

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

FRED JACK SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000712

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 17-19, 2014.....	1
HEARING TRANSCRIPT DATED JUNE 9, 2014.....	483
APPLICATION FOR POST-CONVICTION RELIEF	497
APPLICANT’S EXHIBIT #1	504
APPLICANT’S EXHIBIT #2	505
APPLICANT’S EXHIBIT #3	513
RETURN.....	518
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 7, 2018	527
ORDER OF DISMISSAL.....	682
INDICTMENTS AND SENTENCE SHEETS.....	693

State of South Carolina)	In the Court of General Sessions
)	Fifth Judicial Circuit
County Of Richland)	2013-GS-40-5845
	2013-GS-40-5846
	2013-GS-40-5848
	2013-GS-40-5849
	2013-GS-40-5850
	2013-GS-40-5851

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

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

B E F O R E:

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

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

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John Christopher Shipman, Esquire
Attorneys for the Defendant

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Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>

MONDAY, MARCH 17, 2014

Jury Voir Dire.	14

Jury Selection.	37

Jackson vs. Denno Hearing

Jerry Malondado

Direct Examination by Mr. Mathews.	69

Cross-examination by Mr. Hawks.. . . .	72

Joseph Clarke

Direct Examination by Mr. Mathews.	75

Cross-examination by Mr. Hawks.. . . .	84

Chauncey Smith

Direct Examination by Mr. Mathews.	88

Cross-examination by Mr. Hawks.. . . .	93

Redirect Examination by Mr. Mathews.	94

Lyle Hearing

Chauncey Smith

Examination by the Court.. . . .	106

Direct Examination by Ms. Cavanaugh.	108

Cross-examination by Mr. Shipman.. . . .	108

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Allison Ricard	
Direct Examination by Mr. Mathews.	119
Cross-examination by Mr. Hawks.. . . .	124
 <i>TUESDAY, MARCH 18, 2014</i>	
<i>Guilty Plea</i>	
Fred Jack Sanders	
Examination by the Court.. . . .	150
Opening Statement by Mr. Mathews.. . . .	163
Opening Statement by Mr. Shipman.	169
 <i>State's Case in Chief</i>	
Chauncey Smith	
Direct Examination by Ms. Cavanaugh.	172
Cross-examination by Mr. Shipman.. . . .	203
Redirect Examination by Ms. Cavanaugh.	228
Melody Galinski	
Direct Examination by Mr. Mathews.	231
Cross-examination by Mr. Hawks.. . . .	233
William Cedarstaff	
Direct Examination by Mr. Mathews.	235

1	Jerry Maldonado	
2	Direct Examination by Mr. Mathews.	236
3		
4	Joseph Clarke	
5	Direct Examination by Mr. Mathews.	240
6	Cross-examination by Mr. Hawks.. . . .	256
7		
8	William Gonzales	
9	Direct Examination by Ms. Cavanaugh.	263
10	Cross-examination by Mr. Hawks.. . . .	268
11		
12	David Unger	
13	Direct Examination by Ms. Cavanaugh.	269
14	Cross-examination by Mr. Hawks.. . . .	271
15		
16	Randy James	
17	Direct Examination by Ms. Cavanaugh.	272
18	Cross-examination by Mr. Hawks.. . . .	274
19		
20	Sara Brassell	
21	Direct Examination by Mr. Mathews.	276
22		
23	Allison Ricard	
24	Direct Examination by Ms. Cavanaugh.	284
25	Cross-examination by Mr. Hawks.. . . .	300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Redirect Examination by Ms. Cavanaugh.	309
Tara Kinney	
Voir Dire Examination by Ms. Cavanaugh.. . . .	315
Direct Examination by Ms. Cavanaugh.	317
Cross-examination by Mr. Hawks.. . . .	331
<i>WEDNESDAY, MARCH 19, 2014</i>	
William Lindsey	
Direct Examination by Mr. Mathews.	344
Cross-examination by Mr. Hawks.. . . .	352
<i>End of State's Case in Chief</i>	
<i>Defendant's Case</i>	
Fred Jack Sanders	
Direct Examination by Mr. Hawks.	374
Cross-examination by Ms. Cavanaugh.. . . .	377
Redirect Examination by Mr. Hawks.	389
Recross-examination by Ms. Cavanaugh.. . . .	389
<i>End of Defendant's Case</i>	
Closing Argument by Mr. Hawks.. . . .	400
Closing Argument by Ms. Cavanaugh.. . . .	417
Jury Charge.. . . .	431
Verdict.. . . .	458

1	Jury Polling.	459
2	Certificate Page.	482

E X H I B I T S

No.	Description	I.D.	Ev.
S-1	Photograph	149	174
S-2	Photograph	149	181
S-3	Photograph	149	181
S-4	Photograph	149	181
S-5	Photograph	149	181
S-6	Photograph	149	181
S-7	Photograph	149	181
S-8	Photograph	149	181
S-9	Photograph	149	181
S-10	Photograph	149	181
S-11	Photograph	149	181
S-12	Photograph	149	181
S-13	Photograph	149	181
S-14	Photograph	149	181
S-15	Photograph	149	181

1	No.	Description	I.D.	Ev.
2	S-16	Photograph	149	181
3	S-17	Photograph	149	181
4	S-18	Photograph	149	181
5	S-19	Photograph	149	181
6	S-20	Photograph	149	181
7	S-21	Photograph	149	181
8	S-22	Photograph	149	181
9	S-23	Photograph	149	181
10	S-24	Photograph	149	181
11	S-25	Photograph	149	181
12	S-26	Photograph	149	181
13	S-27	Photograph	149	181
14	S-28	Photograph	149	181
15	S-29	Photograph	149	181
16	S-30	Photograph	149	181
17	S-31	Photograph	149	181
18	S-32	Photograph	149	181
19	S-33	Photograph	149	181
20	S-35	Photograph	149	181
21	S-36	Photograph	149	181
22	S-37	Photograph	149	
23	S-38	Photograph	149	
24	S-39	Photograph	149	
25	S-40	Photograph	149	

	<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>
1				
2	S-41	Photograph	149	
3	S-42	Photograph	149	270
4	S-43	Green Box	149	196
5	S-44	Advice of Rights Form	242	243
6	S-45	Statement	242	254
7	S-46	Pills and Powder Substance	247	329
8	S-47	Contain with Syringes	247	314
9	S-48	Spoons and straws	261	314
10	S-49	Enlarged Map	285	285
11	S-50	Collection of Items	290	314
12				
13				
14	C-1	Mental Evaluation		14
15	C-2	Advice of Rights Form		54
16	C-3	Statement		54
17	C-4	Statement		252
18				
19				
20				
21				
22				
23				
24				
25				

1 *MONDAY, MARCH 17, 2014*

2 THE COURT: Is Fred Jack Sanders present?

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

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

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

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

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

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

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

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

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

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

21 DEFENDANT: And are you the executor?

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

1 you, if you are Fred Jack Sanders.

2 DEFENDANT: I'm the beneficiary.

3 THE COURT: What is your name?

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

5 THE COURT: What is your name?

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

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

15 THE COURT: Is your name Fred Jack Sanders?

16 DEFENDANT: I am the beneficiary.

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

19 MR. HAWKS: I do, Your Honor.

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

22 THE COURT: Yes, Your Honor.

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

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

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

8 MR. HAWKS: Not guilty.

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

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

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

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

15 MR. HAWKS: I have, Your Honor.

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

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

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

1 MR. HAWKS: I have, Your Honor.

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

4 MR. HAWKS: I believe he does.

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

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

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

15 (A PAUSE.)

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

18 (A PAUSE.)

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

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

25 THE COURT: All right.

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

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

6 MR. HAWKS: He has, Your Honor.

7 THE COURT: You have a report?

8 MR. HAWKS: I do.

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

11 MR. HAWKS: Yes.

12 THE COURT: You have?

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

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

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

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

20 MR. HAWKS: No, Your Honor.

21 THE COURT: The answer is no?

22 MR. HAWKS: No, Your Honor.

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

24 (A PAUSE.)

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

1 the record. Any objection?

2 MR. HAWKS: No, Your Honor.

3 (MENTAL EVALUATION MARKED AS COURT'S EXHIBIT NUMBER
4 1.)

5 THE COURT: You ready for the jury?

6 MS. CAVANAUGH: Yes, Your Honor.

7 MR. HAWKS: Yes, Your Honor.

8 THE COURT: All right, bring the jury.

9 MS. CAVANAUGH: Your Honor, may we get a jury list?

10 THE COURT: I'm sorry?

11 MS. CAVANAUGH: May we get a copy of that list?

12 THE COURT: No.

13 (THE JURY PANEL ENTERS.)

14 JURY VOIR DIRE

15 THE COURT: Afternoon, ladies and gentlemen. As I
16 told you this morning, those of you who are chosen on a
17 jury will be sitting on a criminal case, and I'm going to
18 tell you a little bit about it right now. And the purpose
19 of this, another question and answer period, another
20 qualification period, is to find out if you know anything
21 about this case, or if you know any of the individuals
22 involved, or if you have any conflicts that may prevent you
23 from serving on a jury in this case.

24 I'm going to tell you a little bit about it in just a
25 minute, but let me just start by saying that as you

1 probably are aware, the prosecuting entity in any criminal
2 case, in South Carolina at least, is a solicitor's office,
3 and in some states they call it the district attorney.
4 Some places they call it the state's attorney, but in South
5 Carolina our criminal justice system is run by the
6 solicitor's office, and obviously law enforcement
7 communicates with the solicitor's office in preparation for
8 a case. So, I'm going to ask you some questions about your
9 involvement with law enforcement.

10 But first of all, I want to introduce to you the
11 solicitors that are going to be handling this case today.
12 They are assistant solicitors Kathryn Cavanaugh and Foster
13 Mathews. I need to know if any member of the jury panel is
14 related by blood, connected by marriage or employment, or
15 close personal acquaintance of either Ms. Kathryn Cavanaugh
16 or Mr. Foster Mathews.

17 (NO ONE STANDS.)

18 THE COURT: All right. Now as you probably know, your
19 elected solicitor is Mr. Dan Johnson. He's the elected
20 solicitor for the Fifth Judicial Circuit, which includes
21 Richland and Kershaw counties. I need to know if any
22 member of the jury panel is related by blood, connected by
23 marriage or employment, or a close personal acquaintance of
24 Mr. Dan Johnson. Anybody know Mr. Johnson?

25 (NO ONE STANDS.)

1 THE COURT: Any member of the jury panel related by
2 blood, connected by marriage or employment, or close
3 personal acquaintance of any member of his staff? In other
4 words, do you know or related to both anybody that works in
5 the Fifth Judicial Circuit Solicitor's Office? Any member
6 of the jury panel?

7 (NO ONE STANDS.)

8 THE COURT: All right. Now as I mentioned a moment
9 ago, because the solicitor's office works very closely with
10 law enforcement, I need to know if any member of the jury
11 panel or any member of your family is involved in law
12 enforcement, and that can mean anything from the City of
13 Columbia Police Department, Richland County Sheriff's
14 Department, SLED, State Law Enforcement Division, the DEA
15 or FBI, or any military police force, any member of your
16 family or any -- you or any member of your family related
17 to people that work in law enforcement?

18 There's a lady on the front row. Now if you'll stand
19 up, I'm going to ask you to identify yourself by your
20 number, not by your name.

21 JUROR: Okay. 56.

22 THE COURT: All right, Ms. 56, and who's involved in
23 law enforcement?

24 JUROR: Melron Kelly.

25 THE COURT: I mean ---

1 JUROR: Melron Kelly.

2 THE COURT: I know, but where, where do they work?

3 JUROR: I think Richland.

4 THE COURT: Richland?

5 JUROR: I haven't been here that long.

6 THE COURT: Okay, a deputy?

7 JUROR: He's the interim chief.

8 THE COURT: Oh, city police department?

9 JUROR: Uh-huh.

10 THE COURT: Mr. Kelly?

11 JUROR: Yes.

12 THE COURT: All right, and he's related to you?

13 JUROR: Yes, sir.

14 THE COURT: All right. Well, ma'am, let me ask you.

15 Would that fact in any way interfere with your ability to
16 give the state and the defendant a fair and impartial trial
17 in this case?

18 JUROR: No.

19 THE COURT: Okay. Thank you very much, Ms. 56.

20 All right, anybody else? Just go ahead and stand up.

21 Yes, ma'am.

22 JUROR: Juror 209.

23 THE COURT: 209. Yes, ma'am.

24 JUROR: My husband is state transport police.

25 THE COURT: All right. Would that fact in any way

1 interfere with your ability to give both the state and the
2 defendant a fair and impartial trial?

3 JUROR: No, sir.

4 THE COURT: All right. Thank you very much, Ms. 209.
5 Yes, sir, with the black jacket.

6 JUROR: Number 27.

7 THE COURT: 27.

8 JUROR: My mother works at the Lexington correctional
9 facility.

10 THE COURT: She works for Lexington correctional?

11 JUROR: Yes, sir.

12 THE COURT: You must be 127.

13 JUROR: No, sir, just 27.

14 (A PAUSE.)

15 THE COURT: I'm looking for you on my list. Oh, there
16 it is. I'm sorry. I see it. All right, Mr. 27, would
17 that fact in any way interfere with your ability to give
18 both the state and the defendant a fair and impartial
19 trial?

