, Mr. Miller, on the incident date,
20 tell me about what happened and how you came to be
21 where you were.

22 A. The end of the workday, I stopped by Motel 6 to
23 check on my friend John McFadden who had called me
24 and said that he was there --

25 Q. Don't say what anyone else said.

1 A. Okay. But he called and asked for a ride to go
2 get some groceries and stuff.

3 Q. And so what did you do?

4 A. I stopped by Motel 6 and went and knocked on
5 the room and lent them the vehicle to go -- lent
6 Chris Quarrels the vehicle to go to the grocery
7 store, which was just right kind of a half mile
8 away, that Bi-Lo around the corner on State Street.

9 Q. Okay. What happened then?

10 A. I went -- well, when I went in there, John
11 McFadden, who I know well, Lisa Breedlove, who I
12 know, Josh Crawly, and the Jason Carroll guy was
13 there.

14 Q. Then what happened?

15 A. I said hello and went -- walked two doors up to
16 Taco Bell and got some dinner, came back to the
17 hotel -- brought dinner back, came back to the
18 hotel, and had been there at the most 10 minutes,
19 maybe 15, when there was a knock on the door.

20 Josh Crawly was sitting closest to the door.
21 He pulled the curtain back and he said, it's the
22 police. And it wasn't my room, I was visiting.
23 But -- and I don't really remember whether I said it
24 or someone else said it, but, obviously, the
25 consensus was, well, you got to open the door.

1 Q. What happened?

2 A. The cops came barging in and yelled at
3 Ms. Breedlove because she had gotten up to go to the
4 bathroom. We heard about that this morning.

5 There -- when he opened the door, there were five or
6 six of them there. And one walked in and another
7 followed. And they started saying, what's going on
8 here, what's going on here. And I remember McFadden
9 answered, just hanging out. I think I said, I'm
10 visiting. And --

11 Q. Were you placed in detention, handcuffed?

12 A. Yes.

13 Q. Okay.

14 A. Shortly after that, we were all placed in
15 detention.

16 But let me finish. When I came back with the
17 food, the Carroll guy had left.

18 Q. Okay. And did you make any statements about
19 being a meth manufacture or meth cook?

20 A. Absolutely not.

21 Q. Okay. And did you have a wallet that you
22 placed pseudoephedrine in -- crushed pseudoephedrine
23 in?

24 A. No. I don't carry a wallet. In my bookbag,
25 which was in the room, I had IDs and that kind of

1 stuff because I come from work. I carry a money
2 clip which usually has my bank card, my cash, and
3 whatever else I need in it.

4 I've yet to see that wallet that was talked
5 about this morning. I didn't see it that night
6 until I was at the headquarters police department of
7 Cayce. I know he testified that he came over and
8 saw it and picked it up. But we were all three
9 sitting on a wooden bench in the front office of
10 Cayce, and he walked in and went, who does this
11 belong to? And nobody said anything. And I said,
12 it's a black wallet, let me see it. And he threw it
13 down on the desk and never showed it to us.

14 Q. Did you ever claim it?

15 A. No, I never claimed it. I never saw it.

16 Q. Okay. Were you there to manufacture
17 methamphetamine or to assist in it?

18 A. Absolutely not. I had no idea that any of that
19 stuff was even there.

20 Q. Okay. Answer any questions the State may have.

21 CROSS-EXAMINATION

22 BY MR. BELL:

23 Q. Mr. Miller, may I call you James?

24 A. You may.

25 Q. Thank you. James, you were at Motel 6 on

1 January 8th, 2014, weren't you?

2 A. Correct.

3 Q. And you were at room 126?

4 A. Yes, sir.

5 Q. And there were multiple individuals there; is
6 that true?

7 A. Correct.

8 Q. Did you know those individuals?

9 A. As I just stated, I knew John McFadden well and
10 I had met the others.

11 Q. How did you meet the others?

12 A. I worked as Transitions and they were all
13 either day users or residents at some time there.

14 Q. Now, what is Transitions?

15 A. Transitions is a facility located downtown that
16 helps people transition from a homeless state or
17 a -- not necessarily always homeless, but a state of
18 needing help into jobs, help them find jobs; if they
19 have mental illness, hook them up with mental
20 health.

21 It opened in 2012, and I was hired -- I retired
22 from real estate because of an accident. I was
23 hired and worked for -- til late 2012 til late 2013
24 as a full-time paid employee. I then reduced myself
25 to part-time and diminished it to volunteerism just

1 because of my personal goals.

2 Q. Now, you didn't mention working for Transitions
3 when Mr. Johnson asked you where you worked, did
4 you?

5 A. He didn't ask me where I worked.

6 Q. Didn't you tell him what your employment
7 history was?

8 A. He said what did you to make your living, and I
9 said I was a real estate developer. After I retired
10 from real estate, I was hired by Transitions, mainly
11 because, at that time, I was doing some volunteer
12 work and I met Lawrence -- I can't remember his last
13 name right now -- and they were opening it, and he
14 asked me to come on and help him out.

15 Q. Now, does Transitions encourage its employees
16 to go hang out with people like John McFadden at the
17 Motel 6?

18 A. You'll have to explain to me what you mean by
19 people like John McFadden.

20 Q. You knew those individuals in that room, didn't
21 you?

22 A. I just told you that I know John McFadden well
23 through church, and I had met the other people.

24 Q. Why did they need you to come give them a ride?

25 A. As I said, they wanted a ride to go to the

1 grocery store. They were without a vehicle.

2 Q. How did they get to Motel 6 then?

3 A. I don't know. I hadn't been there. I can't
4 testify about what happened when I wasn't there.

5 Q. But you were the first person they called for a
6 ride?

7 A. I have no idea. I think they had been there
8 for four or five days, so I'm sure they had seen
9 other people and been other places. But --

10 Q. You could smell something in that room when you
11 got there, couldn't you?

12 A. I smelled some acetone maybe, which is nail
13 polish remover. But it was not a horrendous odor of
14 any kind.

15 Q. That didn't seem unusual to you?

16 A. Not if somebody was taking nail polish off.

17 Q. How long did you say you were in that room; 10
18 to 15 minutes?

19 A. No. I said I got there 5:00-ish, walked up to
20 Taco Bell, came back, probably there maybe ten
21 minutes before the police came knocking on the door.

22 Q. So you were there maybe ten minutes?

23 A. Approximately.

24 Q. And then roughly how long before the first
25 time -- the first time you were there? How long

1 were you there the first time? Excuse me.

2 A. Long enough to say hello and walk to Taco Bell.

3 Just stuck my head in.

4 Q. Did you see any fingernail polish remover when
5 you were there?

6 A. No, sir.

7 MR. BELL: Beg the Court's --

8 A. Or if I did, I didn't know it was nail polish
9 remover.

10 Q. Showing you State's Exhibit 2, sir. That's how
11 the room looked when you got there, isn't it?

12 A. No, sir.

13 Q. How did it look?

14 A. It wasn't that messy.

15 Q. So in the time that you went to the Bi-Lo, you
16 said, and the time you came back, they ransacked the
17 room?

18 A. The only thing I can say is police testified
19 they entered the room. And I'm sure they were there
20 before they took the picture. That looks to me like
21 somebody had been searching.

22 Q. So are you saying police made the room look
23 like that?

24 A. No. I'm saying it looks to me like somebody
25 had been searching. Blankets are pulled off the bed

1 or thrown up. It didn't look like that when I got
2 there.

3 Q. So when you got there, the beds were neatly
4 made and the house was -- or the room was put
5 together?

6 A. No, sir. I didn't say that. I said it wasn't
7 a mess like that. I believe --

8 Q. Tell me what condition --

9 A. I believe --

10 THE COURT: Hold on. Hold on. Let him --

11 A. I believe that Ms. Breedlove was on the far
12 bed, Mr. McFadden was sitting on this one on his
13 computer (indicating). I can't --

14 Q. That's fine, sir. I'm showing you State's 3.
15 That bed didn't look like that when you were there?

16 A. Well, somebody would have been sitting on it.
17 But, no, sir. I don't know what those are lying on
18 the bed. But there had been -- I believe three
19 people were staying there and they had been there
20 four or five days, so I'm sure the room wasn't
21 emaculate.

22 Q. Was there an ashtray on the center of the bed
23 when you were there?

24 A. I didn't notice.

25 Q. James, State's 10. In the ten minutes or so

1 that you were there, did you see those bags?

2 A. No, sir. And when I came in with the tacos --
3 you know, if you go to Taco Bell, you can buy that
4 box of a dozen tacos, which is what I bought. When
5 I came in, I sat down at the table, which is right
6 inside the door, and hadn't been to the back of the
7 room. But I'm not saying they weren't there, but I
8 didn't notice them.

9 Q. You didn't see the contents of this bag in
10 State's 11?

11 A. Sir, as I said, I didn't notice the bags. If I
12 had seen the contents of the bag. I probably would
13 have been frightened.

14 Q. What happened to the tacos?

15 A. We ate them.

16 Q. What happened to the packaging?

17 A. I guess it's in the trash.

18 Q. Are you referring to the trash bin in State's
19 28?

20 A. No, sir. I don't know which trash bin that is.

21 Q. You know how to cook meth, don't you, James?

22 A. No, sir.

23 Q. When you were pulled out of that room, the
24 police detained you; is that correct?

25 A. Yes, sir. They detained three of us.

1 Q. Did you ask to remain silent?

2 A. I'm sorry?

3 Q. Did you ask to remain silent?

4 A. Did I ask to remain silent?

5 Q. Did you say you didn't want to talk to them?

6 A. I don't remember saying anything to them.

7 Q. So you didn't speak to the officer at all?

8 A. I didn't make any statements that stand out. I
9 remember -- I certainly didn't say I'm a meth cook.

10 Q. So that officer lied?

11 A. I didn't say it. I'm not going to call him a
12 liar.

13 Q. So you may have said it to him then?

14 A. No. I didn't say it.

15 Q. So that makes that officer a liar?

16 THE COURT: Now, you can't pit witnesses
17 against each other. The jury determines who is
18 telling the truth.

19 A. Why would I make a statement like that?

20 THE COURT: You don't have to answer that.

21 THE DEFENDANT: Thank you, sir.

22 BY MR. BELL:

23 Q. Did you tell the officer that you were a
24 well-sought-after meth cook because you were proud?

25 MR. JOHNSON: Objection, Your Honor; asked and

1 answered.

2 A. I just told you I --

3 THE COURT: Hold on. Hold on. Answer it one
4 more time and that's it.

5 A. I did not make a statement as to me being a
6 meth cook. I do not know how to cook meth.

7 Q. Do you know what pseudoephedrine is?

8 A. Yeah. It's Sudafed. You buy it for allergies,
9 colds, and it's used in the making of
10 methamphetamine.

11 Q. Isn't it true that you bought pseudoephedrine
12 some 60-plus times --

13 MR. JOHNSON: Objection, Your Honor.

14 A. Over what period of --

15 THE COURT: Hold on. Hold on.

16 MR. JOHNSON: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. JOHNSON: I have to make a motion at this
19 time, Your Honor.

20 THE COURT: All right. Y'all step out for a
21 second, please. I'm sorry.

22 (The jury exits the courtroom at 1:37 PM.)

23 THE COURT: Mr. Bell, what in the world are you
24 getting into?

25 MR. BELL: Your Honor, it's a simple question.

1 He can answer --

2 THE COURT: It's not a simple question. You
3 know exactly what it is. That's the most
4 prejudicial question you could ask this guy.

5 MR. BELL: Purchasing pseudoephedrine is not
6 illegal, Your Honor.

7 THE COURT: Sure it's not. But he's not here
8 for purchasing pseudoephedrine, he's here for
9 manufacturing meth. And it's highly prejudicial to
10 try to say he's been buying pseudoephedrine all over
11 the state.

12 What's your motion?

13 MR. JOHNSON: Motion for a mistrial, Your
14 Honor. The solicitor specifically indicated to me
15 prior to trial, as we brought up at the pretrial,
16 that he would not be introducing any evidence about
17 the pseudoephedrine buy logs that they have related
18 to my client. He specifically said he would not do
19 that. I have a written motion that I submitted, and
20 it's actually Court's Exhibit 1, where I was arguing
21 against the submission of these buy logs, and the
22 solicitor stated very clearly that he was not going
23 to bring those up, not going to use them as
24 evidence, and he's just brought that up. I'd move
25 for a mistrial since it's so highly prejudicial

1 against my client.

2 MR. BELL: State's position, Your Honor, is,
3 we've not introduced the logs. We could have gone
4 and put the logs in. This is a simple question
5 where if he answers no, I can move on; if he answers
6 yes, I can move on. It has nothing to do with
7 pseudo logs. I have not tried to --

8 THE COURT: Well, you've certainly alleged that
9 he's big into the manufacturing of meth and you've
10 got one little incident in a motel room where he
11 claims he was just a visitor. You didn't find
12 anything on him, you hadn't got -- other than he
13 just happens to be there. And then you want to --

14 MR. BELL: He has pseudoephedrine on him.

15 THE COURT: -- inject into the trial
16 purchasing -- what did you say, 60 times? What was
17 the question?

18 MR. BELL: Yes, sir, 60-plus times.

19 MR. JOHNSON: So if he answers the question and
20 the solicitor wants to cross him and opens -- he
21 basically said he was not going there, was not going
22 to bring up the buying -- the buys of
23 pseudoephedrine, but he just did it. At pretrial he
24 specifically said, I'm not going to bring up these
25 multiple buys or purchases of pseudoephedrine, these

1 logs. I have a written motion that details why I
2 was objecting to it. We never resolved it in
3 pretrial because the solicitor said he wasn't going
4 to bring it up.