20 JUROR: No, sir.

21 THE COURT: Thank you very much.

22 Yes, please. Anybody just go ahead and stand up.

23 JUROR: Juror number 43.

24 THE COURT: 43, yes, sir.

25 JUROR: My niece is recently married to a Richland

1 County deputy.

2 THE COURT: All right, Solicitor, this is a city case
3 or a Richland County case?

4 MS. CAVANAUGH: This is a county case.

5 THE COURT: All right. Could you give me the name of
6 the officer?

7 JUROR: Clay Short.

8 THE COURT: Is the name Clay Short in any way involved
9 in the investigation of this case?

10 MS. CAVANAUGH: No, Your Honor.

11 THE COURT: All right, Mr. 43, would that fact in any
12 way interfere with your ability to give both the state and
13 the defendant a fair and impartial trial?

14 JUROR: No, sir.

15 THE COURT: Thank you very much.

16 Yes, sir.

17 JUROR: Juror 99.

18 THE COURT: Yes, sir.

19 JUROR: I have a cousin with the FBI in Raleigh, a
20 cousin in the Baltimore City Police Department.

21 THE COURT: All right. Would the fact -- that fact in
22 any way interfere with your ability to give both the state
23 and the defendant a fair and impartial trial?

24 JUROR: No, sir.

25 THE COURT: Thank you very much.

1 Anybody else? All right, I'm going to carry that one
2 step a little further, ladies and gentlemen. I'm going to
3 ask if you or any member of your family supports law
4 enforcement either with financial contributions or as a
5 volunteer. Now, by that I mean any of you that might
6 support groups such as the Mothers Against Drunk Driving or
7 Students Against Drunk Driving or Citizens Against Violent
8 Behavior. I forget the name of that group. Groups such as
9 Sistercare that may work with victims of crime, groups such
10 as the Alston Wilks Society that may deal with prisoners
11 once being released from incarceration, the State Troopers
12 Association, Sheriffs Association, any of those groups that
13 have as their primary function the support of law
14 enforcement or law enforcement groups, any member that
15 contributes to any of these groups?

16 Yes, ma'am, your number, please?

17 JUROR: 193.

18 THE COURT: Let me find you on my list. Yes, ma'am,
19 and ---

20 JUROR: I work -- excuse me, sir.

21 THE COURT: Go ahead.

22 JUROR: I work with, in a volunteer basis, Sistercare
23 and support Mothers Against Drunk Driving.

24 THE COURT: All right. Thank you very much, ma'am.

25 Yes, sir.

1 JUROR: 195. You did say, Your Honor, you or family,
2 correct?

3 THE COURT: Yeah.

4 JUROR: My father is chief of State Troopers
5 Association.

6 THE COURT: Your father does?

7 JUROR: Yes.

8 THE COURT: Do you?

9 JUROR: No, sir.

10 THE COURT: Okay. Thank you very much.
11 Yes, ma'am.

12 JUROR: Juror number 315.

13 THE COURT: 315.

14 JUROR: Yeah, and my entire family supports Mothers
15 Against Drunk Driving due to a fatal accident of a relative
16 of mine.

17 THE COURT: Thank you very much, ma'am.

18 The lady with the white sweater.

19 JUROR: 124.

20 THE COURT: Yes, ma'am.

21 JUROR: I support Sistercare and the sheriff's
22 department, the sheriff's department.

23 THE COURT: Sheriff's Association?

24 JUROR: Yes.

25 THE COURT: All right. Thank you very much, ma'am.

1 Lady on the front row.

2 JUROR: 230.

3 THE COURT: 230, yes, ma'am.

4 JUROR: I make contributions to Sistercare and the
5 police.

6 THE COURT: And what?

7 JUROR: The -- I don't know, the sheriff's department,
8 I guess.

9 THE COURT: Sheriff's Association?

10 JUROR: Uh-huh.

11 THE COURT: All right. Thank you very much, ma'am.
12 Yes, sir.

13 JUROR: Juror number 43. We give to the State
14 Troopers Association.

15 THE COURT: I have to do this; I always do. Mr. 43,
16 when you contributed to the State Troopers Association, did
17 you get a sticker to put on the back of your car?

18 JUROR: I believe I got one one year, but I don't have
19 it displayed.

20 THE COURT: Didn't? Didn't have it displayed?

21 JUROR: No, sir.

22 THE COURT: You ever get a ticket?

23 JUROR: No, sir. I drive safely.

24 THE COURT: Well, you just shot my theory down. I
25 thought you had to have it on your car. All right, thank

1 you very much, Mr. 43.

2 Yes, ma'am.

3 JUROR: Juror 202.

4 THE COURT: 202.

5 JUROR: Support Sistercare.

6 THE COURT: Thank you very much, ma'am.

7 All right, any member of the jury panel or any member
8 of your family work -- I asked about the solicitor's
9 office. I'll ask about the Attorney General's office or
10 the U.S. Attorney's office. Any member of the jury panel,
11 any member of your family work for either of those two
12 institutions?

13 (NO ONE STANDS.)

14 THE COURT: All right. Now, ladies and gentlemen, the
15 defendant in this matter today is Mr. Fred Jack Sanders.

16 Mr. Sanders, will you stand and face the jury?

17 (THE DEFENDANT COMPLIES.)

18 THE COURT: Any member of the jury panel related by
19 blood, connected by marriage or employment, or a close
20 personal acquaintance of Mr. Fred Jack Sanders? If so
21 please stand.

22 (NO ONE STANDS.)

23 THE COURT: Thank you very much.

24 Mr. Sanders is represented in this case today by Mr.
25 Lucas Hawks and Mr. Chris Shipment.

1 Counsel, will you stand and fact the jury?

2 (COUNSELORS COMPLY.)

3 THE COURT: Any member of the jury panel related by
4 blood, connected by marriage or employment, or a close
5 personal acquaintance of either Mr. Lucas Hawks, who is the
6 gentleman with red hair, or Mr. Chris Shipman? Any member
7 of the jury panel know either of these two attorneys?

8 (NO ONE STANDS.)

9 THE COURT: All right. Thank you very much.

10 Any member of the jury panel related to or a close
11 personal acquaintance with anybody that works in the Fifth
12 Judicial Circuit Public Defender's Office, any member of
13 the jury panel?

14 (NO ONE STANDS.)

15 THE COURT: All right. Now, ladies and gentlemen, to
16 encapsulate this case, it is a drug-related case, and the
17 defendant is charged with several counts of either
18 possession or manufacturing drugs. I'm going to go through
19 the list and just tell you what he's charged with and what
20 he's being tried for today.

21 MR. HAWKS: Your Honor, may we approach really
22 briefly?

23 THE COURT: Sure.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: All right, ladies and gentlemen, the

1 defendant is charged, and these -- looks like these all
2 stem from the same date, being April 23, 2013. The
3 defendant is charged with manufacturing methamphetamine,
4 possession with intent to distribute methamphetamine,
5 possession with intent to distribute crack cocaine,
6 possession with intent to distribute heroin, possession of
7 a controlled substance which looks to be a schedule IV
8 drug, and possession of a firearm.

9 And as I say, indictments in these cases charge him,
10 the defendant, on April 23rd with what I've just read to
11 you.

12 Where did this allegedly take place, Solicitor?

13 MS. CAVANAUGH: 113 Rockingham Road, Your Honor.

14 THE COURT: 113 Rockingham Road. Does any member of
15 the jury panel have any knowledge of this case one way or
16 the other in any way? In other words, if you live next
17 door to Rockingham Road, or April 23rd you were aware that
18 something took place on Rockingham Road in April almost a
19 year ago. Any member of the jury panel read anything about
20 it, heard anything about it? I doubt there was any press
21 coverage, but there could have been. Any member of the
22 jury panel know anything about this case? Ever heard
23 anything about it, talked about it at work?

24 (NO ONE STANDS.)

25 THE COURT: All right. Ladies and gentlemen, what I

1 read from are what's called indictments, and these are
2 simply a piece of paper. These are the formal documents by
3 which a case is brought in to court. They're not evidence
4 of anything, and by the mere fact that I have told you what
5 these indictments say, you are not to draw any inference or
6 any conclusions about the guilt or innocence of the
7 defendant.

8 The defendant, as you would be, as I would be, as
9 anybody in this country would be, is presumed innocent of
10 the charges brought against him. Under our law, until the
11 state proves those -- the elements of those crimes to a
12 jury beyond a reasonable doubt -- in other words, every
13 individual that comes in to this court, this criminal court
14 in South Carolina, is presumed innocent of the charges
15 brought against him. And these are merely the documents,
16 the paper documents that formally announce the charges
17 against the defendant. I just want to make that clear that
18 you're not to assume anything based on what I told you the
19 charges are.

20 Now that you know what the charges are, has any member
21 of the jury panel or any member of your family ever been
22 accused of or convicted of any of these types of crimes?
23 May not be the same one or similar one, and I don't need a
24 lot of detail. I just need to know if any member of the
25 jury panel or any member of your family has ever been

1 accused or charged with a similar type situation.

2 And your number, please?

3 JUROR: 154.

4 THE COURT: 154. I've got to find you on my list.

5 All right, sir, can you tell me briefly about it?

6 JUROR: My brother-in-law.

7 THE COURT: How long ago?

8 JUROR: Five, six years ago.

9 THE COURT: Okay. Is that matter resolved now?

10 JUROR: Yes.

11 THE COURT: All right. Thank you very much, Mr. 154.

12 Let's just start with the gentleman with the black
13 shirt on there. Your number again?

14 JUROR: 195, sir.

15 THE COURT: 195?

16 JUROR: Yes, sir.

17 THE COURT: All right.

18 JUROR: I have two uncles that were charged with
19 possession.

20 THE COURT: Okay. How long ago?

21 JUROR: The one uncle is unclear because I don't keep
22 in contact. The other one, I want to say possibly ten,
23 fifteen years ago.

24 THE COURT: Okay. In Richland County?

25 JUROR: No, sir, in Texas.

1 THE COURT: All right. Thank you very much, Mr. 195.
2 Blue shirt.

3 JUROR: 307.

4 THE COURT: 307?

5 JUROR: My brother is currently ongoing. My brother
6 was arrested for breaking into someone's car under the
7 influence of drugs. He's in rehab currently.

8 THE COURT: He what?

9 JUROR: He's in rehab currently.

10 THE COURT: Oh, he's in rehab. All right. Would that
11 fact in any way interfere with your ability to give both
12 the state and the defendant a fair and impartial trial?

13 JUROR: Yes, sir.

14 THE COURT: It would? It would interfere with your
15 ability? All right, thank you very much, sir.

16 Let me go back to 195 and ask the same -- I've got to
17 ask this question of everybody. Would that fact that your
18 uncles were involved with drug cases, would that in any way
19 interfere with your ability to give both the state and the
20 defense a fair and impartial trial?

21 JUROR: Yes, sir.

22 THE COURT: It would?

23 JUROR: Yes.

24 THE COURT: All right.

25 There was one more, green shirt.

1 CLERK OF COURT: 154.

2 THE COURT: Yes, sir, I'll ask you the same question.
3 Would that fact in any way interfere with your ability to
4 give both the state and the defendant a fair and impartial
5 trial?

6 JUROR: No, sir.

7 THE COURT: Thank you very much, Mr. 154.

8 All right, lady with a multicolored blouse on.

9 JUROR: I'm 315, and I have a uncle that was charged
10 with possession with intent to distribute and possession of
11 a stolen firearm, and it's still ---

12 THE COURT: How long ago?

13 JUROR: Not even six months ago.

14 THE COURT: In Richland County?

15 JUROR: Yes.

16 THE COURT: All right. Is that matter resolved?

17 JUROR: No.

18 THE COURT: Okay, still pending?

19 JUROR: It is.

20 THE COURT: All right. Would that fact in any way
21 interfere with your ability to give both the state and the
22 defendant a fair and impartial trial?

23 JUROR: Yes.

24 THE COURT: It would?

25 JUROR: Yes.

1 THE COURT: All right. Thank you, ma'am.

2 Yes, ma'am.

3 JUROR: 305.

4 THE COURT: All right.

5 JUROR: My dad has been convicted of various drug and
6 alcohol charges, and he's serving time in northern
7 Virginia.

8 THE COURT: In Virginia?

9 JUROR: Uh-huh.

10 THE COURT: All right. Would that fact in any way
11 interfere with your ability to give both the state and the
12 defendant a fair and impartial trial?

13 JUROR: No, sir.

14 THE COURT: Thank you very much, ma'am.

15 Yes, ma'am. Yes, ma'am. Black, dark shirt.

16 JUROR: 157.

17 THE COURT: All right.

18 JUROR: I have a cousin that's in prison now for
19 selling drugs.

20 THE COURT: All right, in South Carolina?

21 JUROR: It's in South Carolina but not Richland
22 County.

23 THE COURT: All right. Ms. 57, would that fact in way
24 interfere with your ability to give both the state and the
25 defendant a fair and impartial trial?

1 JUROR: It would not.

2 THE COURT: Thank you very much, ma'am.

3 Blue shirt.

4 JUROR: 31.

5 THE COURT: Yes, ma'am.

6 JUROR: My sister was charged, convicted of simple
7 possession thirty-five years ago.

8 THE COURT: Thirty-five years ago?

9 JUROR: Yes, sir, Lexington County.

10 THE COURT: Would that fact in any way interfere with
11 your ability ---

12 JUROR: No, sir.

13 THE COURT: --- to give both the state and defendant a
14 fair and impartial trial? Thank you very much, Ms. 31.

15 Yes, ma'am.

16 JUROR: 312. Both of my parents have been in jail for
17 possession and the use of drugs and alcohol. Dad is now in
18 rehab, and I don't know about Mom.