5 MR. BELL: What the State said, Your Honor, is
6 that we would not introduce those logs. Now,
7 obviously, we didn't know he was going to take the
8 stand at that point. Now, we still don't seek to
9 introduce those logs, but we do believe we can at
10 least ask him a question. And the jury, if they
11 believe him when he says no, they can move on, or if
12 he says yes, obviously, we move on. Now, I
13 certainly don't believe that this rises --

14 THE COURT: So you're going to leave it
15 alone whether he says yes or no?

16 MR. BELL: Yes, sir. Absolutely.

17 THE DEFENDANT: I can't answer it, Your Honor.
18 I don't know if I've bought it 60 times or not.

19 MR. BELL: If you'd like to give a curative
20 instruction because you believe it rises to a
21 mistrial, I certainly would -- certainly would
22 consent to that. But the State's position is that
23 it shouldn't rise to the level of a mistrial, Your
24 Honor.

25 MR. JOHNSON: Your Honor, I think the solicitor

1 is aware my motion was clearly about relevance and
2 about the nature of all these pseudoephedrine buys
3 were not linked to this incident. I think the
4 solicitor clearly understood that. I've never had a
5 solicitor try to pull this, but it is pretty
6 amazing. He clearly stated he was not going to use
7 this evidence, and now he's attempting to.

8 THE COURT: How long has he been incarcerated?

9 MR. JOHNSON: Looks like --

10 THE COURT: If I declare a mistrial, he's going
11 to have to sit until you do it again.

12 THE DEFENDANT: Can I bond out?

13 MR. JOHNSON: He's got a bench warrant. He's
14 done close to a year total. And he cannot bond out
15 because of the bench warrant.

16 MR. BELL: Your Honor, I'll put one additional
17 thing on the record.

18 THE COURT: Sir?

19 MR. BELL: Your Honor, first off, we certainly
20 have a good-faith basis for the question. We
21 weren't simply fishing for any sort of prior bad
22 act. Once again, purchasing pseudoephedrine is
23 perfectly legal. He said he knew nothing about
24 manufacturing methamphetamine. I think that the
25 jury is allowed to draw an inference based on his

1 answer to that question. That makes is relevant.

2 We certainly -- the motion was to not introduce
3 pseudoephedrine logs. We have not done that. We
4 didn't state particular dates or any particular
5 numbers, Your Honor.

6 THE COURT: All right. I'm going to give a
7 curative instruction for them to disregard that,
8 it's not a part of this trial, and I'm striking it
9 from the record.

10 MR. BELL: Thank you, Your Honor.

11 MR. JOHNSON: Judge, if I object to the
12 sufficiency of that, would you like me to --

13 THE COURT: What would you like in addition to
14 that?

15 MR. JOHNSON: Well, I would just say it cannot
16 be cured but -- with that. And I'd still move for a
17 mistrial, Judge.

18 THE DEFENDANT: It's already been said.

19 THE COURT: All right.

20 You wanted to say something, sir?

21 THE DEFENDANT: Yes, sir. I didn't say that I
22 knew nothing about methamphetamine. I would have
23 had to not lived in today's society.

24 THE COURT: Exactly right.

25 THE DEFENDANT: I said I don't know how to make

1 it. The solicitor just attacked me and said, have
2 you bought it 60 times, in front of the jury. And
3 whether you rule it out or not, he's planted the
4 seed that I've bought a bunch of pseudoephedrine,
5 and I haven't.

6 THE COURT: What do the logs show; that he has?

7 MR. BELL: Yes, sir.

8 THE DEFENDANT: The logs show four different
9 names.

10 MR. BELL: The logs include a number of
11 purchases including dates and times, as well as how
12 many blocks he's had where he's exceeded the limit.
13 Obviously, we're not going into those details. This
14 is a very general yes-or-no question where we didn't
15 intend to prod further. But it was specifically in
16 response to his answer to the manufacturing meth
17 question.

18 THE COURT: All right. I'm going to give the
19 curative instruction and see where we go. You may
20 re-raise your motion for a mistrial at a later date,
21 depending on where we go.

22 MR. JOHNSON: Thank you, Your Honor.

23 MR. BELL: Thank you, Your Honor.

24 (The jury enters the courtroom at 1:44 PM.)

25 THE COURT: Mr. Foreman, ladies and gentlemen

1 of the jury, please disregard, and I've stricken
2 from the record, the question that the solicitor
3 posed about whether or not the defendant has
4 purchased pseudoephedrine in the past. That has
5 absolutely nothing to do with this case. We're
6 trying this case based solely on what happened in
7 this motel on the date in question. And that's an
8 improper question which could rise to the level of a
9 mistrial because it may -- once somebody says
10 something, it's hard for me to say disregard it.
11 And you have to disregard it. So I'm asking you to
12 disregard that.

13 I'm striking it from the record, I'm telling
14 you it's improper. I'll allow the trial to go on,
15 but we'll see where we go. You may continue.
16 Disregard it. It's struck from the record. It's an
17 improper question.

18 MR. BELL: Thank you, Your Honor.

19 THE COURT: And that's not being disparaging to
20 the solicitor. He's a fine young lawyer. These
21 young guys get carried away -- not carried away.
22 They get feisty in the battle at times and go beyond
23 where they should go. So don't hold it against him
24 personally. He's a nice young man. And I used to
25 do that same thing every now and then. I was a

1 lawyer for 40 years and -- 30 years; been doing this
2 for 12.

3 MR. BELL: Thank you, Judge.

4 THE COURT: So I can see myself down there
5 sometimes getting a little antsy. Disregard it. It
6 hasn't got anything to do with this case.

7 MR. BELL: Understood, Your Honor. Thank you.

8 CROSS-EXAMINATION

9 (Continued)

10 BY MR. BELL:

11 Q. Mr. James, did you have a wallet on you that
12 night?

13 A. I don't carry a wallet. I had a money clip.

14 Q. Where do you put identification if you have it
15 on you?

16 A. In my money clip, along with debit card.

17 Q. How many kinds of ID do you have?

18 A. I have a state ID and a work ID.

19 Q. How many IDs do you carry on you at one time?

20 A. One. And that night I had my money clip in my
21 pocket with my state ID, debit card, and probably
22 some cash.

23 Q. So you're aware that a wallet was found where
24 you were standing; right?

25 A. I heard that. I'm not aware of it, because I

1 wasn't shown a wallet. And where I was standing --
2 where I remember us standing, the three of us, we
3 came out of the room and were lined up in front of
4 the window. Ms. Breedlove, for some reason, they
5 brought a chair out, she was over in front of the
6 door. And the officer was spending a lot of time
7 talking to her. She later was not arrested. So we
8 assumed that something happened there.

9 But the three of us went back to the Cayce
10 Police Department together and then were later taken
11 to Lexington County.

12 Q. James, why would somebody else's wallet have
13 your ID in it?

14 A. Well, I'm not sure that it is my wallet. I'm
15 not sure that my ID was in it. I never saw it.
16 I've seen a picture of a wallet with an ID inside
17 it, but what else was in the wallet? I asked for
18 them to show it to me, and they didn't. And it
19 wasn't at the hotel that it was mentioned to me, it
20 was at the police department.

21 Q. Okay.

22 MR. BELL: I beg the Court's indulgence.

23 THE COURT: Yes, sir.

24

25 BY MR. BELL:

1 Q. State's 4, James. You've never seen that
2 wallet before?

3 A. I have seen a wallet like that.

4 Q. Where have you seen it?

5 A. Walmart. It's a passport wallet.

6 Q. You can tell all that just by looking at that
7 picture?

8 A. I can because after I saw the picture in the
9 discovery, I went and looked.

10 Q. Is that your ID?

11 A. That's a work ID.

12 Q. Is that your ID?

13 A. That's my name and that's my picture. Yes,
14 sir.

15 Q. Did you lose your ID?

16 A. My bookbag was in the room. I've already told
17 you my work IDs were in there. I had my in
18 pocket --

19 Q. Now earlier -- I'm sorry. Go ahead.

20 A. I had in my pocket my money clip, which had my
21 real ID, my state ID, money, and a debit card.

22 Q. So that's a work ID?

23 A. Yes, sir.

24 Q. And you acknowledge that is your ID?

25 A. It's got my picture on it, sir.

1 Q. And you didn't lose it?

2 MR. JOHNSON: Judge, asked and answered.

3 THE COURT: He can answer that.

4 A. Define lose it.

5 Q. Did you know where you could find it if you
6 wanted to?

7 A. Yeah. If I had gone in my bookbag, it would
8 have been in there.

9 Q. It wouldn't be in that wallet?

10 A. It would have been in my bookbag along with the
11 other one that's pictured, which is a door opener.

12 Q. Okay. Let's talk about that one. State's 21,
13 sir, that little white card above that black
14 container, is that another one of your IDs?

15 A. Is that on, like, a lanyard? And if it is,
16 it's the one you put on the slot to open the door.

17 Q. I'll give you a better picture, sir. Just one
18 second.

19 THE COURT: Open the door to what?

20 THE DEFENDANT: Transitions.

21 THE COURT: Where you were living?

22 THE DEFENDANT: Where I was working.

23 THE COURT: Or working.

24 THE DEFENDANT: Yes, sir.

25 BY MR. BELL:

1 Q. James, I'm showing you 22. Is that your ID as
2 well?

3 A. It's not an ID, it's a -- Transitions, they
4 have the little tray thing. And you lay it on there
5 to unlock the door.

6 Q. Okay.

7 A. That's a key pass or whatever.

8 Q. Does that belong to you?

9 A. It has my picture on it, sir. Yes.

10 Q. Is that your date of birth?

11 A. ?

12 Q. Yes, sir.

13 A. Yes, sir.

14 Q. And where did you say that was located?

15 A. Both of those would have been in my bookbag.

16 Q. Sir, do you know who Transitions is owned by?

17 A. It's a nonprofit organization called housing --
18 Midlands Housing Alliance.

19 Q. Any there any other names you know it by?

20 A. No, sir.

21 MR. BELL: Your Honor, may we approach?

22 THE COURT: Sure.

23 (Sidebar conference.)

24 (State's Exhibit No. 31 marked for
25 identification.)

1 MR. BELL: Permission to approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. BELL:

5 Q. James, I'm showing you what's marked as State's
6 Exhibit 31. Would you take a look at that picture
7 for me.

8 A. Uh-huh.

9 Q. Is that your ID?

10 A. It's the same thing that was up there.

11 MR. BELL: Your Honor, at this time, the State
12 would move State's 31 in to evidence.

13 THE COURT: Without objection -- well --

14 MR. JOHNSON: Your Honor, objection based on
15 previous motion and objection. We object to this.

16 THE COURT: You're protected on that.

17 (State's Exhibit No. 31 admitted in to
18 evidence.)

19 BY MR. BELL:

20 Q. James, I'm showing you 31. What kind of ID did
21 you say this was?

22 A. What's that say at the bottom?

23 Q. Let's see if I can blow it up some more for
24 you. You don't know what the print on your own ID
25 says?

1 A. No. It does say -- what's it say?

2 Q. You want to look at it again, sir?

3 THE COURT: Just read to him what it says.

4 BY MR. BELL:

5 Q. It says Christ Central Ministries and Mission
6 Tracker above that.

7 A. Christ Central is directly across the street
8 from Transitions. Christ Central is a very large
9 Christian organization with campuses all over the
10 state of South Carolina, run by a gentleman called
11 James or Jimmy Jones. And Transitions and Christ
12 Central work together. Their property literally
13 adjoins each other, separated by Main Street.

14 And that -- I didn't even realize it said
15 Christ Central. But it would open doors there as
16 well.

17 Q. Okay.

18 A. You probably read about it. Christ Central
19 managed some of the city's efforts at helping the
20 homeless and the less fortunate this past year.

21 Q. James, did you bring any documents from your
22 work today to show you work there?

23 A. No, sir, I didn't.

24 Q. Any pay stubs or anything like that?

25 A. No, sir. I was not asked to bring anything.

1 Q. So we just have to take your word for it?

2 A. Well, either that or look at the IDs and figure
3 out how I got them without working there. They say
4 Transitions on them.

5 Q. Are employees the only people who get IDs
6 there?

7 A. No. Everybody gets one ID. But employees are
8 the only ones who get a key ID.

9 Q. Okay.

10 MR. BELL: Beg the Court's indulgence.

11 Thank you, Mr. James.

12 THE DEFENDANT: You're welcome, sir.

13 MR. JOHNSON: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q. Mr. Miller, tell me, what is your graduate
17 degree?