19 THE COURT: Okay. That all in Richland County?

20 JUROR: Uh-huh.

21 THE COURT: Ms. 321, would that fact in any way
22 interfere with your ability to give both the state and the
23 defendant a fair and impartial trial?

24 JUROR: No.

25 THE COURT: Yes, ma'am.

1 JUROR: 56.

2 THE COURT: Yes, ma'am.

3 JUROR: I had a cousin. He's released from prison
4 now, but he went to prison probably about eight years ago
5 for possession.

6 THE COURT: Okay. Would that fact in any way
7 interfere with your ability to give both the state and
8 defendant a fair and impartial trial?

9 JUROR: No, sir.

10 THE COURT: Thank you very much, Ms. 56.

11 Let me put it differently now. I asked in that last
12 question if anybody had, or any member of your family had
13 been arrested or charged with possession of drugs. This is
14 a little bit different in that -- and the same people may
15 stand up, but any member of your family that hasn't been
16 arrested or convicted of either possession or use of drugs
17 that has caused you and your family problems? In other
18 words, it may not have gone so far as to involving law
19 enforcement, but there still may be family situations where
20 drugs have been a problem with you or your family. You may
21 have fought it and are not bothered with drug problems at
22 the present time.

23 I'm not asking anybody to confess to doing anything
24 they shouldn't be doing, but just if it has affected you or
25 your family -- that is, the possession or use of drugs -- I

1 think I'd like to know that just so everybody is aware of
2 your history. Anybody that -- and I know, for example, the
3 last young lady, she doesn't have to stand up again. She
4 said both, both of her parents were affected by drugs.
5 Anybody else that feels that way about any family
6 situation?

7 Yes, sir. All right, let me start with 56 since I've
8 got ---

9 JUROR: I have ---

10 THE COURT: I remembered your number now.

11 JUROR: I have a cousin and a brother that was on
12 drugs. That pretty much kind of affected the family in the
13 sense of, you know, stealing and stuff like that from the
14 family.

15 THE COURT: Okay. Well, I still ask you the same
16 question. You can be fair to both these parties?

17 JUROR: Yes, sir.

18 THE COURT: All right.

19 Let's start with the lady with the blue shirt on over
20 there. Your number?

21 JUROR: I'm number 80.

22 THE COURT: 80. Yes, ma'am.

23 JUROR: My brother was involved in a once-legal drug
24 called spice, and it caused him to make decisions that led
25 to his death this past September.

1 THE COURT: I'm sorry for that, ma'am, but I do have
2 to ask you. Would that fact interfere with your ability to
3 give both these parties a fair and impartial trial?

4 JUROR: I would say so.

5 THE COURT: No? You okay?

6 JUROR: Uh-huh.

7 THE COURT: All right. Thank you, ma'am.

8 It was 80?

9 JUROR: 195, sir.

10 THE COURT: No, wait a minute.

11 JUROR: Oh, 80.

12 THE COURT: 80.

13 All right, back to 195. Yes, sir.

14 JUROR: Yes, sir. My cousin in Texas again. There
15 has been talks of him and possession and use of it, but no
16 reports of him having to be in jail.

17 THE COURT: Okay, and you told me that that fact, the
18 fact that you've got this in your family would ---

19 JUROR: Yes. It will not lead to ---

20 THE COURT: You don't think you could be fair to both
21 parties?

22 JUROR: Correct.

23 THE COURT: All right. Good. Thank you very much.

24 Blue shirt.

25 JUROR: 307. It was -- this is my brother. His

1 endeavors have caused a lot of emotional strain.

2 THE COURT: And you felt that that could keep you from
3 being fair to both these parties?

4 JUROR: Yes, sir.

5 THE COURT: All right. Thank you very much, sir.
6 Lady with the green dress, black coat.

7 JUROR: 206.

8 THE COURT: Yes, ma'am.

9 JUROR: My mother, drug use, alcohol problems. I know
10 it would not affect my position.

11 THE COURT: You can be fair to both parties?

12 JUROR: Yes.

13 THE COURT: Thank you very much, Ms. 206.

14 Yes, ma'am.

15 JUROR: Me?

16 THE COURT: Yeah.

17 JUROR: 305. Again my dad. My mom lost her house and
18 put emotional stress on my little sister.

19 THE COURT: And you still feel you can be fair and
20 impartial?

21 JUROR: Yes, sir.

22 THE COURT: Thank you, Ms. 306.

23 Green shirt.

24 JUROR: 154.

25 THE COURT: Okay.

1 JUROR: My brother-in-law, who was convicted and
2 served time. His, his wife was also involved with drugs
3 and carried over into their son, and that's who's currently
4 struggling with issues, several issues.

5 THE COURT: You told me you could be fair and
6 impartial. Do you still feel the same?

7 JUROR: Yes.

8 THE COURT: All right. Thank you very much.

9 Yes, ma'am.

10 JUROR: 205. I have a cousin who's struggled on and
11 off for the last few years.

12 THE COURT: Okay. You feel you could be fair and
13 impartial in this case?

14 JUROR: No, sir.

15 THE COURT: You sure, ma'am?

16 JUROR: I, I just feel like it would affect things.

17 THE COURT: All right. Thank you very much, ma'am,
18 205.

19 And?

20 JUROR: 321.

21 THE COURT: Yes.

22 JUROR: I suffer from depression and an eating
23 disorder because of my parents, and also my brother does
24 drugs also, but he's not that deep into it.

25 THE COURT: Okay, and you feel you could be fair and

1 impartial to both these parties?

2 JUROR: Yes, I so.

3 THE COURT: All right, anything further from the
4 state?

5 MS. CAVANAUGH: No, Your Honor.

6 THE COURT: Defense?

7 MR. HAWKS: Yes, Your Honor. Just the question about
8 being morally religious or ethically opposed.

9 THE COURT: Not going to do it.

10 MR. HAWKS: Okay.

11 THE COURT: Approach the bench.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: Ready?

14 MS. CAVANAUGH: Yes, Your Honor.

15 MR. HAWKS: Yes, Your Honor.

16 CLERK OF COURT: Yes, sir.

17 THE COURT: All right. Give us a jury.

18 JURY SELECTION

19 CLERK OF COURT: Ladies and gentlemen of the jury
20 panel, when I call your number, please come to this
21 microphone here. State your juror number and your
22 occupation. Bring all your personal belongings with you,
23 please.

24 278.

25 JUROR: Sheryl Ward-Kirkland. I am a church

1 administrator.

2 CLERK OF COURT: What says the state?

3 MS. CAVANAUGH: Please present this juror.

4 CLERK OF COURT: What says defense?

5 MR. HAWKS: Please seat this juror.

6 CLERK OF COURT: You can have a seat in the jury box
7 over here.

8 Again, come to the microphone. State your number and
9 your occupation. 80.

10 JUROR: My name is Jordan Erickson, and I'm a
11 full-time nursing student.

12 CLERK OF COURT: What says the state?

13 MS. CAVANAUGH: Please present this juror.

14 CLERK OF COURT: What says the defense?

15 MR. HAWKS: Please seat this juror.

16 CLERK OF COURT: Have a seat in the jury box, please.
17 21.

18 JUROR: Juror number 21. I'm retired. I'm formerly
19 with the South Carolina Department of Archives and History.

20 CLERK OF COURT: What says the state?

21 MS. CAVANAUGH: Please present this juror.

22 CLERK OF COURT: What says the defense?

23 MR. HAWKS: Please seat this juror.

24 CLERK OF COURT: Have a seat in the jury box, please.
25 177.

1 JUROR: Daniel Morales, member service representative
2 Palmetto Citizens Federal Credit Union.

3 CLERK OF COURT: What says the state?

4 MS. CAVANAUGH: Please present this juror.

5 CLERK OF COURT: What says the defense?

6 MR. HAWKS: Please excuse this juror.

7 CLERK OF COURT: Have a seat in the back of the
8 courtroom, please.

9 321, 321.

10 JUROR: My name's Andrea Tillman, 321. I work at
11 retailing, and I'm a full-time student.

12 CLERK OF COURT: What says the state?

13 MS. CAVANAUGH: Please excuse this juror.

14 CLERK OF COURT: Have a seat in the courtroom. Thank
15 you.

16 209.

17 JUROR: Karen Pickering, juror 209. Database
18 specialist.

19 CLERK OF COURT: What says the state?

20 MS. CAVANAUGH: Please present the juror.

21 CLERK OF COURT: What says the defense?

22 MR. HAWKS: Please excuse this juror.

23 CLERK OF COURT: Have a seat the back of the
24 courtroom, please. Thank you.

25 56.

1 JUROR: 56, retired from General Motors.

2 CLERK OF COURT: What says the state?

3 MS. CAVANAUGH: Please excuse this juror.

4 CLERK OF COURT: Have a seat in the back of the
5 courtroom. Thank you.

6 JUROR: Okay. Thank you.

7 CLERK OF COURT: 40.

8 JUROR: 40. Associate director of Verizon.

9 CLERK OF COURT: What says the state?

10 MS. CAVANAUGH: Please present this juror.

11 CLERK OF COURT: What says the defense?

12 MR. HAWKS: Please seat this juror.

13 CLERK OF COURT: Have a seat in the jury box, please,
14 sir.

15 305.

16 JUROR: 305, substitute teacher.

17 CLERK OF COURT: What says the state?

18 MS. CAVANAUGH: Please excuse this juror.

19 CLERK OF COURT: Have a seat in the back of the
20 courtroom. Thank you.

21 206.

22 JUROR: 206, enrollment tech analyst.

23 CLERK OF COURT: What says the state?

24 MS. CAVANAUGH: Please excuse this juror.

25 CLERK OF COURT: Have a seat in the back of the

1 courtroom. Thank you.

2 68.

3 JUROR: Juror number 68, U.S. Brokerage.

4 CLERK OF COURT: What says the state?

5 MS. CAVANAUGH: Please present this juror.

6 CLERK OF COURT: Says the defense?

7 MR. HAWKS: Please strike this juror.

8 CLERK OF COURT: Have a seat in the back of the
9 courtroom. Thank you.

10 54.

11 JUROR: Juror number 54, preschool teacher.

12 CLERK OF COURT: What says the state?

13 MS. CAVANAUGH: Please present this juror.

14 CLERK OF COURT: What says the defense?

15 MR. HAWKS: Please seat this juror.

16 CLERK OF COURT: Have a seat in the jury box, please.

17 31.

18 JUROR: Juror 31. Quality analyst, Blue Cross Blue
19 Shield.

20 CLERK OF COURT: What says the state?

21 MS. CAVANAUGH: Please present this juror.

22 CLERK OF COURT: What says the defense?

23 MR. HAWKS: Please seat this juror.

24 CLERK OF COURT: Have a seat in the jury box. Thank
25 you.

1 299.

2 JUROR: 299. I'm a courthouse consultant with Justice
3 Planning Associates.

4 CLERK OF COURT: What says the state?

5 MS. CAVANAUGH: Please present this juror.

6 CLERK OF COURT: What says the defense?

7 MR. HAWKS: Please excuse this juror.

8 CLERK OF COURT: Have a seat in the back of the
9 courtroom. Thank you.

10 154.

11 Strikes are four and four.

12 JUROR: Juror 154, lead engineer for Westinghouse.

13 CLERK OF COURT: What says the state?

14 MS. CAVANAUGH: Please present this juror.

15 CLERK OF COURT: What says the defense?

16 MR. HAWKS: Please seat this juror.

17 CLERK OF COURT: Have a seat in the jury box. Thank
18 you.

19 268.

20 JUROR: 268, HVAC technician.

21 CLERK OF COURT: What says the state?

22 MS. CAVANAUGH: Please present this juror.

23 CLERK OF COURT: What says the defense?

24 MR. HAWKS: Please seat this juror.

25 CLERK OF COURT: Have a seat in the jury box. Thank

1 you.

2 157.

3 JUROR: Juror 157, administrative specialist.

4 CLERK OF COURT: What says the state?

5 MS. CAVANAUGH: Please present this juror.

6 CLERK OF COURT: What says the defense?

7 MR. HAWKS: Please seat this juror.

8 CLERK OF COURT: Have a seat in the jury box. Thank
9 you.

10 202.

11 JUROR: Juror 202, teacher assistant.

12 CLERK OF COURT: What says the state?

13 MS. CAVANAUGH: Please present this juror.

14 CLERK OF COURT: What says the defense?

15 MR. HAWKS: Please seat this juror.

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

17 312.

18 JUROR: 312, student and a paralegal for the Law
19 Office of Mathias Chapel.

20 CLERK OF COURT: What says the state?

21 MS. CAVANAUGH: Please excuse this juror.

22 CLERK OF COURT: Have a seat in the back of the
23 courtroom. Thank you.

24 194.

25 JUROR: 194, retail.

1 CLERK OF COURT: Does the state challenge for cause?

2 MS. CAVANAUGH: No.

3 THE COURT: What says the defense?

4 MR. HAWKS: Please seat this juror.

5 CLERK OF COURT: Have a seat in the jury box. Thank
6 you.

7 107.

8 JUROR: Juror number 107, graduate program
9 coordinator.

10 CLERK OF COURT: Does the state challenge for cause?

11 MS. CAVANAUGH: No.

12 CLERK OF COURT: What says the defense?

13 MR. HAWKS: Please excuse this juror.

14 CLERK OF COURT: Have a seat in the back of the
15 courtroom. Thank you.

16 43.

17 JUROR: Juror number 43. IT director, Systems
18 Developed.

19 CLERK OF COURT: Does the state challenge for cause?

20 MS. CAVANAUGH: No.

21 CLERK OF COURT: Does the defense challenge for cause?

22 MR. HAWKS: Yes, Your Honor. I believe he said his
23 niece was married to a Richland County Sheriff's Department
24 deputy.

25 THE COURT: Overruled.

1 MR. HAWKS: Thank you, Your Honor.

2 CLERK OF COURT: Have a seat in the jury box.

3 First alternate, 230.

4 JUROR: Juror 230, training and development.

5 CLERK OF COURT: What says the state?

6 MS. CAVANAUGH: Please present this juror.

7 CLERK OF COURT: What says the defense?

8 MR. HAWKS: Please seat this juror.

9 CLERK OF COURT: Have a seat in the jury box, please.
10 193.

11 JUROR: Juror 193, recent retiree of Palmetto Health
12 Administration.

13 CLERK OF COURT: What says the state?

14 MS. CAVANAUGH: Please present this juror.

15 CLERK OF COURT: What says the defense?

16 MR. HAWKS: Please seat this juror.

17 CLERK OF COURT: Have a seat in the jury box. Thank
18 you.

19 THE COURT: Any objections to the jury selection
20 process from the state?

21 MS. CAVANAUGH: No, Your Honor.

22 THE COURT: From the defense?

23 MR. HAWKS: No, Your Honor.

24 THE COURT: Thank you very much.

25 All right, ladies and gentlemen of the jury panel who

1 were not selected on this jury, I'm going to excuse you now
2 at this time. I'm going to ask you to call back.

3 (A PAUSE.)

4 THE COURT: I'm going to ask you to go check back by
5 the jury assembly room. You'll get further instructions.
6 I think you're done for the day, possibly for the week, but
7 do check back by the jury assembly room, and they'll give
8 you further instructions.

9 I want to thank you very much for coming. Good luck
10 to all of you.

11 (THE JURY PANEL EXITS.)

12 THE COURT: All right, ladies and gentlemen of the
13 jury, I'm going to release you now for the day. Ask you to
14 be back in the jury room at 9:30 in the morning.

15 Now, the bailiff is going to take you and show you
16 where your jury room is. So, when you return to the
17 courthouse tomorrow morning at 9:30, I'll ask you to come
18 directly to the jury room. Mr. Talbert is going to show
19 you where it is to give you some instructions about parking
20 and all that sort of thing.

21 I'm going to ask you to do a couple of things for me.
22 First off, I'm going to ask you not to talk about this case
23 to anybody. It's probably going to be natural for friends
24 or family to ask you what you're doing down here at the
25 courthouse, and you can certainly tell them that you've

1 been selected a jury. But I'm going to ask you not talk
2 about this case. I don't know, and perhaps you may not
3 know whether somebody you're talking to has some opinions
4 about a case like this and may want to try to express them
5 to you.

6 You're going to hear all the evidence in this case
7 right here in this courtroom, and you're going to be asked
8 to make a decision as to the guilt or innocence of the
9 defendant based on what you hear in this courtroom, not
10 what somebody on the outside might think you ought to be
11 doing, or maybe have some influence on you one way or the
12 other. I hope you will respect my instructions in this
13 regard.

14 Secondly, sometimes it becomes a temptation for jurors
15 to try to find out something about the case on their own.
16 In other words, to try to do some independent research
17 either by the internet or some other method. That also is
18 something I'm going to ask you not to do.

19 I've been instructed by the Chief Justice of the State
20 of South Carolina to instruct jurors about independent
21 investigation in a case. It's happened before. I will
22 tell you that the penalty for doing so can be severe.
23 That's not a threat; that's just a fact. The system only
24 works if you are unbiased, as you've indicated that you
25 are, and that you are not influenced by anything outside

1 this courtroom. So, I will ask you and implore you not to
2 try to do any independent investigation on your own.

3 As I said, I'm going to ask you to be back at 9:30 in
4 the morning, and when you do return to the jury room, there
5 will probably be some coffee or something there for you.
6 But I'm going to ask you in the few minutes that you're in
7 there to try to elect or select one of your members to be
8 the foreperson of this jury. In other words, the person
9 who will actually write the verdict at the end of the trial
10 if that becomes necessary.

11 Now, the foreperson of the jury will take the seat
12 occupied by lady who was first drawn out of the jury pool
13 seated on the front row with her -- with, I think, a beige
14 suit on. The foreperson of the jury will maintain that
15 seat throughout the trial. The rest of the seats don't
16 have any names or numbers on them. So, just sit where
17 you're most comfortable.

18 If you have, for example, a hearing problem or a
19 problem hearing, the witnesses are going to be seated up
20 here at this witness box. You may want to sit closer to
21 that witness box if you have, as I say, a problem hearing.
22 I think all the discussions that take place in the
23 courtroom are going to be right here in front of you. So,
24 you should have no problem in seeing and hearing what the
25 attorneys say and what the -- whatever the witnesses may

1 say.

2 So, if you'll do that for me, and let the bailiff know
3 who your foreperson is. As I say, the foreperson merely
4 writes the decision at the end of the trial, depending on
5 what the jury's findings are. The foreperson would also be
6 the one to communicate with me, if necessary, during the
7 course of the trial about any concerns the jury might have
8 and would kind of run the discussion, or at least preside
9 in the jury room if any discussions are taking place. So,
10 if you'll do that for me, I would appreciate it.

11 Otherwise, have a pleasant afternoon. We'll commence
12 the trial at 9:30 in the morning. There are a number of
13 legal matters that I need to take up with these attorneys.
14 It will make the -- we'll do that this afternoon, and it
15 will make the progress of the trial a lot more efficient if
16 I can get those matters sort of cleared up before the trial
17 actually starts. So, have a pleasant afternoon, ladies and
18 gentlemen. We'll see you at 9:30 in the morning.

19 JUROR: I have a question.

20 THE COURT: Just ask the bailiff. If he -- he'll ask
21 -- he, he'll ask me if...

22 (THE JURY EXITS AT 1:28 PM.)

23 (A PAUSE.)

24 BAILIFF: Your Honor, she'd like to know the duration
25 of the trial so she can notify her school.

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

3 BAILIFF: Okay.

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

10 MR. HAWKS: I have a long list.

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

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

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

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

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

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

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

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

1 the home that we don't want mentioned if possible.

2 THE COURT: All right. Well, that's a motion in
3 limine, but we're not -- we're talking about limine and not
4 necessarily suppression. Are you ---

5 MR. HAWKS: Well ---

6 THE COURT: --- using the two interchangeably?

7 MR. HAWKS: Yeah. I'm sorry, Your Honor. The
8 suppression is for the -- his statement, and then ---

9 THE COURT: Well, the statement would be covered by
10 *Denno, Jackson vs. Denno*, wouldn't it?

11 MR. HAWKS: Right, and then the suppression would be
12 the physical stuff.

13 THE COURT: All right. Well, I'm just trying to find
14 out how long we're going -- who needs to testify on behalf
15 of the state regarding the statements? I assume that you
16 have an officer here.

17 MS. CAVANAUGH: Your Honor, we -- there will be three
18 investigators that will be required for *Jackson vs. Denno*.

19 THE COURT: All right. So, we got three officers for
20 that. What about *Lyle*? That's just a ---

21 MR. HAWKS: I'm not sure which officer heard the
22 statements.

23 THE COURT: Okay, but that involves the statements
24 also, not his criminal record or any -- all right, what do
25 you mean by exclusion?

1 MR. HAWKS: His statement is a prior bad act. That's
2 why we are doing the *Lyle* motion.

3 THE COURT: That's the *Lyle*. What do you mean by
4 exclusion?

5 MR. HAWKS: Exclude his statement. I'm sorry.

6 THE COURT: Same thing then.

7 MR. HAWKS: Yes.

8 THE COURT: Not two different motions. All right.

9 You prepared, state prepared to go forward on these
10 motions at 2:30?

11 MS. CAVANAUGH: Yes, Your Honor, we are. We need to
12 get the additional investigator here, but 2:30 is fine.

13 What about his continuance motion?

14 MR. HAWKS: Well -- I'm sorry.

15 THE COURT: Well, let's go ahead and do that now.
16 It's a little late, but...

17 MR. HAWKS: Could I have two seconds to go grab
18 something downstairs? I can do it off-the-cuff.

19 THE COURT: Just tell me what you want.

20 MR. HAWKS: Your Honor, there's a case called *State*
21 *vs. Burns* that says the state is required to not
22 necessarily in court give up the confidential informant,
23 but at least provide the defense with some information
24 about how to find that confidential informant to interview,
25 talk to him or her.

1 THE COURT: Okay. So, if state were required to
2 disclose the identity of the confidential informant, you
3 are asking for a continuance to be able to interview that
4 confidential informant?

5 MR. HAWKS: Yes, Your Honor, and I requested from Ms.
6 Cavanaugh about a week ago -- and I have email downstairs
7 -- any contact information she may have.

8 THE COURT: All right. I understand, and they've
9 refused to give it to you?

10 MR. HAWKS: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. HAWKS: And I ---

13 THE COURT: I think we can take that up at 2:30.

14 MS. CAVANAUGH: Yes, Your Honor.

15 THE COURT: All right, 2:30. Thank you very much.
16 Approach the bench, counsel, before you leave.

17 MS. CAVANAUGH: Oh, Your Honor, well, I do have --
18 it's a very minor motion. We just -- the possession with
19 intent to distribute heroin indictment, the wrong -- it's a
20 scrivener's error. The wrong, the wrong CDR code statute
21 is on the front. However, the body of the indictment, the
22 statute name, description is correct. So, we just move to
23 amend that indictment, just the CDR code and the statute.

24 THE COURT: 2:30, 2:30, but let me you see counsel
25 just a minute.

1 (OFF THE RECORD.)

2 (ADVICE OF RIGHTS FORM MARKED AS COURT'S EXHIBIT 2.)

3 (STATEMENT MARKED AS COURT'S EXHIBIT 3.)

4 THE COURT: All right, be seated. Thank you. All
5 right, Mr. Hawks, where you want to start?

6 MR. HAWKS: We can start with the continuance motion,
7 Your Honor.

8 THE COURT: All right. Go ahead.

9 MR. HAWKS: If I may before we begin that? I would
10 just like to renew my objection to you not asking the final
11 voir dire question, and my objection to that, final strike
12 for cause.

13 THE COURT: Well, you didn't mention it when I asked
14 you if you had any motions to strike for cause, and you
15 didn't say anything about it. So, I didn't feel it was
16 necessary. I'm certainly happy for you to put it on the
17 record.

18 MR. HAWKS: Thank you, Judge, and as far as the
19 continuance goes, Your Honor, I have several reasons why
20 I'm asking for one. To begin, there is a lot of physical
21 evidence in this case, of course, in manufacturing
22 methamphetamine. As far as I understand it, most, if not
23 all of that, was destroyed pursuant to a clandestine
24 laboratory procedure of some kind. I did not actually
25 learn about that until last week.

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

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

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

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

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

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

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

6 MR. HAWKS: No.

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

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

16 THE COURT: How about the drugs?

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

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

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

24 THE COURT: For example?

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

1 liquid. There were a couple of bottles.

2 THE COURT: A burner?

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

4 THE COURT: Fuel?

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

7 THE COURT: Have you shared that?

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

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

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

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

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

25 THE COURT: Meth found in his room?

1 MR. MATHEWS: Correct.

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

4 MR. MATHEWS: Not, not ---

5 THE COURT: --- charge?

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

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

13 MR. MATHEWS: Yes, Your Honor.

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

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

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

21 THE COURT: Okay.

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

24 THE COURT: What about crack then?

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

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

3 THE COURT: He was there?

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

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

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

9 THE COURT: Packaged. Same as the methamphetamine?

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

18 THE COURT: Was that tested?

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

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

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

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

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

4 THE COURT: Oh.

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

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

9 MR. HAWKS: Yes.

10 THE COURT: That's basically your motion?

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

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

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

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

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

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

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

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

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

25 THE COURT: --- last week?

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

5 THE COURT: In response to what?

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

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

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

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

15 MR. HAWKS: The basis for the manufacturing.

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

18 MS. CAVANAUGH: Your Honor.

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

23 MS. CAVANAUGH: Your Honor.

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

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

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

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

8 THE COURT: Of the arrest?

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

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

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

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

21 THE COURT: I understand.

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

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

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

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

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

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

20 MR. HAWKS: Well.

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

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

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

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

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

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

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

23 All right, what's next?

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

1 THE COURT: Thank you.

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

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

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

16 THE COURT: All right.

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

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

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

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

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

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

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

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

21 MS. CAVANAUGH: Right.

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

24 MS. CAVANAUGH: Not at all.

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

1 search warrant?

2 MS. CAVANAUGH: Yes, Your Honor.

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

4 MS. CAVANAUGH: Yes, Your Honor.

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

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

10 THE COURT: He was what?

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

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

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

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

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

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

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

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

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

22 THE COURT: All right.

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

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

J. MALDONADO - DIRECT EXAMINATION BY MR. MATHEWS

69

1 this point.