18 A. Psychology.

19 Q. Is a master's or doctorate?

20 A. Master's.

21 Q. And you have two children?

22 A. I have two sons. One is an attorney who
23 practices out in New York with a French firm. He
24 spends most of his life in England. He
25 does international --

1 MR. BELL: Objection, Your Honor --

2 A. My other --

3 THE COURT: Hold on.

4 MR. BELL: -- improper bolstering the witness.

5 THE COURT: He's bragging about his child.

6 MR. BELL: How is that -- relevance objection,
7 Your Honor.

8 THE COURT: You asked everybody about where
9 they worked and their families.

10 MR. BELL: I didn't ask about any families,
11 Your Honor.

12 THE COURT: Well, he's entitled to be proud of
13 his son.

14 MR. JOHNSON: Thank you, Judge.

15 BY MR. JOHNSON:

16 Q. Mr. Miller --

17 A. And my younger is an accountant, works for
18 Price Lawyer House [phonetic], heads up the IBM in
19 Germany, which is why neither of them are here.
20 They're both in Europe at this time.

21 Q. All right. Thank you.

22 MR. JOHNSON: That's all I have, Your Honor.

23 THE COURT: Any additional witnesses?

24 MR. JOHNSON: No, sir. The Defense rests.

25 THE COURT: Anything in reply?

1 MR. BELL: Nothing from the State, Your Honor.

2 THE COURT: All right.

3 Mr. Foreman, ladies and gentlemen, that
4 concludes all the testimony. I got to spend about
5 five minutes with them to make sure the verdict
6 forms are right and my charge covers everything
7 they've got. So let's take about a five or
8 ten-minute break, and we'll come back and do the
9 final arguments, I'll charge you, and then you'll
10 get it. Don't discuss the case yet, don't
11 deliberate. I'll see you back in about ten minutes.

12 (The jury exits the courtroom at 2:00 PM.)

13 THE COURT: All right. Let me see y'all in
14 chambers.

15 MR. JOHNSON: Your Honor, can I renew my
16 motion at this time? Is it appropriate?

17 THE COURT: I'll give you a chance.

18 MR. JOHNSON: Thank you, sir.

19 (Short break.)

20 THE COURT: You ready to proceed?

21 MR. BELL: State is ready, Your Honor.

22 MR. JOHNSON: Defense is ready, Your Honor.

23 THE COURT: Bring the jury in.

24 MR. JOHNSON: Judge, was I going to renew at
25 this time my motion for mistrial?

1 THE COURT: Just remind me when -- we can put
2 it all on the record at the end.

3 MR. JOHNSON: Yes, sir.

4 (The jury enters the courtroom at 2:11 PM.)

5 THE COURT: Okay. We're now going to hear the
6 final arguments. Final arguments, like opening
7 statements, is not evidence in the case. You've
8 heard all the evidence you're going to hear. Let's
9 hear the arguments, I'll do my charge, and then
10 y'all will be in a position to make a decision in
11 the case.

12 Mr. Johnson.

13 MR. JOHNSON: Thank you, Judge.

14 THE COURT: Thank you.

15 MR. JOHNSON: Ladies and gentlemen, we talked
16 before about a guessing game they're going to ask
17 you to play. We talked about the State having the
18 burden before they're allowed to strip, remove, the
19 presumption of innocence from a citizen. As we're
20 all citizens, we all have the presumption of
21 innocence. If they're going to transform my client
22 from an innocent to a guilty person, they have the
23 burden beyond a reasonable doubt, as the Judge will
24 explain.

25 Now, I ask you to simply focus on their

1 evidence, focus on what you heard or what they
2 failed to bring, because it really is their burden.
3 They've got to bring it. And I submit when you
4 evaluate it, there's a lot to focus on that's
5 missing or inadequate.

6 When the officers testified, what did you hear?
7 Simple question: Who is at the motel?
8 Straightforward question. The ultimate answer: I
9 assume this person, these two people, maybe this
10 person. Is it important to find out who's in the
11 room or who's registered to a room? Oh, well,
12 Mr. Quarrels. Well, I assume he was there. And the
13 other officer: Well, the statement was made. What
14 statement? Well, he claims to be a meth
15 manufacturer. Well, how many different ways can you
16 record a statement?

17 List of ways, list of equipment, did you do
18 that? Nope. Well, wait a minute. The question:
19 What about surveillance if you have a lab? Their
20 expert who finally said, well, we do conduct
21 surveillance. Well, what's the importance of
22 surveillance? What can you learn? Well, we'll
23 never know what they could have learned because they
24 all said they didn't do it. Had the option, chose
25 not to.

1 We talked about, what about videos? This is
2 right there at the motel surrounded by businesses.
3 Let's talk about all the security cameras that were
4 out there. Every officer: I didn't check for that,
5 didn't look for that. What about the motel
6 security? The officer said, well, I don't think it
7 was working. I said, well, was it working that day?
8 And he said, I don't know, didn't check.

9 Well, wait a minute. What about the doors on
10 either side of this room, this motel? There's all
11 these people standing there. Why don't you go knock
12 on this door, go knock on that door? Did you do
13 that? No. Did any officer do that? No.

14 Question: What about the man that they say
15 called the police and said there's a meth lab going
16 on in this room? Who is he? Where is he at? Did
17 any officer even try to interview him? What did
18 they say? Well, one officer said, well, I tried to
19 call the number. Did you go to his house? Nope.
20 Did you ask the motel if he worked there? Is he an
21 employee of the motel? Didn't ask.

22 Now, ladies and gentlemen, if that's sufficient
23 beyond a reasonable doubt to convert my client from
24 an innocent man to a guilty man on every element on
25 both charges, I would simply say, in my experience,

1 it's not enough. They've got so many resources and
2 so much that they could have done that I talked
3 about on that day that was not done. They turned it
4 into a guessing game for the 12. And it's really
5 not supposed to be that. It's evidence that's
6 supposed to convince you beyond a reasonable doubt.
7 You're supposed to go back, look at the evidence,
8 and give a verdict based on all that hard work.
9 Well, did they do their jobs? That's a fair
10 question.

11 I talked about the Solicitor's Office and how
12 they take up all these floors at the courthouse and
13 they have their own investigators. They have the
14 ability, as I said, to tell the investigator, go do
15 this, go do that. Oh, wait, there's an individual
16 who called the police and said there's a meth lab,
17 here's his name, let's go talk to him.

18 They had the ability -- the solicitor had the
19 ability to investigate that because they're involved
20 in law enforcement. It's a law enforcement agency.
21 But did we hear about that? With all of the
22 investigators that are sitting in this courthouse
23 right now, never happened, never going to know. A
24 call was made, no surveillance done, no interview
25 performed.

1 Well, what about, well, there's a wallet and
2 this officer says, I picked up a wallet and he made
3 a statement. Well, if makes a statement, did you
4 record it? No, didn't record it; said, I didn't
5 even turn on the mic. Well, that's a choice. They
6 have to make those choices because they have to
7 build a case or they fail to build a case.

8 Ladies and gentlemen, at the very least, I
9 would argue, make the clear record, who was there?
10 Who was there? Who called and said there's a meth
11 lab? Go in there, fingerprint evidence. Is it
12 impossible? Did anybody say it was possible to test
13 the fingerprints in this case? We all hear about
14 fingerprints on TV. What do fingerprints do? They
15 tell you who touches what. What can you tell from
16 that? Well, obviously, you'd want to know. They're
17 saying somebody picked this stuff up and tried to
18 make meth or was making meth.

19 It's pretty straightforward, kind of old
20 fashioned police work. Having worked about close to
21 15 years in this area, having been a solicitor, I
22 can tell you, I've worked plenty of cases where
23 fingerprints are collected on different types of
24 crimes, fingerprints get taken all the time. No
25 fingerprints, no attempt, no fingerprints taken.

1 We talked about residue. And they kind of
2 said, oh, meth residue, ha, ha. Well, what if
3 there's residue on a person? Well, we'll never
4 know. We'll never know. They didn't check. And if
5 some of this seems excusable, I would say, look at
6 it in a cumulative way, because that's what you have
7 to do, as the Judge will instruct, review the
8 evidence.

9 But focus on what you didn't get to hear about,
10 what you don't get to see. The witness who called
11 the police about the meth lab, never got to hear
12 from him, never got to hear that testimony. That's
13 their job to bring that, and they failed.

14 Quite clearly, I will say Mr. Miller, he
15 testified about his background, education, children.
16 I would ask you to judge him. Judge him on who he
17 is, judge him on the evidence, judge him on the lack
18 of evidence, and look at what kind of person
19 Mr. Miller is. And ask yourself, did they complete
20 their job, their mission to go beyond a reasonable
21 doubt on both indictments, every element, because
22 that's what they've got to do. And I think the
23 answer will be quite simple and quite clear. Thank
24 you.

25 MR. BELL: Your Honor, may we briefly approach?

1 (Sidebar conference.)

2 MR. BELL: Thank you, Your Honor. Mr. Johnson.

3 May it please the Court.

4 THE COURT: Yes, sir.

5 MR. BELL: Ticktock, ticktock, ticktock. That
6 rhythmic sound that a clock or watch makes that
7 we're all so familiar with, ticktock, ticktock.
8 That sound is accomplished by a series of gears or
9 cogs that work in conjunction to make that watch or
10 clock go. You see, those gears and those cogs link
11 together. And if one of those cogs or gears fails
12 to operate or to do its job, the rest of the gears
13 and cogs can't do their job, and as a whole, they
14 can't make that sound, that ticktock, ticktock,
15 ticktock.

16 A conspiracy is much like the workings of a
17 clock. You see, a conspiracy involves two or more
18 people who come together for a common purpose. And
19 in this case you've heard there were multiple
20 individuals and there was everything you need in
21 that room 126 at Motel 6 to manufacture
22 methamphetamine. And if any one of those
23 individuals didn't bring their part, didn't operate
24 their gear, the process could have never been
25 completed, they couldn't have gotten together and

1 made that ticktock sound.

2 Now, the facts are clear. On January 8th of
3 2014, a complaint comes in. You've heard a lot
4 about it. It came in from a guy named Jason
5 Carroll. Now, he complains to 911 of a chemical
6 odor at room 126. Law enforcement responds. And
7 several of the officers say that even when they got
8 out of their vehicles they could smell the chemical
9 odor, and one they opened the door, it was strong,
10 overwhelming.

11 A few of them said fingernail polish remover.
12 You had the meth tech, Sergeant Gleaton, say that's
13 acetone. You heard from the expert, Lieutenant
14 Gunter, that acetone is commonly used as a solvent
15 in manufacturing methamphetamine and that it gives
16 off a strong odor, especially when it's in any sort
17 of large quantity.

18 Now, Sergeant Gleaton arrives, he evacuates the
19 room based on his training. They get a search
20 warrant and they execute it. What does he find?
21 Every single thing you need to manufacture meth,
22 except one; pseudoephedrine. Ticktock, ticktock.
23 So where is the pseudoephedrine? How are you going
24 to make meth without it?

25 Well, when law enforcement gets there, Mr.

1 James Miller in that room 126, has a bag in there,
2 and they take him outside. They detain him for
3 safety purposes, he starts fiddling around, and the
4 officer knows he needs to check, make sure there's
5 no danger, no weapon, none of that. As he goes over
6 and begins to do a Terry frisk to search for
7 weapons, he sees right behind Mr. Miller a wallet on
8 the ground, right behind where he was standing.

9 You heard the officer say that he picked up the
10 wallet, asked Mr. Miller: Is this yours? I have
11 one like it. Inside that wallet, an ID belonging to
12 none other than James Miller. Has his picture ID on
13 it, his picture. He says it was his. Now, he says
14 that it was in his bag that he took into the room.
15 So I guess the contention is that someone took it
16 out, put it in a wallet, and then threw it behind
17 him where police took him outside. That's for you
18 to determine, ladies and gentlemen.

19 Inside that wallet, aside from the ID, was a
20 coffee filter. And not any coffee filter, not the
21 Motel 6 coffee filter, it is the same color and size
22 coffee filter that you see in the packaging that are
23 in these pictures. The rest of the coffee filters
24 were in that room. That's no coincidence.

25 Inside that brown or beige coffee filter is a

1 powder substance. They send gather, do what's
2 called a chain of custody to make sure they can
3 track it, they send it off for testing. You heard
4 the chemist come back and tell you it tested
5 positive for pseudoephedrine. James Miller, he
6 brought his part. Ticktock, ticktock.

7 Now, you heard some argument about another
8 statement that was made, a well-sought-after meth
9 cook. True, there's no recordings, there's no
10 camera footage of it. It was testified by multiple
11 officers that on this kind of response call, you
12 don't typically turn on recording equipment for a
13 meth lab. And there's something called spontaneous
14 admissions where people just -- maybe they're
15 nervous and they just start talking or just for
16 whatever reason, they have to fill the silence and
17 they speak. I have no idea why he volunteered that
18 information. But if he didn't volunteer it, then
19 the other conclusion is that the officer simply made
20 it up.

21 You get to judge, as triers of the fact,
22 people's credibility. You can believe all, part,
23 none of what these witnesses say. And I encourage
24 you to think back on their testimony and see if you
25 found them to be believable. I think you'll find

1 that they were being honest. And maybe their memory
2 isn't perfect, because we're over a year and a half
3 out, but they did try their best and I believe
4 they're being honest.