2 MR. HAWKS: Yes, Your Honor.

3 THE COURT: Remember. It's, as I say, it's more like
4 a motion in limine.

5 Solicitor, call your first witness.

6 MR. MATHEWS: Thank you, Your Honor. The state calls
7 Sergeant Jerry Maldonado.

8 JERRY MALDONADO, BEING DULY SWORN,
9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat in the witness box.
11 State your name for the record, please, and spell it for
12 us.

13 WITNESS: Jerry Maldonado, M-a-l-d-o-n-a-d-o.

14 DIRECT EXAMINATION BY MR. MATHEWS:

15 Q. Sergeant Maldonado, where are you employed?

16 A. Richland County Sheriff's Department.

17 Q. And in what capacity?

18 A. I'm a sergeant over the Special Victims Unit.

19 Q. And back in April of 2013, in what capacity were you
20 employed there?

21 A. As sergeant of -- in the Narcotics Unit.

22 Q. And as sergeant in the Narcotics Unit, what were some
23 of your duties?

24 A. Supervise the day-to-day operations, to include search
25 warrants, undercover operations, surveillances, whatever is

1 needed for the day.

2 Q. And on April 23, 2013, did you have occasion to work
3 on a case involving a search warrant at 113 Rockingham
4 Road?

5 A. I did.

6 Q. And can you tell me your involvement with that,
7 please?

8 A. Well, basically Investigator Collins had a search
9 warrant, and we gathered, did a briefing, and then we went
10 to the house and made entry into the house.

11 Q. And once you got into the house, what was your role?

12 A. Once everyone was gathered up, we brought everyone
13 into the living room, and I mirandized everyone.

14 Q. Now when you say everyone, who was in this house?

15 A. There was the defendant, another male, and a female in
16 the garage, and the mother was in the house.

17 Q. And when you say the defendant, Fred Sanders?

18 A. That is correct.

19 Q. Do you recognize him in the courtroom?

20 A. I do.

21 Q. Can you point him out, please?

22 A. The gentleman sitting in the middle with the beard.

23 MR. MATHEWS: Your Honor, may the record reflect that
24 he has identified the defendant?

25 THE COURT: The record will so reflect.

J. MALDONADO - DIRECT EXAMINATION BY MR. MATHEWS

71

1 BY MR. MATHEWS:

2 Q. And at that point when you had all the individuals
3 there, what, what did you say you did?

4 A. I mirandized all of them.

5 Q. And when you say mirandized, how did you do that?

6 A. I did it verbally. I recited the Miranda the way I,
7 way I know it.

8 Q. Tell me, tell me exactly what you said.

9 A. I said -- I had them all -- made sure they were
10 listening to me and I told them. I said you have the right
11 to remain silent. Anything that you say can be used
12 against you in court. Have a right to an attorney. If you
13 cannot afford one, one will be appointed for you at no
14 cost. You also have the right to stop answering questions
15 at any time to speak to an attorney.

16 Q. And at that point, did you ask if they understood,
17 acknowledged?

18 A. I did. I go to each individual one, and I had them
19 acknowledge me, not by nodding their head, but they had to
20 say that they -- you know, yes that they understood.

21 Q. Did Mr. Sanders say yes?

22 A. He did.

23 Q. Did he appear to be on under the influence of alcohol
24 or drugs at the time?

25 A. No.

1 Q. In your opinion, did he understand what you told him?

2 A. Yes, sir.

3 Q. Did he ask any questions about anything that you told
4 him at that point?

5 A. Not to me, no, sir.

6 Q. Did you take a statement from him at that point?

7 A. I did not.

8 Q. Okay.

9 MR. MATHEWS: Thank you. I have no further questions
10 at this time.

11 MR. HAWKS: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. HAWKS:

13 Q. Do you normally mirandize several people at once?

14 A. I do.

15 Q. So, that is common practice?

16 A. I do. I, I mirandize all of them and then go to each
17 individual one, make sure that they acknowledge me,
18 understand what I had said.

19 Q. But you read the rights to all of them?

20 A. I do.

21 Q. But those are individual rights, aren't they?

22 A. They are.

23 Q. And you said that they acknowledge them individually?

24 A. Correct.

25 Q. After you had read to all three?

J. MALDONADO - CROSS-EXAMINATION BY MR. HAWKS

73

1 A. Correct. Four.

2 Q. And how big is this -- four? I'm sorry.

3 A. You are correct.

4 Q. Who is the fourth?

5 A. The mother.

6 Q. The mother. She in handcuffs?

7 A. I don't remember if she was or not.

8 Q. Where was she when y'all made entry?

9 A. I do not recall. Everyone went out through the whole
10 house.

11 Q. But Mr. Sanders, Ms. Brassell, Mr. Johnson.

12 A. Correct.

13 Q. They were found where?

14 A. In the garage of the house.

15 Q. In the garage. What were they doing when y'all came
16 in?

17 A. I did not go into the garage myself. When you make
18 entry, everyone has different areas that they go to. So, I
19 did not see them in the garage.

20 Q. And this team you made entry with, how many officers
21 are we talking about here?

22 A. We probably had seven to nine people.

23 Q. Seven. How heavily were you armed?

24 A. All with our issue 40s.

25 Q. Sidearms?

1 A. Yes.

2 Q. Any rifles?

3 A. I don't believe anyone brought any in.

4 Q. Any shotguns?

5 A. I don't believe so.

6 Q. Did you have a battering ram, shields, anything like
7 that?

8 A. We had a tool, battering ram. Breaching tool.

9 Q. Did you need to use that?

10 A. I don't recall if we did or not.

11 Q. How big is this family room that all four people were
12 in?

13 A. I would guess around 12 x 16, 14 x 14, somewhere
14 around there.

15 Q. Where was everyone seated? Couches?

16 A. Everybody was seated in the couches and chairs.

17 Q. And each acknowledged your question about Miranda?

18 A. Correct.

19 Q. Individually? Not all at once?

20 A. Correct.

21 MR. HAWKS: I have nothing further for this witness,
22 Your Honor.

23 THE COURT: Anything further?

24 MR. MATHEWS: No, Your Honor.

25 THE COURT: All right, sir. You may come down.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

75

1 (THE WITNESS EXITS THE STAND.)

2 MR. MATHEWS: State calls Investigator Joe Clarke.

3 JOSEPH CLARKE, BEING DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 THE COURT: Have a seat. State your full name for the
6 record.

7 WITNESS: Joseph Clarke.

8 DIRECT EXAMINATION BY MR. MATHEWS:

9 Q. Investigator Clarke, where are you employed?

10 A. Richland County Sheriff's Department.

11 Q. And in what capacity?

12 A. I am currently an investigator in the Special Victims
13 Unit.

14 Q. April 2013, what unit were you working with?

15 A. I was an investigator with the Narcotics Unit.

16 Q. And did you have an occasion to work at an incident
17 where a search warrant was served on April 23, 2013, at 113
18 Rockingham Road?

19 A. Yes, I did.

20 Q. And can you tell me your involvement?

21 A. I was part of the group that was assisting an agent
22 who had acquired a search warrant of that home. We made
23 entry, dynamic entry into the house and then once inside,
24 we secured persons inside the home. And then once the
25 securing of persons and the immediate danger or threat of

1 danger was over, we then conducted a search pursuant to the
2 search warrant.

3 Q. And can you tell me what your individual role was?

4 A. I assisted, like other agents, in gathering items,
5 contraband, whatnot, things that we could quickly identify
6 and that we knew as narcotics or narcotics-making
7 equipment. And more importantly I conducted a interview, a
8 quick interview of the defendant.

9 Q. And were you present when he was orally mirandized
10 earlier?

11 A. Yes.

12 Q. So, you heard him acknowledge his Miranda rights at
13 that time?

14 A. Yes.

15 Q. Did you again acknowledge him of his Miranda rights?

16 A. I did.

17 Q. And can you tell me where this interview took place?

18 A. Once had everything had, you know, settled down -- it
19 only took a few minutes and Sergeant Maldonado had done his
20 Miranda with folks in the room -- then I stepped to the
21 side with the defendant. We actually stood inside -- I
22 would call it the laundry room. That's where the washer
23 and dryer set was, and at that point I mirandized. He
24 waived the written waiver, and we conducted a brief
25 interview.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

77

1 Q. About -- and how big was this room, you said?

2 A. The laundry room, a large closet maybe of 10 x 6
3 maybe.

4 Q. Was he, was he handcuffed?

5 A. He would be unhandcuffed at that point because I would
6 like for him to sign the waiver ---

7 Q. But ---

8 A. --- at that point.

9 Q. He was not -- was he under arrest at that point?

10 A. He was being detained at that point. He was, he was
11 mirandized, yes.

12 Q. So, he was not free to leave?

13 A. No, he was not.

14 Q. Okay. I am going to hand you what I've already shown
15 to defense counsel marked as Court's Exhibit Number 2. Do
16 you recognize that?

17 A. I do.

18 Q. What is that?

19 A. This is a standard form we use, Richland County
20 Sheriff's Department Interrogation and Advice of Rights.
21 It's a form we use to mirandize someone and then to -- if
22 they wish to go forward, they have a part at the bottom
23 where they can waive their rights and actually speak to us
24 first.

25 Q. And is that the form that you used on April the 23rd?

1 A. It is.

2 Q. Can you read what that form says? Well, first of all,
3 did you read this aloud to Mr. Sanders, or did you allow
4 him to read it?

5 A. I read it in front of them, and as I do, as per my,
6 kind of my policy I've been doing for twelve, thirteen
7 years, I actually check off each box as I read it and make
8 sure they understand it. And then I explain at the bottom
9 do they understand the word coercion, and he did understand
10 that. And then he agreed to speak to me further, and I
11 checked that box as well for the waiver of rights.

12 Q. Will you read that form for me, please?

13 A. Certainly. At the top it has the perfunctory
14 information: his name, officers present, and the date and
15 time. Then it says: Your rights. And it says:

16 Before we ask any questions, you must understand
17 your rights. You have the right to remain
18 silent. Anything you say can be used -- you in
19 court. You have a right to talk to a lawyer for
20 advice before we ask any questions and to have a
21 lawyer with you during any questioning. If you
22 cannot afford a lawyer, one will be appointed for
23 you before any questioning if you wish. If you
24 decide to answer questions now without a lawyer
25 present, you still have the right to stop

1 answering any time. You also have the right to
2 stop answering at any time until you talk to an
3 attorney.

4 And it has an area where it's witnessed by the
5 officers who signed by the defendant. Below that is a
6 waiver of rights. It says:

7 I have read this statement of my rights. I
8 understand what my rights are. I am willing to
9 talk and answer questions. I understand and know
10 what I am doing. No promise has been made to me
11 and no pressure of coercion -- or coercion of
12 any kind has been used against me.

13 And again a place the witness can sign.

14 Q. Did Mr. Sanders sign this?

15 A. He did.

16 Q. In your presence?

17 A. Yes.

18 Q. And did you witness it?

19 A. I did.

20 Q. Did anyone else?

21 A. Investigator Smith was present when that part was
22 done.

23 Q. Did he also check additional -- each individual block
24 of the rights that you read him?

25 A. Did who?

1 Q. Did Mr. Sanders?

2 A. No, he did not. I just checked them off in front of
3 him.

4 Q. You check them off as ---

5 A. Yes.

6 Q. --- you read them?

7 A. Yes.

8 Q. Did he indicate that he understood those rights?

9 A. He did.

10 Q. Did he seem under the influence of alcohol or drugs at
11 the time?

12 A. No.

13 Q. Did you -- did he, he -- did he waive his rights?

14 A. He did.

15 Q. And he agreed to talk with you?

16 A. He did.

17 Q. Did you promise him anything?

18 A. No.

19 Q. Did you force or coerce him in any way?

20 A. None whatsoever.

21 Q. Showing you what has been marked as Court's exhibit 3,
22 already shown to defense counsel. Do you recognize that?

23 A. I do.

24 Q. What is that?

25 A. This would be our standard statement form, and it's

1 where someone is giving a statement to us.

2 Q. And tell me the procedure of how this works when you
3 take a statement.

4 A. The procedure is, is, one, establish that Miranda has
5 been administered and then pursuant to waiving Miranda, we
6 go forward with the statement. If they are willing -- and
7 in many cases they are willing to go forward with their
8 written statement -- I will speak freely with the subject
9 for a moment, and then we will reduce what they say to
10 writing. And then as per my policy, or what I've always
11 done is once that statement has been given, I then read it
12 back to them. Make sure they understand what I've said.
13 If there's any corrections they want to make, they can,
14 they can do at that time. And then if they agree to that,
15 then I have them affix their signature.

16 Q. So, who wrote this statement?

17 A. I actually wrote the statement.

18 Q. And, and speaking with Mr. Sanders, you wrote the
19 statement?

20 A. Mr. Sanders is two feet away from me as I'm reading
21 this to him and taking the statement from him.

22 Q. How long is the statement?

23 A. Two pages.

24 Q. And after you completed the statement, did you give
25 Mr. Sanders the opportunity to read it?

1 A. I did.

2 Q. And did he sign that statement?

3 A. He did, and one of the things I've done over the years
4 is I will write at the bottom, I'll write at the bottom:
5 Statement ends. I'll put some marks there, some Xs. I'll
6 put my initials, and then I'll have whomever is taking the
7 statement put their initials next to it so they'll see I've
8 written statement ends in their presence and nothing else
9 gets added to the statement.

10 Q. Did he sign or initial each page individually?

11 A. He signed both pages and initialed the second page,
12 the statement ends.

13 Q. And did you witness this?

14 A. I did.

15 Q. Did anyone else witness this?

16 A. I am not certain if it was being observed the full
17 time, but I know that Investigator Smith was present during
18 some of the questioning there.

19 Q. Can you please read the statement from Mr. Sanders?

20 A. Sure. Again, there's some initial information at the
21 top: his name, the date, 113 Rockingham Drive, which is in
22 Columbia. I asked and he gave me two phone numbers, and
23 then I did a Q and A, and I asked the question: Do you
24 reside at 113 Rockingham? He said: Yes, sir. And I asked,
25 followed up by that: How long? He said: I think fifteen to

1 eighteen years.

2 Question: Which bedroom do you stay and sleep in?

3 He said: Answer: Back left bedroom.

4 Question: Do you reside with any other person at
5 this home?

6 His answer: Yes, my mother.

7 Question: Does your mother keep any of her
8 personal items in your bedroom?

9 He says: No, sir.

10 Question: So, any illegal items -- contraband,
11 firearms -- in your bedroom would be yours and
12 yours alone, correct?

13 His answer: Yes, sir.

14 Question: Are you a convicted felon? Have you
15 ever been to prison for more than a year?

16 His answer: Yes, to both questions.

17 Question: So, you are fully aware that possession
18 of a firearm by yourself is illegal, correct?

19 Answer: I thought I understood I could have a
20 single-shot rifle for hunting. I know I'm not
21 supposed to have a pistol or assault rifle.

22 Question: We have found through our search
23 warrant cocaine, marijuana, Valium,
24 methamphetamine in your bedroom. These are your
25 items, correct?

1 That was a question mark.

2 Answer: Yes, sir.

3 Question: How do you use or take meth?

4 Answer: Inject or smoke.

5 Question: The loaded syringes we found containing
6 liquid in it, is this meth?

7 Answer: Yes.

8 Question: Do you have anything further to add?

9 Answer: I apologize.

10 Q. The statement that you took, was that the entirety of
11 your conversation with Mr. Sanders, or was that reduced
12 from the entirety?

13 A. That would be the majority of it, but that's certainly
14 reduced down, right. I wouldn't -- I don't recall any more
15 correspondence after that.

16 Q. Thank you.

17 A. Sure.

18 MR. MATHEWS: Your Honor, at this time I would offer
19 Court's Exhibits 2 and 3 for purpose of pretrial only, and
20 I have no further the questions.

21 THE COURT: Mr. Hawks.

22 MR. HAWKS: Thank you, Your Honor.

23 CROSS-EXAMINATION BY MR. HAWKS:

24 Q. Investigator Clarke, what part of the home did you
25 enter?

J. CLARKE - CROSS-EXAMINATION BY MR. HAWKS

85

1 A. Early in the course of the investigation, I probably
2 entered all, all areas of the home.

3 Q. Initially. I'm sorry. I meant initially.

4 A. I would have to say I went in and to the left where
5 the garage area was.

6 Q. Okay. So, you went into the garage?

7 A. Yes.

8 Q. I'm sorry. Some officers went into the garage. Were
9 you one of them?

10 A. Yes.

11 Q. Okay, and the three -- not the mother -- the three
12 others were in the garage. Is that correct?

13 A. I recall that, yes.

14 Q. Were they getting high when y'all came in?

15 A. I have no idea what they were doing.

16 Q. Okay. So when y'all made entry, you didn't see
17 anything going on?

18 A. Going on? What do you mean?

19 Q. What were they doing?

20 A. They seemed to be sitting.

21 Q. Okay. Talking?

22 A. I have no idea if they were talking.

23 Q. If you had known that Mr. Sanders was high or under
24 the influence of some sort of narcotic, would you have
25 taken his written statement?

1 A. If I had known that and I could quantify that or
2 qualify that? Is that the question?

3 Q. Sure.

4 A. Probably not.

5 Q. Okay. Why is that?

6 A. Well, the veracity of the warrant. I mean, I want the
7 veracity of the statement to hold up. I want it to be a
8 true telling of what this person is saying or doing, and I
9 want them to be fully aware of what I'm asking them.

10 Q. That's understandable. If Mr. Sanders had not
11 admitted to some of this stuff -- well, let me put it this
12 way. If no one had taken any blame at all, any of the
13 four, would all four have been taken to jail?

14 A. In a vacuum, counselor, perhaps. Yes.

15 Q. Is it fair to say that's generally how it's done, hand
16 of one, hand of all if you can't figure out whose it is?
17 Take all?

18 A. Yes, sir.

19 Q. Why, why didn't you ask Mr. Sanders about the
20 equipment found in his room or the crack in the written
21 statement?

22 A. I guess I have to put you in the position of where we
23 were at the time. This is a fluid situation, and a search
24 is ongoing. We have multiple agents in a room gathering
25 things, multiple agents in a home observing and moving

J. CLARKE - CROSS-EXAMINATION BY MR. HAWKS

87

1 things. And my best answer, counselor, would be at the
2 time I was not fully aware of what the level of meth making
3 equipment was being discovered.

4 Q. How many search warrants have you executed in the
5 past, ballpark?

6 A. Hundreds.

7 Q. Is it your standard practice to not wait until
8 everything has been figured out before making a written
9 statement?

10 A. My standard practice? No.

11 Q. And this time was different because?

12 A. Well, you have to, you have to go with what you have
13 at the time, and that's what it was. I mean, situation
14 where -- with what we had gathered at that moment and what
15 we were discussing at that moment, I just stay relevant on
16 that.

17 Q. And Mr. Sanders, he didn't appear nervous, edgy,
18 frightened, anything out of the ordinary?

19 A. Having never met the man, he didn't seem to be acting
20 strange really in any way.

21 Q. Okay.

22 MR. HAWKS: Beg the court's indulgence.

23 (A PAUSE.)

24 BY MR. HAWKS:

25 Q. Once you knew there was more stuff in the house or the

1 fluency of the situation sort of panned out, why didn't you
2 take another statement?

3 A. Because after the statement was taken, I and other
4 investigators then got in the vehicle and went to another
5 location unrelated to this incident to scope out another
6 search warrant which we were going to execute later that
7 evening.

8 Q. Busy man?

9 A. Very, very much so, counselor.

10 MR. HAWKS: I have nothing else for this witness, Your
11 Honor.

12 MR. MATHEWS: Nothing on redirect, Your Honor.

13 THE COURT: All right, you may come down.

14 (THE WITNESS EXITS THE STAND.)

15 MR. MATHEWS: State calls Investigator Chauncey Smith.

16 CHAUNCEY SMITH, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

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

19 State your name for the record and spell it, please.

20 WITNESS: Chauncey Smith, C-h-a-u-n-c-e-y Smith.

21 DIRECT EXAMINATION BY MR. MATHEWS:

22 Q. Investigator Smith, where are you employed?

23 A. Richland County Sheriff's Department.

24 Q. And in what capacity?

25 A. I am an investigator on motor vehicle crimes.

C. SMITH - DIRECT EXAMINATION BY MR. MATHEWS

89

1 Q. And in April 2013, what unit were you working in?

2 A. I was a narcotics agent.

3 Q. Did you have occasion to execute a search warrant at
4 113 Rockingham Road on April the 23rd, 2013?

5 A. I did.

6 Q. Can you tell me your involvement in that execution?

7 A. I participated initially in the buy. On that date I
8 was part of the entry, initial entry team. Then started
9 searching the residence like the rest of the guys and girl.
10 Ultimately, I ended up packaging and collecting most of the
11 evidence, taking it to headquarters, filling out a search
12 warrant return, and taking that ultimately back to the
13 judge.

14 Q. And after you recovered this evidence, did you have an
15 occasion to talk to Mr. Sanders?

16 A. I did.

17 Q. And ---

18 A. Several times.

19 Q. Where was he when you talked to him?

20 A. Initially he was in the garage. We didn't have much
21 conversation there. It was kind of like stop and move.
22 Then in the living room, I was there when Sergeant
23 Maldonado advised him of his rights, which he waived. I
24 spoke with him briefly there. He kind of -- then
25 Investigator Clarke was talking to him a little bit. I was

1 there for that as well. I was actually packaging up
2 evidence as he was talking with him, and then I also spoke
3 with him prior to him getting on the paddy wagon.

4 Q. Showing you what's marked as Court's Exhibit 2. Do
5 you recognize that?

6 A. I do.

7 Q. And what is that?

8 A. That's the advice of right statement from the
9 sheriff's department that Mr. Sanders signed for
10 Investigator Clarke.

11 Q. Did you witness Investigator Clarke read this to him?

12 A. I did.

13 Q. Did you see Mr. Sanders sign it?

14 A. I did.

15 Q. Did he seem like he understood it to you?

16 A. He did.

17 Q. And after collecting evidence, tell me about the final
18 time you spoke to Mr. Sanders.

19 A. We collected -- I was packaging up a pretty good bit
20 of evidence, and then you got to wait around for the
21 recovery people to come pick up all the stuff. In the
22 meantime, Mr. Sanders and the other individuals were
23 outside the residence. I kind of had, I don't know, I
24 guess downtime. I wasn't really doing a whole lot, so I
25 continued searching the house, the garage area, so on and

1 so forth, and found a little container with what appeared
2 to be narcotics.

3 And at that time I walked back outside, and knowing
4 that Mr. Sanders had twice now been advised of his Miranda
5 rights and waived them and decided to speak to
6 investigators, I asked him about the green box that I had
7 located.

8 Q. And specifically what did you ask him?

9 A. I said is this yours.

10 Q. And what was his response?

11 A. I, I, I said is this yours, and why did you try to
12 hide it or something like that, and he said it is mine. I
13 didn't try to hide it.

14 Q. And did you ask him any specifics about the box?

15 A. I did. I opened it up and I said what is this inside?
16 And he -- there's like -- it looks like a tackle box. It
17 was full of individual compartments. He went to each
18 individual one stating which one it -- what it was.

19 Q. And what ---

20 A. What type of stuff.

21 Q. What did he say was in the box?

22 A. I believe it was heroin, crack. I believe he said
23 meth. I believe he said -- I believe that's what it was.
24 I don't have -- if I could see the box, I could tell you
25 exactly, pretty much exactly what he said.

1 Q. That, that's fine. Did you talk to him about cooking
2 meth at all?

3 A. I did. He was in his -- I believe he was in his room.
4 We were taking him back to his room to kind of -- I said --
5 because they had found syringes, and I said how many more
6 are in here? Does anybody need to get stuck with these
7 things? You know, what's going on and stuff. He said no.
8 Those -- what, what you found is what's there. Those were
9 loaded up with meth.

10 And at some point we were asking him -- because he had
11 different little containers that you use to make,
12 manufacture methamphetamine. And I asked -- a lot of times
13 you'll see like a 2-liter bottle or 1-liter bottle with
14 white powder and black stuff inside of it. I asked him
15 where those were. He said he actually had taken those and
16 buried them in various locations along power lines and
17 stuff like that to avoid getting caught.

18 Q. And you're familiar with meth operations?

19 A. Pretty familiar.

20 Q. So in your opinion, that's what was going on there?

21 A. Oh, that's definitely what's going on.

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

23 Q. And again what did he specifically say about bottles
24 that were located in and around his house?

25 A. The bottles he, I believe he said they were used to

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

93

1 cook. I believe he said there were no active ones. And I
2 asked him about the waste ones, like the standard ones with
3 the really poisonous stuff with the alkaline batteries and
4 all that stuff in it. He said he, he takes those and
5 buries them elsewhere so he doesn't get caught.

6 Q. When you say waste ones, what do you mean?

7 A. After the product is taken off, after you finish
8 making all the product, he takes the -- what he was saying
9 was he takes the 2-liter ones with all the -- most of the
10 residue in it and takes them elsewhere.

11 Now, he did have, like, the gas generator, the
12 leftover ones and spoons and so on and so forth like that
13 commonly used to manufacture methamphetamine.

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

15 THE COURT: Mr. Hawks.

16 CROSS-EXAMINATION BY MR. HAWKS:

17 Q. Investigator Smith, what part of the house did you
18 enter?

19 A. I entered just about all that entire house.

20 Q. Again I apologize. I meant in the beginning when you
21 first entered.

22 A. Went through the front door, took a left, then went to
23 the garage area. I believe after they were handcuffed, I
24 went back towards the living room area, something like
25 that.

1 Q. So, you heard Maldonado give Miranda in the living
2 room?

3 A. I did.

4 Q. You were present when the statement was written in the
5 laundry room with Investigator Clarke?

6 A. I was.

7 Q. Okay, and he was mirandized both of those times?

8 A. He was.

9 Q. And then up in the bedroom, did you mirandize him
10 yourself?

11 A. No.

12 Q. But you did initiate the conversation?

13 A. Sure.

14 Q. And you asked him questions specifically relating to
15 the crimes that he was charged with?

16 A. Sure.

17 Q. And were you aware of what was going on in the garage
18 when the warrant was executed?

19 A. Prior to us going in there?

20 Q. As you came in.

21 A. As I came in, they were, they were sitting down.

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

23 REDIRECT EXAMINATION BY MR. MATHEWS:

24 Q. Just very briefly. When you spoke with him the last
25 time, did he ever indicate that he didn't want to talk to

C. SMITH - REDIRECT EXAMINATION BY MR. MATHEWS

95

1 you?