5 Now, maybe one ID in a wallet with
6 pseudoephedrine with his ID is just coincidence.
7 But when that search warrant is executed on the
8 room, what else do they find? A second picture ID
9 of James Miller. He says it was in his bag. I
10 guess someone took it out and put it there too.

11 The law, as it reflects manufacturing of
12 methamphetamine, it doesn't have to be what we call
13 being caught red-handed. The law, as the Judge will
14 tell, you encompasses aiding, abetting, or
15 conspiring to manufacture. What matters is that you
16 believe beyond a reasonable doubt that based on
17 everything they found in the room and on
18 Mr. Miller's person, that's exactly what they were
19 attempting to do in that room. Every single
20 component was in that room. The only missing link
21 that wasn't in plain view was in Mr. Miller's
22 pocket, unless you believe that officer lied and
23 planted that wallet there.

24 The law also says that you're allowed to use
25 paraphernalia found near a meth lab as an inference

1 that manufacturing of meth was occurring. Now, what
2 does that mean? That means that when you find
3 things that are typically associated with
4 manufacturing, but even if you didn't catch him in
5 the act, you can still assume that's what they were
6 going to do. We have everything from baggies to
7 scales to needles and syringes, on top of all of the
8 other components for the intricate part of
9 manufacturing. You can use all of those things to
10 make your decision.

11 The other charge that we're here today on is
12 called altering pseudoephedrine and the possession
13 of that altered pseudoephedrine. It's fairly
14 simple. You all were put on this jury because we
15 trusted you to use your education and common sense.
16 Altering pseudoephedrine just means that you take it
17 out of that capsule or pill form and you crush it or
18 powder it or do something to take it out of its
19 original state. Now, there's a reason that there's
20 a law against that. And I'll let you surmise why
21 they felt it necessary to make that law.

22 You're going to hear a lot about reasonable.
23 I'm sure you've heard it already during the course
24 of this trial. But what reasonable doubt does not
25 mean is just as important as what it does mean.

1 What reasonable doubt does not mean is beyond all
2 doubt. You don't have to be 100-percent positive.
3 There are very few things on this planet that you
4 can be 100-percent certain of. And maybe you don't
5 believe every single detail or every bit of
6 testimony or evidence that you heard from the stand,
7 but if you still believe based on everything you've
8 seen, based on the testimony and the evidence
9 presented; that that's exactly what Mr. Miller and
10 his cohorts were doing was manufacturing, that's
11 beyond a reasonable doubt. You don't have to be
12 100-percent sure.

13 Now, Mr. Johnson made sure during his opening
14 and his closing to point out to all of you that I'm
15 the government. I'm the big, bad government and I'm
16 here to strip away people's rights. Well, it's half
17 right; I do work for the government. I work for
18 Lexington County, and proudly so. I work for your
19 elected Solicitor, Donnie B. Meyers.

20 But where he falters in his argument is that it
21 is not me who is here to render a verdict. That's
22 your job. The State and our laws trust you 12
23 individuals to make that decision. I'm here to give
24 you the evidence, and I want you to do what you
25 think is right.

1 And if you don't believe that Mr. Miller had
2 that wallet on him and tried to get rid of it when
3 police detained him, that that ID didn't belong to
4 him or that someone planted it there, that someone
5 planted the pseudoephedrine inside a matching coffee
6 filter, that his ID found in the room was pulled out
7 of that bag and also planted there, if you want to
8 believe all of that, if that's your version of what
9 you believe the facts are, please, by all means,
10 find him not guilty. I don't want an innocent man
11 convicted.

12 Regardless, there's a loud noise that prevails
13 throughout this case if you look at everything put
14 together. Ticktock, ticktock, ticktock. All of
15 these individuals came together, they had all of the
16 components. Mr. Miller had on him personally the
17 primary component of pseudoephedrine. He did his
18 part.

19 Now, I want to mention a few things that the
20 Defense mentioned in his closing. Everything the
21 Defense spent time talking about is what we don't
22 have versus what we do have. Because the Defense
23 knows if you look at all of this, it's very hard to
24 escape the truth. So I want you to focus on why we
25 don't have satellite imagery or cameras on every

1 wall, why they didn't talk to the neighbors when
2 they specifically were asked to respond to a
3 particular room. Maybe they should have bothered
4 everybody in the vicinity about it, but when you're
5 asked to respond to a particular room and then you
6 respond there and the complaint is confirmed and
7 they find everything in that room, how much more do
8 you need? If you don't think that's enough, ladies
9 and gentlemen, if you think they should have done
10 more, please cut him loose.

11 You've heard a lot of testimony about why there
12 wasn't fingerprints or DNA. You heard from both our
13 meth tech Sergeant Gleaton, as well as our expert
14 Lieutenant Gunter who says that based on all of
15 their training and based on OSHA regulations, any
16 component or anything that could have potentially be
17 exposed to meth residue is supposed to be
18 decontaminated and destroyed. That's why we can't
19 bring all this to you. That's why it's difficult to
20 get fingerprints off of it. You heard how volatile
21 these shake-and-bake procedures can be. You heard
22 that they can cause explosions; some minor, some
23 major.

24 Ladies and gentlemen, I'd wager that when these
25 individuals came together, the ticktock, ticktock

1 that they were creating, it was no ordinary clock;
2 instead, it's much like the clock you attach to a
3 bomb. Manufacturing meth is dangerous, and that's
4 exactly what Mr. Miller was there to do with his
5 friends. Ticktock, ticktock.

6 Ladies and gentlemen, I pray, on behalf of the
7 government, that you return a verdict that speaks
8 the truth; the truth that he didn't just happen to
9 walk there in a ten-minute period when police just
10 showed up; that he had been there, he had two
11 different IDs there, he had a wallet on him with
12 pseudoephedrine powder in it, and he was there to
13 cook meth. Please find Mr. Miller guilty of
14 manufacturing methamphetamine and the possession of
15 altered pseudoephedrine. Thank you.

16 THE COURT: Mr. Foreman, ladies and gentlemen
17 of the jury, my charge is about 10 to 12 minutes.
18 Everybody okay?

19 All right. The way we normally do this -- the
20 way I normally do it all over the state is, in
21 criminal cases there are certain principles of
22 criminal law, constitutional law that affect all
23 criminal cases. So we'll talk about those general
24 principles first, and then we'll go to the specific
25 elements of the two indictments that we're here for

1 that are being tried here today.

2 First of al, let me remind you that in this
3 case, obviously, the defendant Mr. Miller has been
4 indicted in two indictments; one is for
5 manufacturing methamphetamine, and the other one is
6 for possession of altered pseudoephedrine. The fact
7 that he's been indicted in this case is not evidence
8 in the case and cannot be considered by you as
9 evidence of guilt in the case, nor does it create
10 any presumption or inference of guilt. The
11 indictments are simply the formal written
12 instruments which contain the charges. It's the
13 formal document by which this case is brought into
14 the courtroom.

15 Each indictment charges a separate and distinct
16 offense, and you must decide each indictment
17 separately on the evidence and the law applicable to
18 it, uninfluenced by your decision as to any other
19 indictment. He may be convicted on both, he may be
20 found not guilty on both, he may be found guilty on
21 one and not guilty on the other, or guilty on one
22 and not guilty on the other two. Decide each one of
23 them separate and apart, decisions be made as to
24 each indictment.

25 To these two indictments, the defendant has

1 pled not guilty. A plea of not guilty puts the
2 burden on the State to prove the defendant guilty
3 beyond a reasonable doubt. A person charged with
4 committing a criminal offense in our state is never
5 required to prove himself innocent. I charge and
6 instruct you that it is an important constitutional
7 rule of law that a defendant in a criminal trial, no
8 matter how serious the charges may be, will always
9 be presumed to be innocent of the crimes for which
10 he has been charged, unless guilt has been proven by
11 the State to you, satisfying you of that guilt
12 beyond a reasonable doubt.

13 The presumption of innocence does not end when
14 you begin your deliberations, but it stays with the
15 defendant throughout the trial until you reach a
16 verdict of guilt based on the evidence satisfying
17 you of that guilt beyond a reasonable doubt. The
18 presumption of innocence is not a mere legal theory
19 or phrase; it is a substantial constitutional right
20 to which every defendant is entitled, unless you,
21 the jury, are satisfied of the evidence of the
22 defendant's guilt beyond a reasonable doubt.

23 What is a reasonable doubt? Our appellate
24 courts have defined reasonable doubt by simply
25 saying it's the kind of doubt that would cause a

1 reasonable person to hesitate to act. It's the kind
2 of doubt that would cause a reasonable person to
3 hesitate to contact. Proof beyond a reasonable
4 doubt is proof that leaves you firmly convinced of
5 the defendant's guilt. There are very few things in
6 the world that we know with absolute certainty. And
7 in criminal cases, the law does not require proof
8 beyond every possible doubt.

9 If, based on your consideration of the
10 evidence, you're firmly convinced that the defendant
11 is guilty of the crime charged, you must find him
12 guilty. If, on the other hand, you think there's a
13 real possibility that he is not guilty, you must
14 give him the benefit of the doubt and find him not
15 guilty. So they have to prove his guilt to you
16 beyond a reasonable doubt.

17 Oftentimes we illustrate that -- because in
18 civil cases where you're suing for monetary damages,
19 you're suing someone who has caused injuries in a
20 car wreck, or your lawyer for legal malpractice, or
21 your doctor for medical malpractice for monetary
22 damages, the person bringing the suit, the
23 plaintiff, and the defendant who is being sued, they
24 come in on equal footing in the court room. To win
25 in a civil case, the burden of proof is by the

1 presumption or the greater weight of the evidence.
2 So you have to -- if these are the scales, you have
3 to tip the scales ever so slightly in the
4 plaintiff's favor to win. After all of the evidence
5 is in, if the scales remain the same or tip in favor
6 of the defendant, it would be a verdict for the
7 defendant, for the plaintiff to prove it by the
8 presumption or the greater weight of the evidence.

9 In a criminal case, because the defendant is
10 presumed innocent under the constitution, he comes
11 in with the scales of justice tilted in his favor in
12 this manner. And for the State to prove the guilt,
13 they have to prove it beyond a reasonable doubt and
14 tip the scales in this manner. So the standard of
15 proof in a criminal case is much greater than that
16 of a case in a civil setting.

17 Let me remind you that during the trial of this
18 case, obviously, as I told you when we started, you
19 and I have different functions to perform. My job
20 is to charge you on the law and instruct you on the
21 law. I'm the judge of the law in this case. I also
22 rule on the admissibility of evidence. My job is
23 pretty easy. You have the tough job; you're the
24 judges of the facts. And, therefore, you have to
25 determine what the true facts are and apply those

1 facts to the law as I give it to you, and then
2 you're in a position to render a true and just
3 verdict.

4 And I say that with this in mind: If at any
5 time during the trial of this case, I've rolled my
6 eyes or smiled or shook my head or did something
7 that looks like I have an opinion about the facts,
8 the law does not allow me to do that. I try these
9 cases day in and day out. I was in Charleston last
10 week, here this week, Aiken next week. So it's hard
11 to sit up here and not give any type of facial
12 expression. But if I do, don't think I have an
13 opinion about the facts. I can't. That's your job.
14 You have the most important job in here of
15 determining the true facts in the case.

16 And, obviously, to do that and to perform your
17 duty as the finders of fact, you must determine the
18 credibility of the witnesses who have testified in
19 the case. Credibility simply means believability.
20 Who do you believe? It becomes your duty as jurors
21 to analyze and evaluate the evidence and determine
22 which evidence convinces you of its truth.

23 In determining the believability of witnesses
24 who have testified in the case, you can believe one
25 witness over several, several over one; you can

1 disbelieve everything a witness says, you can
2 believe part of it, disbelieve the other part. In
3 other words, use your ordinary common sense that
4 you've gained over your lifetime. You deal with
5 wives, husbands, children, employers, employees,
6 friends, enemies; you know how to tell when someone
7 is telling the truth. So judge the witnesses in
8 this case in determining the believability of them.
9 You may consider whether any witness has exhibited
10 to you any interest, bias, prejudice, or other
11 motives in the case, and you may also consider the
12 appearance and manner of a witness while on the
13 witness stand.

14 As I told you earlier, we have people who
15 qualified as expert witnesses in this case. Our
16 rules of evidence ordinarily do not permit a witness
17 to testify as to opinions or conclusions. We have
18 an exception to that rule, which we call the expert
19 witness exception. A witness who, by education and
20 experience, has become an expert in some art,
21 science, or profession may state an opinion as to
22 relevant and material matters in which the witness
23 claims to be an expert, and may also state the
24 reasons for the opinion.

25 You should consider any expert opinion received

1 in this case just like any other witness, and give
2 it the weight you think it deserves. If you decide
3 the opinion of an expert is not based on sufficient
4 education or if you conclude the reasons given in
5 support of the opinion are not sound or that opinion
6 is outweighed by the other evidence, you can
7 disregard the opinion entirely. Just because he's
8 been designated as an expert, he's to be given no
9 greater weight than that of any other witness simply
10 because he's an expert. And you're not even
11 required to accept his opinion even when it's not
12 contradicted.

13 Now, Mr. Foreman, ladies and gentlemen, that's
14 sort of general propositions of law that we deal
15 with in all cases. Let's now turn to the two
16 indictments in this case. I'll talk about the
17 manufacturing methamphetamine first.

18 The defendant is charged with the offense of
19 manufacturing methamphetamine. In order to be found
20 guilty of that, the State must prove to you beyond a
21 reasonable doubt that the defendant knowingly
22 manufactured -- that's real hard -- knowingly
23 manufactured or aided, abetted, attempted, or
24 conspired to manufacture methamphetamine.
25 Manufacture, as defined by our statute, means to

1 produce, prepare, convert, process a drug naturally
2 or chemically. Very simple, means what it says.

3 Now, conspiracy is defined in our laws as --
4 it's a theory, legal theory. In this case they say
5 that the defendant has conspired with another to
6 manufacture methamphetamine. Conspiracy is defined
7 as a combination between two or more persons for the
8 purpose of accomplishing an unlawful object. The
9 State must prove beyond a reasonable doubt that the
10 defendant combined with another for the purpose of
11 committing the crime of manufacturing
12 methamphetamine.

13 There must be a mutual understanding,
14 agreement, or common intention and plan. Mere
15 passive knowledge of or consent to the criminal
16 conduct of another is not enough to make a person a
17 conspirator. There must be guilty knowledge and
18 participation. Similar to the mere fact that the
19 defendant may have associated with another person or
20 met with another person and discussed common aims
21 and interest does not necessarily establish proof of
22 the existence of a conspiracy or that the defendant
23 was involved in the conspiracy.

24 However, it's not necessary that the agreement
25 be a formal one. The agreement of conspiracy may

1 come into being through an implied mutual
2 understanding. The willful, intentional, and
3 knowing adoption by two or more persons of a common
4 plan is sufficient. No covert acts need to be shown
5 to establish a conspiracy.

6 In order to convict a defendant under the
7 theory of conspiracy, the State must prove beyond a
8 reasonable doubt not only that the defendant knew of
9 the unlawful conduct, but that he agreed to combine
10 with the other persons for the purpose of
11 accomplishing the unlawful conduct.

12 I further charge you that possession of
13 equipment or paraphernalia used in the manufacture
14 of methamphetamine gives rise to a permissive
15 inference that the defendant intended to manufacture
16 methamphetamine. The resulting implication only
17 permits you to infer a violation of the
18 manufacturing methamphetamine statute. This
19 inference does not relieve the State from proving
20 beyond a reasonable doubt that the defendant had the
21 intent to manufacture; this is simply an evidentiary
22 fact to be taken into consideration by you along
23 with the other evidence in the case and be given the
24 weight, if any, you decide it should receive.

25 The other indictment is the indictment dealing

1 with a pseudoephedrine. It's codified in Section
2 44-53-368: In order to prove the defendant was in
3 possession of an altered pseudoephedrine, the State
4 must prove to you beyond a reasonable doubt that the
5 defendant had in his possession or under his control
6 pseudoephedrine which has been altered from its
7 original condition so as to be powdered, liquified,
8 dissolved, solvated, or crushed. They must prove
9 that to you beyond a reasonable doubt.

10 Now, another very important theory of law to be
11 charged in this case is what we call mere presence.
12 The mere presence at the scene is not sufficient to
13 prove someone guilty of a crime. A defendant's
14 presence where a crime is being committed or mere
15 association with a person who commits a crime does
16 not make the defendant an accomplice or an aider and
17 abettor or conspirator committing the crime. The
18 burden is on the State to prove every element of the
19 crime charged.

20 If you find, after reviewing all the evidence,
21 that the State has proved that the defendant was
22 only present at the scene of the crime and they have
23 not proven beyond a reasonable doubt any other
24 participation of the crime, then you must find him
25 not guilty. The law is that proof of at the scene

1 of the crime is not sufficient to find someone
2 guilty.

3 Now, you will have in the jury room two verdict
4 forms, Mr. Foreman. It's a real simple verdict
5 form: We find the defendant not guilty or guilty as
6 to each, manufacturing methamphetamine and
7 possession of the altered pseudoephedrine. This
8 item separate and apart from the other. Make a
9 decision on one, make a decision on the other, and
10 don't be influenced by one or the other.

11 Your decision must be unanimous; all 12 must
12 agree. Obviously, we're here to deliberately
13 deliberate on the evidence that you've heard and
14 decide this case solely on the evidence that you've
15 heard from the courtroom, make a determination as to
16 what the true facts are, take those facts and apply
17 them to the law, and reach a just verdict. Verdict
18 means to speak the truth, Latin phrase.

19 We're not here to reward any friends or punish
20 any enemies. Do it with a cool deliberation of the
21 facts. And once you've reached a verdict on both,
22 knock on the door. The bailiff will bring the
23 verdict forms back out and you'll come back out with
24 him.

25 I'm going to ask that you return to your jury

1 room in just a second. Do not start your
2 deliberations. I have to ask the lawyers if I've
3 left anything out or if they wants some changes to
4 the charge I've given. We'll then gather up all the
5 evidence.. They'll bring the evidence into the jury
6 room along with the verdict forms, and then you can
7 start your deliberations.

8 Sometimes jurors have questions, that's not
9 unusual; sometimes they ask to replay two and a half
10 hours of testimony, that is not usual. But if you
11 need to listen to testimony, we'll be glad to do it
12 for you. The protocol is this: If you have a
13 question, write it out on the notepad back there,
14 knock on the door, give it to the bailiff, and
15 they'll bring it to me. Sometimes I can answer it
16 and sometimes I can't.

17 When you get through deliberating, just knock
18 on the door, and we'll receive you back in. I'm
19 going to ask that you step back into your jury room.
20 Don't start deliberating quite yet until we send
21 everything back. It will be just a few minutes, and
22 then you can start your deliberations.

23 Please separate my alternates.

24 (The jury exits the courtroom at 2:55 PM.)

25 THE COURT: All right. Are there any

1 objections, requested additions, deletions, or
2 modifications on the charge on behalf of the State?

3 MR. BELL: Your Honor, I certainly try to
4 qualify as having ADD. But did Your Honor charge
5 the law of possession, actual and constructive?

6 THE COURT: No.

7 MR. BELL: I think that's necessary given the
8 indictment of possession of pseudoephedrine or
9 possession of altered pseudoephedrine.

10 MR. JOHNSON: Judge, I'm not aware of any
11 requirement to charge that.

12 MR. BELL: I certainly don't believe Your Honor
13 you can charge mere presence without having --

14 MR. JOHNSON: Could be.

15 THE COURT: You're probably right.

16 MR. JOHNSON: We're certainly not asking for
17 that, Your Honor.

18 THE COURT: You got a constructive possession
19 charge? Hold on. I'm sure I got it. I just got it
20 misplaced. I got it.

21 All right. Bring the jury back in, please.

22 MR. JOHNSON: Judge, do you want me to bring
23 this up before you do that? Just briefly, you said
24 368. I believe the statute -- it's really 398 for
25 the possession of pseudoephedrine.

1 THE COURT: What did I say?

2 MR. JOHNSON: 368.

3 THE COURT: Well, it is 398.

4 MR. JOHNSON: Yes, sir. And that's really --
5 other than renewing my motion, that's it.

6 THE COURT: All right. No problem.

7 MR. BELL: Thank you, Judge.

8 THE COURT: Ask them to step back in, please.

9 MR. BELL: Your Honor, to clarify, did you also
10 charge direct and circumstantial evidence?

11 THE COURT: No.

12 MR. BELL: I don't know if that's a requirement
13 in standard jury charges or not.

14 THE COURT: It's not.

15 MR. BELL: Okay.

16 (The jury enters the courtroom at 2:58 PM.)

17 THE COURT: Two things briefly: They brought
18 to my attention under the indictment for possession
19 of altered pseudoephedrine, number one, I gave you
20 the wrong code section. I think I said 44-53-368.
21 It's actually 398. That's neither here nor there,
22 but that's the correct statute.

23 And I said in that the State has to prove
24 beyond a reasonable doubt that the defendant
25 possessed the pseudoephedrine in an altered state.

1 There's two types of possessions; there's something
2 called actual possession and something called
3 constructive possession. In order to prove that he
4 had in his possession, the State has to prove beyond
5 a reasonable doubt that he had the power and intent
6 to control the disposition of the use of the
7 pseudoephedrine.

8 Actual possession means that the defendant was
9 in actual physical custody of the pseudoephedrine.
10 Constructive possession means that the defendant had
11 dominion and control or the right to exercise the
12 dominion and control over the pseudoephedrine, or on
13 the property which the pseudoephedrine was found.

14 As I told you earlier, mere presence on the
15 scene where drugs were found is not enough to prove
16 possession. Actual knowledge of the presence of the
17 pseudoephedrine is strong evidence of the
18 defendant's intent to control its disposition or
19 use. The defendant's knowledge or possession may be
20 inferred when a substance is found on the property
21 under the defendant's control. However, this is
22 simply an evidentiary to be taken into consideration
23 by you along with all the other evidence in the case
24 and give it the weight you think it deserves.

25 And one last final sort of housekeeping matter:

1 There are two types of evidence in a case; direct
2 and circumstantial evidence. Direct evidence is the
3 testimony of a person who claims to have actual
4 knowledge of a fact, such as an eyewitness;
5 circumstantial evidence is proof of a chain of facts
6 and circumstances indicating the existence of a
7 fact. It is evidence which immediately establishes
8 collateral facts from which the main fact may be
9 inferred.

10 The law makes absolutely no distinction between
11 the weight or value to be given to either direct or
12 circumstantial evidence, nor is a greater degree of
13 certainty required for circumstantial evidence and
14 that of direct evidence. You should weigh all of
15 the evidence in the case, and after weighing all of
16 the evidence you're not convinced of the guilt of
17 the defendant beyond a reasonable doubt, you must
18 find him not guilty.

19 Direct evidence: You walk outside, you get
20 wet, you see the raindrops coming down. You walk
21 outside and there's no raindrops, you're not getting
22 wet, but there's puddles everywhere and it's cloudy.
23 That's circumstantial evidence that it's just
24 rained. So those are the two types of evidence.

25 Two types of possession, constructive and

1 actual, and the correct code section. I think that
2 covers everything, gentlemen.

3 MR. BELL: Yes, sir, Your Honor.

4 MR. JOHNSON: Yes, sir.

5 THE COURT: All right. I'm going to let you go
6 back. I'll send all the evidence back and you can
7 start deliberating as soon as it gets back there.

8 (The jury exits the courtroom at 3:02 PM.)

9 THE COURT: All right. Gentlemen, come check
10 the evidence, please.

11 Let the record reflect that they've reviewed
12 all of the evidence and the verdict form. They find
13 it to be in order. We're going to send it back to
14 the jury for them to start deliberating.

15 Make sure my alternates are separated, please,
16 sir.

17 MR. JOHNSON: Your Honor, before we do that,
18 can I put on the record --

19 THE COURT: Hang on. Let me go ahead and send
20 that back first.

21 (The jury begins deliberations at 3:09 PM.)

22 THE COURT: All right. I told Mr. Johnson he
23 could make his motion for directed verdict at the
24 close of the case, nunc pro tunc.

25 MR. JOHNSON: Your Honor, also renewal of

1 motion objecting to curative instruction and motion
2 for mistrial, for the record.

3 THE COURT: What was the objection for the jury
4 instruction? I thought we cleared all that up.

5 MR. JOHNSON: No, sir. This was renewing the
6 motion for mistrial regarding curative instruction
7 based on the question asked by the solicitor. I
8 just wanted to renew that motion for mistrial.

9 THE COURT: Certainly.

10 MR. JOHNSON: Yes, sir.

11 THE COURT: You may want to hold on to that
12 motion until we see what happens.

13 MR. JOHNSON: Yes, sir.

14 THE COURT: All right. I'll stand on my ruling
15 on that. Directed verdict?

16 MR. JOHNSON: Motion for directed verdict based
17 on previous motions and objections, Your Honor. I
18 move for directed verdict in favor of the Defense.

19 THE COURT: All right. For the same reasons,
20 respectfully denied.

21 All right. Anything else?

22 MR. BELL: Nothing from the State, Your Honor.

23 MR. JOHNSON: That's it, Judge.

24 THE COURT: All right. We'll stand at ease.

25 (Trial in recess at 3:10 PM.)

1 THE COURT: All right. Are we ready for the
2 verdict?

3 MR. BELL: The State is ready, Your Honor.

4 MR. JOHNSON: Defense is ready, Your Honor.

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

7 (The jury enters the courtroom at 3:52 PM.)

8 THE COURT: Mr. Foreman, have y'all reached a
9 verdict?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Hand it to the bailiff, please.
12 You may publish it.

13 THE CLERK: Indictment 2015-GS-32-01585, State
14 vs. James B. Miller. As to the offense of
15 possession of altered pseudoephedrine, we the jury
16 find the defendant guilty. We all unanimously
17 agree. And it's so signed by the foreman.