2 A. No. He was cooperative and talkative the entire time.

3 Q. Did he ever say he wanted a lawyer?

4 A. Never.

5 Q. Did he ever say he wanted to stop talking?

6 A. Never anything like that.

7 MR. MATHEWS: Thank you.

8 THE COURT: Anything further?

9 MR. HAWKS: I have nothing further.

10 THE COURT: All right, you may come down.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Anything further?

13 MR. MATHEWS: Your Honor, we have no further

14 witnesses.

15 THE COURT: All right, anything on behalf of the
16 defendant?

17 MR. HAWKS: May it please the court, Your Honor? The
18 one concern I have and the reason I asked each officer
19 about it was ---

20 THE COURT: Well, let me ask -- start over. Do you
21 plan to call any witnesses?

22 MR. HAWKS: No.

23 THE COURT: Oh. Thank you.

24 MR. HAWKS: Sorry.

25 THE COURT: That's all right. Now you may proceed.

1 MR. HAWKS: In the incident report, it specifically
2 says -- and I know perhaps not those three officers wrote
3 the incident report -- but it says they were using crack in
4 the garage when the search warrant was executed. I find it
5 hard to believe that not one single officer out of three
6 that took statements did not know that Mr. Sanders was
7 under the influence of any sort of substance. It's in the
8 incident report.

9 THE COURT: That he was?

10 MR. HAWKS: Yes, Your Honor.

11 THE COURT: What's it say specifically?

12 MR. HAWKS: It says -- apologize. I just had it:

13 An ashtray containing a white, rock-like
14 substance was observed in plain view on the
15 floor.

16 I thought it said that they were actually using it. I
17 know I read that somewhere.

18 (A PAUSE.)

19 MR. HAWKS: Oh, I'm sorry, Your Honor. It's actually
20 further down post Miranda. Joshua Johnson admitted he was
21 smoking crack in the garage with Sarah Brassell and Fred
22 Sanders. So, that would have been, I'm guessing, when they
23 were in the living room and had been mirandized.

24 THE COURT: Who said that?

25 MR. HAWKS: Joshua Johnson.

1 THE COURT: Well, you got Joshua Johnson?

2 MR. HAWKS: No, Your Honor. I just again find it a
3 little odd that all three of them claim they didn't know
4 that he was using narcotics.

5 THE COURT: Well.

6 MR. HAWKS: And that's why I specifically asked
7 Investigator Clarke if he would have taken his statement
8 had he known that.

9 THE COURT: Well, he gave you what I thought was a
10 reasoned answer. I can't make a finding based on what a
11 third-party who may or may not be a co-defendant or
12 co-conspirator said to an officer after the -- after
13 mirandizing took place. The statement was given. I can't,
14 I can't use that statement to impeach what the three
15 officers said. Plus there's no corroboration to that. So,
16 if you have a motion based on that, it's respectfully
17 denied.

18 MR. HAWKS: Thank you, Your Honor.

19 THE COURT: I don't know what the motion would be, but
20 I think I've explained myself.

21 All right, do you wish to argue about the
22 voluntariness of your client's statements? Isn't that the
23 issue?

24 MR. HAWKS: Well.

25 THE COURT: Isn't that the issue?

1 MR. HAWKS: Yes, Your Honor. I guess the only, my
2 only issue would be with the last one where he was not
3 mirandized again, and although he was talking the entire
4 time, I think the line of questioning that Mr. -- or excuse
5 me, Investigator Clarke was going into had ceased. The
6 statement was signed, and then Investigator Smith begins
7 questioning him again without Miranda.

8 THE COURT: How about that, Solicitor? The third
9 questioning where not only does the defendant admit that
10 the drugs are his, but actually describes the packaging, as
11 I understood it.

12 MR. MATHEWS: Right, and, and, Your Honor, it wasn't
13 that at no point in time -- even though he'd been advised
14 of his rights twice, he didn't have to be advised every
15 single time he gave a statement once he gave a waiver. He
16 gave a waiver. This wasn't like it was a week later they
17 came up to him and continued to talk to him. This was
18 while they were still in the house. It was a continuation
19 of the entire process, and they just went to ask him again
20 what's this, and I believe it was still under the waiver of
21 Miranda that he had given twice previously in the short
22 amount of time they were in the house.

23 THE COURT: Right, and there's no evidence of an
24 invocation?

25 MR. MATHEWS: None whatsoever, Your Honor, from any of

1 the three officers who testified.

2 THE COURT: All right. Well, anything further, Mr.
3 Hawks, on this issue?

4 MR. HAWKS: Beg the court's indulgence.

5 (A PAUSE.)

6 MR. HAWKS: I have nothing further, Your Honor.

7 THE COURT: All right. Well, you understand that at
8 this stage of the proceedings, I only need to find by a
9 preponderance of the evidence that the statement was
10 voluntary, and I so find.

11 I find that I've consider the evidence that's been
12 presented and that before the alleged statement was
13 obtained from the defendant, the defendant was fully
14 advised of his rights under the Fifth and Sixth Amendment
15 of the Constitution of the United States, and that the
16 defendant was advised of the constitutional safeguards
17 required by *Miranda vs. Arizona* as follows: that the
18 defendant was advised -- reading from it -- prior to any
19 interrogation, he had the right to remain silent; he was
20 advised prior to the interrogation if he waived his right
21 to remain silent and made a statement, that such statements
22 could and would be used against him in a court of law; that
23 he was advised prior to any interrogation he had the right
24 to employ or select an attorney of his own choice; that if
25 he did not have money -- I'm just going to make sure that

1 that was included on the statement -- that the court would
2 appoint and provide an attorney for him if he so desired
3 without cost or expense to him; and that he had the right
4 to have his attorney present with them at all times during
5 all interviews and all interrogations. Defendant was
6 advised prior to any interrogation he had the right to
7 consult with his attorney before interrogation. And he was
8 advised prior to interrogation he had the right to
9 terminate -- that's in there, too -- the interrogation at
10 any time, and that he had the further right to stop
11 answering questions at any time during the interrogation.
12 Defendant was advised prior to interrogation if during the
13 interrogation he desired an attorney, the interrogation
14 would cease until an attorney was provided to him. He
15 would be given the opportunity to consult with his attorney
16 prior to further interrogation.

17 That defendant knowingly and intelligently waived his
18 rights under the Fifth and Sixth Amendment to the
19 Constitution of the United States and the constitutional
20 safeguards required by *Miranda vs. Arizona*. That the
21 alleged statement was obtained from defendant was freely,
22 voluntarily given without duress, without coercion, without
23 undue influence, without reward, without promise or hope of
24 a reward, without promise of leniency, without threat of
25 injury, and without compulsion or inducement of any kind,

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

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

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

13 All right, your next motion.

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

19 THE COURT: Say that again.

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

22 THE COURT: Oh, buried the bottles.

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

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

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

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

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

16 MR. SHIPMAN: Excuse me?

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

18 MR. SHIPMAN: Oh, common scheme?

19 THE COURT: Yeah.

20 MR. SHIPMAN: Well, Your Honor.

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

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

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

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

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

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

25 MR. SHIPMAN: Well ---

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

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

12 MR. SHIPMAN: Well, my ---

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

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

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

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

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

9 THE COURT: I don't know.

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

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

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

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

1 bottles are there.

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

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

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

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

14 Come on back up, sir.

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

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

18 A. I do.

19 Q. --- confused about?

20 A. I do. I believe I do.

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

C. SMITH - EXAMINATION BY THE COURT

107

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

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

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

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

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

25 THE COURT: Any questions?

1 CROSS-EXAMINATION BY MS. CAVANAUGH:

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

4 A. Yeah. It's God awful.

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

6 A. It is.

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

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

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

17 A. Yes.

18 THE COURT: Any questions?

19 CROSS-EXAMINATION BY MR. SHIPMAN:

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

22 A. I did not.

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

25 A. I did not.

C. SMITH - CROSS-EXAMINATION BY MR. SHIPMAN

109

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

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

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

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

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

17 COURT REPORTER: Could you repeat that, please?

18 MR. SHIPMAN: Sorry.

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

22 A. Well, this is ---

23 Q. --- that you found?

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

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

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

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

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

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

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

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

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

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

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

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

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

C. SMITH - CROSS-EXAMINATION BY MR. SHIPMAN

111

1 his response.

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

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

4 Q. Okay.

5 A. Something to that effect.

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

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

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

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

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

15 BY MR. SHIPMAN:

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

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

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

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

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

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

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

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

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

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

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

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

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

C. SMITH - CROSS-EXAMINATION BY MR. SHIPMAN

113

1 -- anywhere in the incident reports.

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

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

6 A. Not exactly.

7 MR. SHIPMAN: No further the questions.

8 THE COURT: All right.

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

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

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

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

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

5 MS. CAVANAUGH: Okay.

6 THE COURT: Thank you. Next motion.

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

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

17 MS. CAVANAUGH: Yes, Your Honor.

18 THE COURT: Just talk to him.

19 All right, next motion.

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

23 THE COURT: I haven't seen it.

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

1 And I'm not sure how exactly to do this, Your Honor, but
2 I'd like to make it part of the record.

3 THE COURT: Get easy enough. Go ahead. Make your
4 argument.

5 MR. HAWKS: Thank you, Your Honor. The crux of the
6 matter at trial, I think, is going to be was he attempting
7 to manufacture this methamphetamine. Did this collection
8 of equipment, this pile of debris, whatever you'd like to
9 call it, was that enough to find attempt under the statute?
10 And unfortunately we're not going to be able to inspect and
11 the jury is not going to be able to inspect any of that
12 evidence because it has been destroyed.

13 And earlier it was mentioned that it was part of their
14 policy to do so. But I have perused the Richland County
15 Sheriff's Department property handbook several times, and I
16 don't find anywhere in there that it is their policy to
17 destroy even an active cook. And specifically under the
18 general procedures of the clandestine laboratory evidence
19 submission -- and if Your Honor would like a copy of the
20 handbook, I can pass that up.

21 THE COURT: I don't need it right now. I don't need
22 it right now.

23 MR. HAWKS: Under the subheading General Procedures it
24 says:

25 Unknown liquids or solids should be packaged in

1 glass vials with Teflon caps. Each glass vial
2 should be placed into poly propylene vials to
3 make sure the liquid will be contained if the
4 glass vials should break or leak. Each vial must
5 be separately packaged.

6 And it goes on to list a few items that cannot be
7 collected because of their danger. Those items: ammonium,
8 ammonia tank, propane tank, large amounts of chemicals,
9 flammable substances, or biohazardous material.

10 The problem is, Your Honor, I'm not sure -- some of
11 this stuff certainly could have been dangerous. I
12 understand that, but a can of Coleman camp fuel, for
13 example, I can go buy at Walmart right now. I don't know
14 why that could not be tagged into evidence just like any
15 other evidence in any other crime.

16 And I'm sure Your Honor is familiar with *Youngblood*
17 and bad-faith requirement, and there's also a case out of
18 South Carolina called *Cheeseboro, State vs. Cheeseboro*.
19 What *Cheeseboro* says is that bad faith is not the only way
20 that due process rights are violated. That if you can show
21 that the evidence was apparently exculpatory or could be
22 exculpatory at the time -- and what we mean by that is
23 simply if the evidence could show that he was not
24 manufacturing methamphetamine -- then it should be
25 preserved.

1 And of course *Youngblood* bad faith, if they go against
2 their own ---

3 THE COURT: What does that, what does that result in,
4 assume I agree with it?

5 MR. HAWKS: Your Honor, I would ask for all of the
6 evidence not kept be suppressed, and that would be ---

7 THE COURT: What was the evidence in *Cheeseboro*?

8 MR. HAWKS: I believe it was a gun, Your Honor.

9 THE COURT: It was a gun. They lost the gun.

10 MR. HAWKS: Not in bad faith, I don't think, and
11 that's why *Cheeseboro* sets out the option.

12 THE COURT: But the evidence that there was a gun was
13 allowed in *Cheeseboro*.

14 MR. HAWKS: Yes. The court kind of ---

15 THE COURT: At least, that's what Mr. *Cheeseboro* now
16 thinks as he's sitting out at the Department of
17 Corrections.

18 MR. HAWKS: Right, and the court goes into that and
19 explains that, you know, the defense really didn't need to
20 inspect this gun. That all the testing had already been
21 done on it and so on. But we never got a chance to even
22 look at this evidence. All we have is pictures, and it's
23 pretty hard to see what is going on. I guess that does
24 look like common, household items, trash.

25 And then this, this report we get last week, I mean, I

1 -- you know, it doesn't say what's hazardous, what's not.
2 I'm sure she's going to disagree with me. But no matter
3 what it says, it doesn't give us the opportunity or the
4 jurors, more importantly, to actually look at the evidence
5 and decide whether or not he was manufacturing
6 methamphetamine, and that's another issue.

7 THE COURT: What about, what about the photographs? I
8 haven't seen them; I don't know what they are. I don't
9 know what's on that list, but what's on the photographs?
10 You've seen the photographs.

11 MR. HAWKS: I have, Your Honor, and there is some,
12 some bottles with some tubing and such, but if there's
13 any ---

14 THE COURT: Can you argue that those are not used in
15 the manufacture of methamphetamine?

16 MR. HAWKS: Well, we don't know where they were used
17 because the, the item -- substances inside were never
18 tested. We don't know what those were, if there were any
19 substances or liquids inside collected. And I don't know
20 if any of it was dangerous. Of course they're saying it
21 was, but was there an active cook?