18 Indictment 2014-GS-32-971, the State vs. James
19 B. Miller. As to the offense of manufacturing
20 methamphetamine, we the jury find the defendant
21 guilty, we all unanimously agree. It is signed by
22 the foreperson, dated November 5th, 2015.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 if these are your verdicts, please indicate, each of
25 you, by raising your right hand.

1 All hands raised, Your Honor.

2 THE COURT: Thank you. Anything for the jury
3 before I dismiss them?

4 MR. BELL: Nothing from the State, Your Honor.

5 MR. JOHNSON: Nothing from the Defense.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen, I thank you. I apologize for the
8 interruptions. Normally we can move one a little
9 smoother than that, but I think y'all knew what I
10 was going through on that other case. It was a case
11 involving a father and three daughters who had been
12 sexually molested over years and years and years.

13 He was -- you can read it in the paper
14 tomorrow. He was an interesting character. He the
15 head of the KKK in Pennsylvania for a number of
16 years, the head of Aryan Nation, all types of
17 things; thrown off the Jerry Springer show for his
18 antics. He had a number of outbursts during the
19 trial of the case. It was an interesting trial, to
20 say the least, and we all had to sort of keep him
21 under reins.

22 During the middle of the trial, we had someone
23 in the courtroom that we later learned was the
24 enforcer for the Aryan Nation, whatever that means.
25 We had a lot of security up here this week. We had

1 the bomb dogs and everything. But you're safe.

2 And -- but it gets interesting.

3 And it's tough to be a juror. Even in the --
4 no matter what kind of case you got. But it's still
5 the best system we got. If you're accused of
6 something, we got 12 of y'all from the community who
7 listen and decide what the true facts are. I thank
8 you. Y'all have been wonderful. I was hoping to
9 get you further down the road yesterday, but I knew
10 when they wanted two and a half hours of testimony,
11 you didn't want to wait on that.

12 In the middle of the -- when I had to interrupt
13 you in the middle of your trial, what happened there
14 was I had asked a question when we qualified you if
15 anyone had a criminal record that had not been
16 pardoned or -- nobody stood up. But right in the
17 middle of the deliberations, they realized one of
18 the jurors did, in fact, have a criminal record back
19 in 1970. So I had to stop deliberations, bring him
20 up, and he said, Judge, I'd been pardoned. Well,
21 there was no record of it on the sheets that we had.
22 He said, well, I got my pardon right here in my
23 bedroom at the house, my house is five minutes away.
24 So we sent him to his house with the police officer
25 to get his pardon. Sure enough, he had his pardon,

1 we let him sit.

2 So it's just one -- seems like that case had a
3 lot of things that just sort of went along. And
4 while we were playing the testimony yesterday
5 afternoon, the defendant, out of the middle of
6 nowhere, he's sitting over there holding up a sign
7 that said vote Trump.

8 Anyway, it was an interesting day. Thank you.
9 Y'all have been fun to work with. And if you get
10 down to Bamberg, stop in and see us. It's a big
11 town. We got a couple stoplights. It won't take
12 you long to get through. But I enjoy coming up to
13 Lexington. Y'all got a great crowd up here,
14 including Ms. Hope. She helps everybody around
15 here. She runs a tight ship. She's got your work
16 excuse. She's also -- you got them their checks?

17 THE CLERK: They don't trust me with the
18 checks.

19 THE COURT: Thank y'all very much. Have a
20 pleasant evening.

21 (The jury is excused at 4:00 PM.)

22 THE COURT: All right. Mr. Johnson?

23 MR. JOHNSON: Yes, Your Honor. An issue I
24 wanted to ask you about. Under possession of
25 pseudoephedrine, they have it as zero to 10 second.

1 Reviewing the language, if we ask Your Honor to
2 basically sentence as a first, it doesn't say for
3 prior violations or previous violations in this
4 article; it just says -- I notice under the language
5 of it, it just says --

6 THE COURT: Under the ephedrine statute?

7 MR. JOHNSON: Possession of the crushed
8 pseudoephedrine. It says: Convicted of Subsection
9 B II or E, and then it goes on to say, for second or
10 subsequent offense. So if that language applied
11 only to the statute, he has no priors under this
12 statute; the priors he has are under the general
13 possession of methamphetamine.

14 THE COURT: But that won't affect the
15 manufacturing sentence.

16 MR. JOHNSON: No, sir.

17 THE COURT: Well, I'm going to run them
18 concurrent.

19 MR. JOHNSON: Yes, sir. We would ask that you
20 sentence him as a first --

21 THE COURT: I'm sorry?

22 MR. JOHNSON: As a first offense on the
23 possession of altered pseudoephedrine because of
24 that language. That's zero to -- but I --

25 THE COURT: I'm going to run them concurrent

1 and give him the minimum.

2 MR. JOHNSON: Yes, sir. I just wanted to ask
3 that for the record. Because that's that way the
4 statute is worded, I think I should ask that.

5 THE COURT: Well, I'm going to be as lenient as
6 I can.

7 Where are the sentence sheets?

8 MR. JOHNSON: Judge, do you want me --
9 basically it says zero to ten on the sheet. You're
10 ruling that you feel it is a second for the
11 possession of altered pseudoephedrine, that he
12 should be sentenced as a --

13 THE COURT: Well, what's the difference in the
14 sentencing?

15 MR. JOHNSON: Well, it's zero to five or zero
16 to ten. And, just for the record, since it's a
17 first or second because of that language, I wanted
18 to ask Your Honor, if you're going to rule that it's
19 a second, consider that a second offense, for
20 sentencing purposes.

21 THE COURT: Is it first or second? I don't
22 know.

23 MR. BELL: Your Honor, we certainly could make
24 the argument, based on the enhancement statute, that
25 that would apply to be a second. However, given the

1 minimum on the principal charge, we'll certainly
2 consent to reducing the CDR to a first offense.

3 THE COURT: First offense on the --

4 MR. JOHNSON: The possession of the crushed
5 pseudoephedrine. We just have to change the CDR
6 real quick, Judge. I'm sorry, Judge. I just have
7 to look up the CDR code real quick.

8 THE COURT: Well, let's do the sentence and
9 then you can change it.

10 MR. JOHNSON: Yes, sir. I'm just going to
11 scratch out zero to ten and put in zero to five, if
12 that's all right.

13 Judge, my other issue is I'm trying to locate
14 the date -- the original bond out date. He bonded
15 out and went back in. And I didn't know if the
16 solicitor -- I'm trying to check that out.

17 THE COURT: I'm going to give him all the time
18 that the statute allows.

19 MR. JOHNSON: Yes, sir.

20 Your Honor, at this time, I'd now make my
21 motion for a new trial and set aside verdict.

22 THE COURT: I'll be glad to hear from you.

23 MR. JOHNSON: Judge, based on the previous
24 objections and motions and taking the evidence in
25 the light most favorable to the State, we'd move to

1 set aside verdicts and move for a new trial.

2 THE COURT: I respectfully deny it for the same
3 reasons set forth on the record a number of times on
4 all the others. It's obviously --

5 MR. BELL: May I approach, Your Honor.

6 THE COURT: -- a question for the jury --

7 MR. BELL: I apologize.

8 THE COURT: -- to rule on the credibility of
9 the witnesses. And it was a matter for them to
10 decide.

11 Gentlemen, y'all are absolutely sure on this
12 manufacturing that his prior record -- that none of
13 it is suspendable?

14 MR. BELL: That's correct, Judge.

15 THE DEFENDANT: None of what?

16 THE COURT: Sir?

17 THE DEFENDANT: I didn't hear what you said,
18 sir. I'm sorry.

19 THE COURT: None of my sentence is suspendable.

20 MR. JOHNSON: The mandatory ten years is not
21 suspendable, the mandatory --

22 THE DEFENDANT: I know someone who went to
23 trial on a third manufacturing and got a suspendable
24 sentence. And I was told in jail that the law had
25 changed. But I don't know. Brody Sexton went on a

1 third and ended up getting time served, but he'd
2 been cooperating with the --

3 THE COURT: Point me to a provision in the
4 statute where it says I cannot suspend it.

5 MR. BELL: If you'll give me a moment, Your
6 Honor.

7 THE COURT: Because if I can, I will.

8 THE DEFENDANT: I was told that the law changed
9 about a year and a half ago to make it so that you
10 could suspend it and make it so that probation or
11 parole could be granted. But...

12 MR. JOHNSON: Your Honor, it's my understanding
13 that the only thing that you can suspend is a first
14 or a second. And this being a third --

15 THE COURT: I know what everybody's
16 understanding is. I want to see the current statute
17 that was in effect the date of this crime.

18 MR. BELL: I have Ms. Mayes getting the
19 statute.

20 THE COURT: All right. Let's stand at ease for
21 a minute.

22 (Brief pause on the proceedings.)

23 THE COURT: All right.

24 MR. BELL: It's in the first paragraph about
25 the last four lines.

1 THE COURT: First four lines down from the
2 bottom?

3 MR. BELL: The first paragraph on that second
4 page, Your Honor. I believe it starts on the fourth
5 line on that first paragraph.

6 THE COURT: Not withstanding any other
7 provision, a person convicted and sentenced pursuant
8 to this subsection for a third or subsequent in
9 which all prior offenses were for possession may
10 have the sentence suspended.

11 MR. BELL: Yes, sir. And that is not the case
12 on this particular defendant. The line after that,
13 I believe, finally says: If that is not the case,
14 then the sentence is not suspendable or
15 non-suspendable.

16 THE COURT: So all of his priors were not
17 simply for possession, they were for -- some for
18 sale or manufacturing or trafficking or --

19 MR. BELL: Your Honor, he does have several
20 different convictions for both PWID and
21 distribution.

22 MR. JOHNSON: Your Honor, just to have a clear
23 record of what they've provided, there's possession
24 on there, but they have a distribution
25 methamphetamine that I believe they're relying upon,

1 if you want to read that into the record.

2 MR. BELL: Your Honor, may I approach? Your
3 Honor, here are his certified priors as they relate
4 to drug offenses. Your Honor, if you'd like me to
5 read his record or read his rap into the record at
6 this time, I'd be happy to.

7 THE COURT: Well, they don't have to go very
8 far with it because in 2005 he had a distribution of
9 meth, so that takes it out of all the priors being
10 for possession.

11 MR. BELL: Yes, sir.

12 THE COURT: And another distribution within
13 proximity of -- what is GHB?

14 MR. BELL: The date-rape drug, Your Honor.

15 THE COURT: There's just a number of
16 distributions all along.

17 All right. Let's come forward, please.

18 Anything on behalf of the State before I impose
19 sentence?

20 MR. BELL: Your Honor does have his prior
21 record. He has ten-plus prior convictions on his
22 record spanning from possession and distribution and
23 PWID. Your Honor has heard the facts of the case.
24 We trust the discretion of the Judge.

25 THE COURT: All right. Mr. Johnson, you agree

1 from the reading of the statute, the manufacturing
2 meth third offense under the statute, I have to give
3 him a mandatory minimum of 10 years up to 30 years,
4 and it cannot be suspended. We've been over that.
5 But the statute says the only way I can suspend it
6 is if all the priors were for possession. And what
7 has been presented to me is that in February of
8 2005, he had a distribution of meth first, PWID of
9 GHB, a distribution of GHB. So we have a number of
10 prior distributions which would preclude any
11 suspended sentence. You agree with that?

12 MR. JOHNSON: Yes, sir. There's a sentence on
13 one, on the PWID GHB. The following there was a
14 nol-pros. My client was asking about this, I just
15 want to clarify for the record. It's a separate
16 indictment that was dismissed, and the conviction
17 was --

18 THE COURT: Well --

19 MR. JOHNSON: But we're in agreement. He does
20 have those priors, Your Honor.

21 THE COURT: -- from what I'm reading, it's not
22 nol-prossed, they're all -- 2004-GS-10-4626 was
23 conspiracy to distribute ecstasy; 4692 is a
24 distribution of methamphetamine; 4705, PWID GHB;
25 4795, distribution of GHB; 4690, a distribution of

1 GHB, all by Judge Houston. What was that, in
2 Charleston?

3 THE DEFENDANT: Yes, sir. I pled to that and
4 got probation.

5 THE COURT: I understand.

6 THE DEFENDANT: All those charges were one
7 thrown at -- I was in the wrong place.

8 THE COURT: Well, I understand that. But I'm
9 trying to help you all I can --

10 THE DEFENDANT: I understand, sir.

11 THE COURT: -- but my hands are tied.

12 MR. JOHNSON: Judge, just for the record, I was
13 just referring to this one ending in 4689, the copy
14 provided by the solicitor, it has NP written on it
15 with no sentence, so it looked to me like that was a
16 nol-pros from that one charge.

17 THE DEFENDANT: It wouldn't make a difference.

18 THE COURT: 4689 was nol-prossed. But there
19 were a number of other ones.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: All right. Anything you want to
22 tell me, Mr. Johnson?

23 MR. JOHNSON: Judge, I believe the final count
24 is 298 days time served. He's been in and served a
25 lot of time in the county. He's got other pending

1 charges.. I'd ask the Court to be as lenient as
2 possible. You've heard some of his history; he's
3 raised two children, they're grown, working
4 overseas, highly successful. He's very well
5 educated and, of course, has maintained his
6 innocence. I would just point out that he's done a
7 lot with his life, Judge, and we'd ask for as much
8 leniency as possible. In addition, I think my
9 client may want to address the Court.

10 THE DEFENDANT: Sir, is there any way you can
11 make it a second -- I mean, I've never had a
12 manufacturing charge -- which would allow it to be
13 nonviolent and I could be paroled?

14 THE COURT: The only thing I can do -- I mean,
15 I can't make it second. I think they gave you that
16 opportunity earlier. You've been tried on a
17 third and I --

18 THE DEFENDANT: I never got that opportunity.

19 MR. JOHNSON: Your Honor, I will say for the
20 record, I received an offer from Mr. Hubbard when he
21 was deputy solicitor, when I initially was
22 appointed. I did deliver that to my client. That
23 was an offer of pleading to a second, and that was
24 rejected, Your Honor.

25 THE DEFENDANT: And withdrawn.

1 THE COURT: As I understand, the sentence range
2 for a third or more, the defendant must be in prison
3 for not less than ten years, no more than 30 years,
4 or fine not more than \$50,000. Is that the way you
5 read it?

6 MR. BELL: If I wrote that on there, Your
7 Honor, it certainly was a --

8 THE COURT: You didn't write anything. I'm
9 reading the statute.

10 MR. BELL: I'll have to double-check it, Your
11 Honor.

12 MR. JOHNSON: We'd certainly request a fine,
13 Your Honor, if that's possible.

14 MR. BELL: May I see the statute again, Your
15 Honor? It does certainly --

16 THE COURT: Up to \$50,000; right?

17 MR. BELL: Not more than.

18 THE COURT: So that means up to.

19 MR. BELL: Your Honor, I think this is a --
20 give me just one moment, Your Honor.

21 THE COURT: I'll tell you what we can do. I'll
22 give you all a chance to look at it, because I'd
23 hate to give this man ten years.

24 THE DEFENDANT: Thank you, sir.

25 THE COURT: I may not have a choice.

1 MR. BELL: Your Honor, this was printed off of
2 Westlaw. I'm going to check with our official code
3 of laws --

4 THE COURT: Here's what we're going to do: I'm
5 going to let you look at it over the weekend. I'll
6 be in Aiken Monday, Tuesday, Thursday of next week.
7 I'll do the sentencing down there. Get me some law
8 on it. Fair?

9 MR. BELL: Yes, sir.

10 THE COURT: If I can give him a fine, I am.

11 MR. JOHNSON: Thank you, Judge.

12 MR. BELL: Your Honor, I'm happy to run and
13 print the official code out if you're willing to
14 wait.

15 THE COURT: I'll be glad to wait. I don't know
16 how long it takes y'all to print the official --

17 MR. BELL: Shouldn't take long, Your Honor.

18 THE COURT: You think Westlaw may be wrong?

19 MR. BELL: I don't know. I've done many of
20 these trials and never had this issue come up.

21 MR. JOHNSON: Your Honor, can I ask for that
22 time --

23 THE COURT: Certainly.

24 MR. JOHNSON: -- to wait and pursue this in
25 Aiken? Can I ask for that time?

1 THE COURT: We're pulling it up here and it
2 says the same. All right. Y'all call me Monday
3 morning and we'll set it. We'll do it Monday or
4 Tuesday or Thursday.

5 MR. BELL: What week is that, Your Honor?

6 THE COURT: Next week or the week after,
7 whichever one you want.

8 MR. BELL: Sounds good.

9 THE DEFENDANT: Next week, please, sir.

10 MR. JOHNSON: Thank you, Judge.

11 MR. BELL: Thank you, Your Honor.

12 (Court adjourned at 4:19 PM.)

13 (The following proceedings were held November
14 12, 2015, at 9:45 AM.)

15 THE COURT: Good morning, sir. How are you?

16 THE DEFENDANT: Okay.

17 THE COURT: All right. We're back on the
18 record. This is the case -- you want to call it,
19 Mr. Solicitor?

20 MR. BELL: Thank you, Your Honor. The State
21 would call the case of State vs. James Bruce Miller
22 on two indictments; Indictment 2014-GS-32-00971,
23 indicted for manufacturing methamphetamine;
24 Indictment 2015-GS-32-1585, indicted for possession
25 of altered pseudoephedrine.

1 THE COURT: All right. This is the case we had
2 in Lexington County last week. We tried it on
3 Thursday, I think.

4 MR. BELL: Yes, sir.

5 MR. JOHNSON: Yes, Your Honor.

6 THE COURT: And that would have been November
7 the 5th. The jury returned a verdict of guilty on
8 both counts. We started the sentencing proceedings
9 and there was some question on the manufacturing of
10 meth third offense. In reading the statute, it was
11 my interpretation of the statute that because some
12 of the prior offenses dealt with more than
13 possession, that I was precluded from suspending any
14 of the sentence, and the sentence was mandatory
15 minimum of 10 to 30. And the statute reads: Or a
16 fine of not more than \$50,000. We had some
17 discussion on whether or not the fine was correct.
18 I gave y'all time to look at it.

19 Of course on the other indictment, which was
20 possession of altered pseudoephedrine, that carried
21 zero to five. Anything we need to add to anything,
22 Mr. Johnson, before we impose sentence?

23 MR. JOHNSON: Your Honor, just that the
24 sentencing sheet, the correction on the possession
25 of altered pseudoephedrine says zero to five, which

1 is correct, as a first offense. But it says up to
2 10,000. That 10,000 is for a second. I believe the
3 statute indicates it's up to \$5,000 potential fine
4 on a first. And since we're going with a first --

5 THE COURT: Is it and/or, or or?

6 MR. JOHNSON: Yes, sir, I believe it's and/or.
7 Under the statute it says: Prison not more than
8 five years, and fine not more -- or it's and fine
9 not more than \$5,000. So it's and.

10 THE COURT: It's not or, it's and.

11 MR. JOHNSON: That's correct. Its says: Must
12 be in prison not more than five years and fine not
13 more than \$5,000. It does say and on that statute
14 on a first.

15 And we would also -- it's our position that
16 they have sufficient priors to make this a third;
17 however, they are mostly possessions. And under the
18 manufacturing statute, for manufacturing meth third,
19 they have to rely upon, I believe, a Richland County
20 conviction from 2013 to make this not a -- make the
21 ten years not suspendable. And it would be our
22 position that my client was only convicted of
23 possessions in 2013, that he was not convicted of a
24 proximity or distribution, as reflected on the rap
25 sheet, so, therefore, you could suspend the ten and

1 give him probation. And that would be our position
2 on that, Judge.

3 In addition to the facts, we'll just put on the
4 record, I believe he has a total of 230 days that
5 he's served. There is a --

6 THE COURT: How many?

7 MR. JOHNSON: 230. And there with is a bench
8 warrant that had been served that would need to be
9 lifted, Judge. If you want me to go into mitigation
10 regarding his family, I could do that at this time.
11 I know Your Honor has already heard that as part of
12 his testimony.

13 THE COURT: I did. He's got two sons; one is
14 working overseas and one is a CPA, I believe.

15 THE DEFENDANT: They're both in Europe. I
16 don't have anyone here.

17 THE COURT: One is a CPA and one is a what?

18 THE DEFENDANT: An attorney.

19 THE COURT: That's right.

20 MR. JOHNSON: And we'd ask, Judge --

21 THE COURT: And I remember his educational
22 background, he's a real estate developer, went to
23 the University of South Carolina.

24 THE DEFENDANT: Master's in psychology.

25 THE COURT: And, unfortunately, somewhere

1 along, looks like later in life, he's gotten
2 involved in some type of an addiction problem, which
3 led to the record and, hence, the problems just
4 ongoing.

5 MR. JOHNSON: Yes, sir. And because he's
6 retired, he does not have financial resources. We'd
7 ask Your Honor to consider -- if Your Honor is going
8 to consider this a non-suspendable ten, then we'd
9 ask Your Honor to consider just a fine and -- a
10 small fine instead of the ten years.

11 THE COURT: Well, as I read the statute,
12 Mr. Johnson, I can't suspend it. I would if I
13 could, under his circumstances, even though he's got
14 a substantial record. My reading of the statute, I
15 can't suspend it. If you want to appeal that, go at
16 it.

17 MR. JOHNSON: Yes, sir.

18 THE COURT: Also, I read it that sentence says
19 it has to be time or the fine. If he pays the fine,
20 he doesn't have to do the time; but if he doesn't
21 pay the fine, he's got to do the time. That's the
22 way I've been doing it for ten years. If that's
23 wrong, then you certainly can have that reviewed. I
24 don't know that I can help any more than --

25 MR. JOHNSON: Yes, sir. Other than that, just

1 to say, it does appear he's raised two children, and
2 has obviously done a great job raising them.
3 They're very educated and very successful. I'm very
4 impressed with his abilities and his education,
5 Judge. I'd ask that you be as lenient as possible.
6 And anything my client might have to add.

7 THE COURT: Mr. Miller, anything you want to
8 tell me?

9 THE DEFENDANT: I think Mr. Johnson has said it
10 all. You're correct, I did have an addiction. I
11 don't now. That's one of the reasons, as I pointed
12 out during testimony, that I was working at
13 Transitions and other places trying to pay back..

14 I had a bad accident 2004, woke up blind, and
15 spent two years at the University Medical Center.
16 And they fed me pills, all kinds of pain pills like
17 M&Ms. And when I came off those, I did have an
18 addiction. I signed myself in to Morris Village,
19 paid for it -- my family paid for it. And I have
20 relapsed once or twice, but have been clean for the
21 last year or two, and plan to stay that way.

22 Any leniency you can give me, I would
23 appreciate it.

24 THE COURT: I'll give you the minimum. That's
25 about as lenient as I can get.

1 THE DEFENDANT: So it's no time?

2 THE COURT: All right. Sir, on the
3 manufacturing, that is a ten-year sentence or a
4 \$10,000 fine. On the pseudoephedrine, that's a
5 three-year sentence and \$1,000. That will run
6 concurrent, at the same time, and I'll give you
7 credit for all the time I can. I assume it's 230
8 days, but whatever the statute allows. Good luck to
9 you, Mr. Miller.

10 THE DEFENDANT: I don't understand. So I do
11 the three years and pay --

12 THE COURT: You do the three years. You'll do
13 it at the same time you're doing the time on the
14 manufacturing. You do it all together.

15 THE DEFENDANT: Well, if I pay the \$10,000
16 fine, I do no time; right?

17 THE COURT: You do the other one, but you've
18 about maxed that out.

19 THE DEFENDANT: I'm sorry, sir?

20 THE COURT: You've about maxed that out.

21 I'll tell you what I'll do. I'll give you 230
22 days on that. So if you can pay the fine, you'll be
23 through.

24 THE DEFENDANT: Pay the \$10,000 fine? Can I
25 have any time to pay that, like two payments?

1 THE COURT: I don't any control over that.

2 Thank you.

3 MR. JOHNSON: Thank you, Judge.

4 MR. BELL: Thank you, Judge.

5 Your Honor, very briefly, he does still have
6 pending charges in Lexington County. So Deputy
7 Newberry will transport him back to LCDC.

8 THE COURT: What's he got over there?

9 MR. JOHNSON: Several charges.

10 THE DEFENDANT: I received three charges after
11 I got to jail that have the wrong address, wrong
12 name, places I've never been. I know not to argue
13 the case, but I --

14 THE COURT: I hope they can maybe look at them
15 and -- but you got this ten-year sentence. I don't
16 have any control over --

17 THE DEFENDANT: The solicitor had offered to
18 drop those originally.

19 MR. BELL: As part of the offer for him to
20 plead to manufacturing second where he could argue
21 for probation. That's obviously not the deal
22 anymore, Your Honor.

23 THE COURT: All right. Well, Mr. Johnson will
24 do all he can to help you.

25 THE DEFENDANT: Thank you, sir.

1 THE COURT: Thank you, gentlemen.

2 MR. BELL: Thank you, Your Honor.

3 MR. JOHNSON: Thank you, Judge.

4 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 2nd, 3rd, 4th, 5th, 12th days of November, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 10, 2016

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

State of South Carolina,

MOTION TO SUPPRESS

vs.

2014A3220300010,013, 014

JAMES MILLER Defendant

The Defendant moves to suppress the pseudoephedrine logs provided by the state.

Legal Analysis:

The Defendant moves to exclude the pseudoephedrine logs under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections Three, Ten, and Fourteen of the South Carolina Constitution.

Specifically, the Defendant challenges the admissibility of the purchase logs based on the following constitutional and evidentiary grounds: (1) Rule against hearsay; (2) Confrontation Clause; and (3) Due process.

The Pseudoephedrine Purchase Logs Violate the Rule against Hearsay Because the Logs Do Not Fall under the Business Records Exception and are Untrustworthy.

The Pseudoephedrine Purchase Logs Violate the Confrontation Clause Because the Logs are Testimonial in Nature.

In Melendez-Diaz v. Massachusetts, the United States Supreme Court held that the Confrontation Clause applies to testimonial business records. 557 U.S. 305, 321-324 (2009)

The *Melendez-Diaz* Court clarified that, while “[d]ocuments kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status[,] . . . that is not the case if the regularly conducted business activity is the production of evidence for use at trial.” *Id.* (citing Fed. R. Evid. 803(6)).

Thus, records generated for use in litigation do not meet these exceptions; particularly when the contemplated litigation is criminal prosecution and a defendant’s constitutional rights are implicated. See *Id.* (citing *Palmer v. Hoffman*, 318 U.S. 109 (1943)).

In *Bullcoming v. New Mexico*, 131 S.Ct. 2705, 2717 (2011), the United States Supreme Court held that “[a] document created solely for an ‘evidentiary purpose,’ . . . made in aid of a police investigation, ranks as testimonial.”

The *Bullcoming* Court found that a corporate employee providing a records

affidavit was not an adequate surrogate to satisfy the confrontation clause because a defendant must have the opportunity to confront the witness who made the observation or performed the analysis recorded. *Id.* at 2708 (applying *Melendez-Diaz* and noting that a document created solely for an evidentiary purpose is likely testimonial).

Even if the purchase logs were admissible under the business records exception, the logs are ultimately inadmissible under the Confrontation Clause.

The Pseudoephedrine Purchase Logs Violate the Rule against Hearsay Because the Logs Do Not Fall under the Business Records Exception and are Untrustworthy.

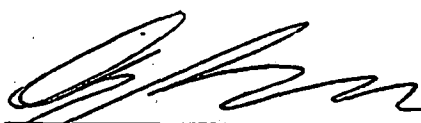
See *Palmer v. Hoffman*, 318 U.S. 109 (1943) (finding accident report completed by railroad employee not admissible under the business records exception to the hearsay rule because it was prepared primarily for use in litigation and not in the conduct of business).

State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) (finding trial court properly refused to admit medical report when no one could testify to the identity, mode of preparation, or whether report was made in the regular course of business at or near the time of the accident).

The Purchase Logs Must Be Properly Authenticated

Connelly v. Wometco Enterprises, Inc., 314 S.C. 188, 191, 442 S.E.2d 204, 206 (Ct. App. 1994) (holding employment file, although relevant and otherwise admissible, was properly excluded from evidence where the employer failed to offer the file through its custodian or another qualified witness)

LEXINGTON, South Carolina
August 7, 2015



Ola Johnson
Attorney for the Defendant
PO Box 549
Lexington, SC 29071
(803) 360-8692

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

State of South Carolina,

vs.

JAMES MILLER,

Defendant

MOTION TO SUPPRESS

2014A3220300010,013, 014

The Defendant moves to suppress all evidence seized from Room 126 at the Motel 6 located at 613 Knox Abbott Dr. in Cayce, South Carolina pursuant to a search warrant as evidence in this case as well as evidence seized outside of Room 126 described as a wallet containing "meth powder" and the ID of James Miller and statements and evidence that resulted from the search of Room 126 as well as testimony related to this evidence.

Summary of Facts

At approximately 5:47 p.m. on the afternoon of January 8th, 2014, officers with Cayce Public Safety knocked on the door of Room 126 at the Motel 6 located at 613 Knox Abbott Dr. in Cayce, South Carolina following an "anonymous call of several subjects manufacturing methamphetamine". Law enforcement entered the room without a search warrant following inconsistent reports by law enforcement of smelling "a strong chemical odor" and one officer witnessing a co-defendant making a "quick movement to the bathroom". Following this, a search was conducted and items were seized pursuant to a search warrant obtained by that agency. Law enforcement reports indicate the seizure of items they describe as consistent with the production of methamphetamine. Following this law enforcement reports seizing a wallet behind a coke machine outside of the room after observing the defendant James Miller in handcuffs "fidget" behind his back while standing near the machine. Law enforcement reports obtaining a wallet with the defendants ID and a coffee filter with a substance that tested positive for pseudoephedrine.

The search of Room 126 was illegal and in violation of Article I, § 10 of the South Carolina Constitution and the Fourth Amendment of the Federal Constitution, and S.C. Code Section 17-13-140 proscribing unreasonable search and seizure.

The defendant in this case had a expectation of privacy and has standing to challenge the search of Room 126 as outlined in Minnesota v. Olson, 495 U.S. 91, 94 (1990).

ABSENCE OF REASONABLE SUSPICION FOR THE KNOCK AND TALK

In State v. Counts, 27546 (S.C. 7-8-2015) the South Carolina Supreme Court has held that in order to comply with the state constitutional right to privacy "law enforcement must have reasonable suspicion of illegal activity before approaching the

targeted residence and conducting the "knock and talk" investigative technique." The facts reported by law enforcement in this case report that the "knock and talk" performed by the initial officer was the result of an anonymous tip. Within the discovery the state has a name listed on a Dispatch Call History (copy attached) as the person providing the initial call. However this is the only information provided. An anonymous tip that a defendant was carrying a gun did not have sufficient indicia of reliability to establish reasonable suspicion to justify a Terry stop and frisk. Florida v. J.L., 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000); see also State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct. App. 2000). State v. Taylor, Op. No. 4687 (S.C. Ct. App. filed May 13, 2009). An anonymous tip was inherently unreliable and insufficient to establish reasonable suspicion of criminal activity where the tip was one in which the reliability could not be tested because the tipster was nameless, the tipster's location was unidentified, the tipster remained unaccountable, and the tipster failed to explain the origin of the allegation of criminal activity, provide any predictive information, or supply a basis for believing the tipster possessed inside information into defendant's affairs. Furthermore, the tip failed to provide any specific information indicating the tipster's knowledge of concealed criminal activity; therefore, the tipster did not risk his or her credibility and was free to fabricate the information with impunity. The tip described readily observable information, such as the individual's location and appearance, and stated the individual was *possibly* selling drugs. While the anonymous tip was trustworthy in the limited sense it assisted the officer in identifying defendant as a person matching the description of the individual whom the tipster wished to accuse, the tip demonstrated neither an extensive degree of familiarity with defendant's actions, nor any independent reliability in terms of the alleged possibility of criminal activity.

In this case law enforcement did not demonstrate that they had reasonable suspicion of illegal activity before approaching the targeted residence and conducting the "knock and talk". The report created by the Cayce public Safety fails to provide any information about the person that provided the call to law enforcement aside from a name that may or may not be the actual name of the person that called the agency. The facts do not support any method of testing the reliability of the person that made the call or information that would give details about the tipster's specific knowledge of the criminal activity.

SEARCH WARRANT

In this case law enforcement obtained a search warrant (copy attached) following the initial search of Room 126. The affidavit attached to the search warrant indicates that law enforcement received a "complaint of a chemical odor coming from Room 126 of the Motel 6." This is inconsistent with the information provided in Officer Garcia's incident report (copy attached) indicating a specific report of "subjects manufacturing methamphetamine" in Room 126. The affidavit also states that Sgt. Gleaton did encounter a chemical odor coming from Room 126 and conducted a "knock and talk". This is inconsistent with the initial report created by Officer Garcia that a chemical odor could be smelled after the door was opened. In addition Sgt. Gleaton created a report (copy attached) where he recorded that outside of Room 126 he detected a chemical odor that he "could not distinguish from a cleaner". The affidavit also states that after access to the room was granted by the occupants, Sgt. Gleaton "observed in plain view one open bucket containing acetone" There is no indication that the substance in the bucket had been tested prior to the creation of this affidavit or ever. The only other

items listed as being observed by Sgt. Gleaton in the room are a coffee pot and coffee filters.

The evidence indicates that no supplemental oral testimony was presented.

As the initial "knock and talk" conducted on Room 126 was in violation of the defendants right to privacy and the police report indicates that law enforcement entered the room following this and prior to obtaining a search warrant or due to any "exigent circumstance", this search was in violation of the defendants right to privacy and to be free from unlawful search and seizure.

The search of Room 126 resulted in the seizure of items consistent with manufacturing methamphetamine as well as an ID with the picture and name of James Miller. This also led to the detention and arrest of the defendant James Miller and the seizure of a wallet and pseudoephedrine along with a second ID card with James Miller listed on it, in the vicinity of Mr. Miller outside of Room 126.

The basis for this search and seizure was the search warrant mentioned above and no exigent circumstances or other exceptions to the search warrant requirement applied. In addition the search warrant contained insufficient information for the magistrate to find probable cause to issue the warrant.

"A magistrate may issue a search warrant only upon a finding of probable cause" State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997); S.C. Code Section 17-13-140. "The affidavit must contain sufficient underlying facts and information upon which a magistrate can make a probable cause determination." State v. Robinson, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999). "The duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed". State v. Adams 352 S.E. 2d 483 (1987).

In previous cases involving the search of a home for suspected illegal drugs, the South Carolina Court of Appeals has found that even in a case where police received citizen complaints about a high volume of foot traffic at a residence and a complaint of a citizen smelling marijuana in the vicinity of the same residence as well as a visitor leaving the residence and being arrested with marijuana, the facts in the affidavit were still insufficient to establish probable cause for a search warrant. *State v. Gentile*, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007). The supporting affidavit must set out facts sufficient to establish the reason law enforcement believes they will find evidence of a crime. *State v. Baccus*, 625 S.E. 2d 216 (2006).

The Search warrant and the detention of the defendant James Miller and the seizure of the wallet located near Mr. Miller and through the observation of Mr. Miller by law enforcement were the result of the police exploiting their illegal actions and thereby requires that the evidence obtained be suppressed as "fruit of the poisonous tree".

This violation of Mr. Miller's rights under the Fourth Amendment cannot be admitted under a good faith exception

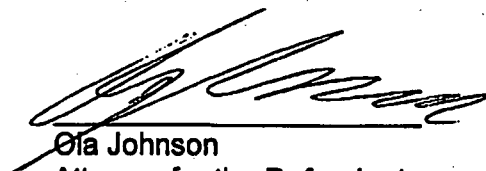
"The good faith exception does not apply if the underlying affidavit does not

include sufficient information to allow a magistrate to determine probable cause." *State v. Adolphe*, 314 S.C. 89,441 S.E.2d 832 (1994).

In addition, for the reasons stated above, this search warrant violates the law of South Carolina and exclusion is the appropriate remedy. S.C. Code Section 17-13-140, Article I, § 10 of the South Carolina Constitution.

Therefore the evidence seized from the execution of this search warrant is the product of an unlawful search and seizure and exclusion of the evidence is required to deter improper police behavior and to avoid the prejudicial effect on defendant James Miller.

Lexington, South Carolina
August 7, 2015



Ola Johnson
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WITNESSES

Cayce Department of Public Safety

Unk Gleaton

Law Enforcement Case #: 1400194

SRH

ARREST WARRANT NUMBER

2014A3220300010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 5/5/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS3200971

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2014

THE STATE

vs.

James B Miller

CDR #: 3200

Indictment for

**MANUFACTURING
METHAMPHETAMINE**

§ 44-53-0375(B)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

INDICTMENT FOR MANUFACTURING METHAMPHETAMINE

§ 44-53-0375(B)(3)

At a Court of General Sessions, convened on APRIL 2014, the Grand Jurors of Lexington County present upon their oath:

That James B Miller did in Lexington County, South Carolina, on or about January 8, 2014, knowingly and intentionally manufacture Methamphetamine, a controlled substance, as defined under the provisions of Section 44-53-110, et. seq. of the South Carolina Code of Laws (1976), as amended, without lawful authority, in violation of Section 44-53-375 (B)(3) of the South Carolina Code of Laws (1976), as amended.

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

ASSISTANT SOLICITOR

WITNESSES

Cayce Department of Public Safety

Unk Gleaton

Law Enforcement Case #: 1400194

SDS

ARREST WARRANT NUMBER

14-STR-00162

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015GS3201585

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2015

THE STATE

vs.

James B. Miller

CDR #: 3269

Indictment for

Possession of Altered Pseudoephedrine

§ 44-53-0398

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Possession of Altered Pseudoephedrine

§ 44-53-0398

At a Court of General Sessions, convened on July 2015, the Grand Jurors of Lexington County present upon their oath:

That James B. Miller did in Lexington County, South Carolina, on or about January 9, 2014, possess or have under his control a substance containing pseudoephedrine which had been altered from its original condition so as to be powdered or crushed, all in violation of § 44-53-398, the code of laws of South Carolina, (1976), as amended.

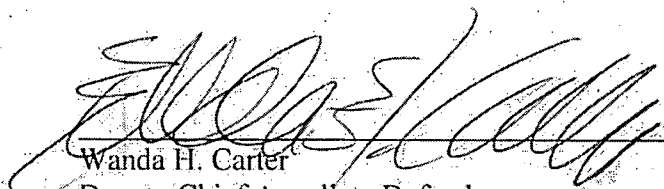
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 21st day of November, 2016.

RECEIVED

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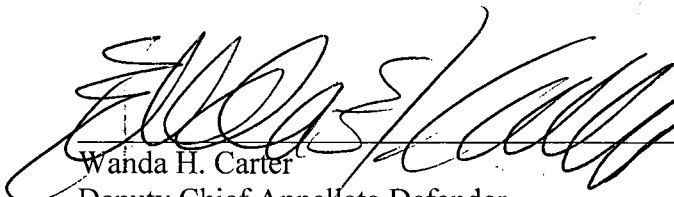
SC Court of Appeals

408

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 21st day of November, 2016.