22 THE COURT: What's the state's position?

23 MR. MATHEWS: Your Honor, I think as Mr. Hawks said,
24 you first have to show that it was done in bad faith.

25 First and foremost, it's a safety issue. Phillips

A. RICARD - DIRECT EXAMINATION BY MR. MATHEWS

119

1 Recovery comes and takes anything associated with a meth
2 lab; they take everything. Richland County property will
3 not take anything that has been exposed to the hazardous
4 chemicals.

5 THE COURT: Who was the investigating officer?

6 MR. MATHEWS: Investigator Ricard right here. If you
7 want to proffer her testimony, we can have her testify.

8 THE COURT: I think you'd better do that.

9 MR. MATHEWS: Yes, sir. State calls Investigator
10 Ricard.

11 ALLISON RICARD, BEING DULY SWORN,
12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Take the witness box. State your
14 name for the record and spell it, please.

15 WITNESS: Allison Ricard, R-i-c-a-r-d.

16 DIRECT EXAMINATION BY MR. MATHEWS:

17 Q. Investigator Ricard, where are you employed?

18 A. The Richland County Sheriff's Department.

19 Q. And in what unit do you work?

20 A. I am currently with the Drug Suppression Team.

21 Q. And where were you in April 2013?

22 A. I was in an investigator with the Narcotics Unit.

23 Q. Okay. Did you work on the search warrant that was
24 executed on April the 23rd, 2013, at 113 Rockingham Road?

25 A. I did. I was the case agent.

1 Q. And going to move on to basically the crux of why
2 we're here. Tell me what happened when all the evidence
3 was recovered.

4 A. When we have a meth lab, we contact Phillips Recovery.
5 This is done -- provided through SLED. They come out and
6 they take custody and dispose of all of the chemicals and
7 anything that was exposed to the toxic meth lab.

8 This particular incident, there were several bottles
9 used in the manufacturing of meth. There were toxic,
10 hazardous chemicals and non-toxic is how they, is how they
11 distinguish them.

12 THE COURT: On-site?

13 WITNESS: Yeah, on-site, yes, sir.

14 BY MR. MATHEWS:

15 A. They take all of this because of the potential that it
16 was exposed during the cook to these chemicals and the
17 fumes.

18 Q. And so there is a test done on-site to show that there
19 was a meth lab and there were hazardous chemicals?

20 A. They do. It's a basic field test. They test and swab
21 the bottles for acid and bases. They then give us an
22 itemized list of everything that they did remove and they
23 did destroy on-site.

24 Q. And now why would -- why, why does this material need
25 to be destroyed?

A. RICARD - DIRECT EXAMINATION BY MR. MATHEWS

121

1 A. Because of the hazardous chemicals that it -- they
2 contain. It's toxic, and we cannot, we cannot submit that
3 into evidence.

4 Q. And do you yourself, when you went on scene, did you
5 use any protective clothing?

6 A. I did. I was actually in a hazardous -- hazmat suit.
7 I wore a respirator, gloves, and boots just due to the
8 nature of the chemicals that we were working with.

9 Q. And does that get destroyed as well?

10 A. It does. Phillips Recovery takes all of, all of that.

11 Q. Is this your procedure or is it state procedure,
12 federal procedure?

13 A. The training that I've had is through DEA and SLED.
14 It is standard practice for any time we enter a meth lab,
15 we are required to wear these suits to dispose of the
16 chemicals. We bring them outside, and Phillips Recovery
17 then comes and collects the chemicals.

18 Q. Tell me about the training that you've had simply in
19 regards to methamphetamine and methamphetamine labs.

20 A. It is a week-long training hosted or put on through
21 DEA and SLED. I completed this course in 2013.

22 Q. So a meth lab recovery, the items on that scene would
23 be differentiated than if you went ahead and found drugs in
24 another location, correct?

25 A. Can you clarify that?

1 Q. I apologize. You don't destroy most evidence when you
2 get it. But you do destroy this when you go into a meth
3 lab?

4 A. Correct. Just based on the hazardous environment and
5 the toxic chemicals that go into making methamphetamine,
6 that's why these items are destroyed as opposed to being
7 collected.

8 Q. Were they documented in any way?

9 A. They were. We photograph everything in place on scene
10 as we found it when we arrived. We then take them outside
11 for the recovery team to collect and dispose of through
12 their company, and they in turn give us an itemized list of
13 everything that they collected and the receipt that it was
14 destroyed.

15 Q. So, you have photographs of the items that were
16 destroyed?

17 A. I do.

18 Q. You have a list of every item that was destroyed?

19 A. I do.

20 Q. Specifically, what indicated to you, based on your
21 training and experience, that there was a meth lab?

22 A. There was a very strong chemical odor in Mr. Sanders's
23 bedroom; this is consistent with the manufacturing of meth.
24 He had all of the precursor chemicals and equipment set up
25 consistent with manufacturing of meth, to include the acid

A. RICARD - DIRECT EXAMINATION BY MR. MATHEWS

123

1 gas generators, which were the 2-liter bottles with the
2 plastic tubing. He had numerous batteries that had been
3 stripped open where he had pulled the lithium out of the
4 batteries. He had Coleman camp fuel. He had instant cold
5 packs that contain ammonium nitrate. He had crystal Drano,
6 which is also used in the process. He had 2-liter bottles
7 with all of this, all of these chemicals and items
8 combined.

9 Stand alone, these items are in common, everyday
10 houses, but there is no need, I mean, for them to be
11 combined other than the manufacturing of meth in a single
12 2-liter bottle.

13 Q. Were any of these cold packs opened?

14 A. They were.

15 Q. Is that uncommon?

16 A. They are. The instant cold pack generally comes in a
17 sealed plastic bag. These were cut, and the ammonium
18 nitrate had been removed out of it and poured, poured into
19 the 2-liter bottle that we were -- that was found in the
20 house. And the water bladder that is in this instant cold
21 pack had been discarded. Commonly these cold packs are
22 just crushed, and there is no rhyme or reason to cut them
23 open.

24 Q. And what's the significance of the chemical smell?

25 A. That indicated that meth had been cooked very recent.

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

124

1 The, the smell was very strong in his room. If it had been
2 two or three weeks since he had cooked, the smell would not
3 have been as strong; the chemicals would have dissipated by
4 that point.

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

6 MR. HAWKS: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. HAWKS:

8 Q. Investigator Ricard, how are you doing?

9 A. Great.

10 Q. Okay, you talked a little bit about your training.
11 You've had a lot of training, right?

12 A. I have.

13 Q. Did some of that training include filling out incident
14 reports?

15 A. It did.

16 Q. Okay, and that's important, right?

17 A. It is.

18 Q. Because you want to get everything down that --
19 everything that's important?

20 A. It is.

21 Q. Okay. Not important enough to include the smell?

22 A. Based on my training and experience, I included the
23 facts in my incident report, and I was able to determine
24 the manufacture -- that meth had been manufactured, yes.

25 Q. But you did not ---

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

125

1 A. Which is what I wrote in my incident report.

2 Q. I'm sorry, but you did not note the smell in your
3 incident report?

4 A. I did not note the smell, no.

5 Q. But you just testified on direct that it was -- I
6 believe the word you used was very significant.

7 A. There was a distinct smell, yes.

8 Q. Not distinct enough to put in the incident report?

9 A. It is not included in the incident report, no.

10 Q. Now I'll switch gears a little here. When Phillips
11 Recovery came, they did fill out a lot of paperwork
12 themselves?

13 A. They do.

14 Q. But you also filled out a couple of forms. Is that
15 correct?

16 A. I do.

17 MR. HAWKS: Beg the court's indulgence. May I
18 approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. HAWKS:

21 Q. I believe this is the first page of the one you filled
22 out. Do you recognize that?

23 A. I do.

24 Q. And that's -- you filled all that out?

25 A. This is not the report that I filled out. This is

1 actually done -- this is a SLED report. This is not the
2 Phillips Recovery report.

3 Q. Right. That's your name there, right? Reporting
4 officer?

5 A. That is my name as the incident report.

6 Q. This isn't your handwriting?

7 A. This is not.

8 Q. Did you fill out any reports?

9 A. I filled out several reports. Which one are you
10 referring to?

11 Q. I'm sorry, I'm speaking specifically about Phillips
12 Recovery.

13 A. I'm sorry. Was there a question there?

14 Q. Yes. Did you fill out any paperwork as a part of them
15 coming and taking evidence?

16 A. Phillips Recovery writes their own report as to what
17 they are taking, an itemized list, and I witnessed and
18 signed that that is what they took.

19 Q. So, you -- they went over this with you before you
20 signed it?

21 A. They did.

22 Q. Okay, and so when they, when they checked this box
23 here, operational laboratory status, you read that over?

24 A. I don't know what you're...

25 Q. Let me show you. This is section 5, laboratory

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

127

1 status.

2 A. Once again, this is the SLED report, not the Phillips
3 Recovery.

4 Q. But you just testified that you read it over before
5 you signed it.

6 A. That's a different form; that's not the Phillips
7 Recovery. That is a separate report that gets sent to
8 SLED.

9 Q. Who wrote it? Who filled this out?

10 A. Andy Farmer, our chemist.

11 Q. Okay. Did you check this form out before ---

12 A. I, I had nothing to do with that form.

13 Q. How did he get the information for this form?

14 A. Based on Phillips Recovery and the incident report, I
15 believe. You're -- I mean, I cannot testify to that.

16 Q. Your name's on it.

17 A. As the officer on the incident report.

18 Q. So, Phillips Recovery does all the reporting to SLED.
19 Don't they get some of their information from you?

20 A. Through us and through our chemists, yes.

21 Q. Okay.

22 A. That, that report is only for SLED to pay Phillips
23 Recovery. That -- there's nothing to it.

24 Q. Where is -- where do SLED and Phillips Recovery get
25 this information?

1 A. On-site and from myself.

2 Q. Okay. So, you had something to do with the generation
3 of these reports?

4 A. Yes.

5 Q. Okay. Now, do you agree that the lab was operational
6 at the time?

7 A. It was not what we consider an active cook, no.

8 Q. That's not the question I asked. Do you agree that
9 the lab was operational at the time?

10 A. The cook was not in progress when we were at the
11 house, no.

12 Q. Okay, but you yourself referred to this set up -- in
13 fact, in your direct you said that it was set up. Would
14 you call that operational?

15 A. He could make meth, yes, using this equipment.

16 Q. What would be your definition of the word operational?

17 A. The ability to operate.

18 Q. Quickly?

19 A. At any point.

20 Q. At any point, okay. So, at any point Mr. Sanders or
21 anyone could have walked into that room and started cooking
22 meth?

23 A. Hypothetically.

24 Q. It would have taken -- it would've happened just like
25 that, turn it on? Operational?

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

129

1 A. There is no/on off switch for a meth lab.

2 Q. So, it would have taken some time?

3 A. It's just a matter of combining chemicals, most of
4 which he already had set up.

5 Q. Don't you have to crush the pseudo?

6 A. You do.

7 Q. Don't you have to strip the matches?

8 A. You strip batteries, not matches.

9 Q. You don't strip matches? Doesn't that stuff takes
10 time?

11 A. It does. It's a process.

12 Q. Okay, and so I'm going to ask you again. In your
13 opinion, was the lab operational when you came upon it?

14 A. It was not active.

15 Q. That is not what I asked. Was the lab operational?

16 A. It could have been.

17 Q. Okay.

18 A. Yes.

19 Q. Are you familiar with the handbook?

20 A. I am.

21 Q. Okay. Have you read through it?

22 A. I have.

23 Q. Are you familiar with the section about clandestine
24 labs?

25 A. I am.

1 Q. Does it say anywhere in that section that you are to
2 call this company, Phillips Recovery?

3 A. I'm -- I...

4 Q. Would you like to see it?

5 A. Sure.

6 (A PAUSE.)

7 Q. Section F, clandestine labs, does it say anywhere in
8 there, and I'll give you a few seconds to look it over, to
9 call Phillips Recovery and have the items destroyed?

10 A. It does not say -- it does not list Phillips Recovery
11 in this. It says that it must be approved by a drug
12 identification personnel prior to submission, and that is
13 where I come in, and I called Phillips Recovery based on
14 that.

15 Q. But it doesn't say to destroy the evidence anywhere in
16 that section.

17 A. Phillips Recovery destroys it because we cannot submit
18 it into evidence.

19 Q. But it doesn't say that you're supposed to call
20 Phillips Recovery in this section.

21 A. It does not.

22 Q. Okay. Are you familiar with the other literature
23 about meth labs and its handling?

24 A. Can I see what you referring to?

25 Q. Absolutely. Page 57 under the section vehicles,

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

131

1 rolling meth labs.

2 (A PAUSE.)

3 A. Once again it says it must -- if a suspected rolling
4 meth lab, which this was not a rolling meth lab. This was
5 at a house. It says that a drug identification personnel
6 must be notified. Once again, I was the person on scene
7 that called Phillips Recovery because we could not submit
8 this into evidence.

9 Q. So, you're the drug identification personnel that must
10 be notified?

11 A. Was that a question?

12 Q. Uh-huh.

13 A. I was on scene. I made the determination that we had
14 a meth lab and called Phillips Recovery, yes.

15 Q. But again it doesn't say anywhere in this section that
16 you're to call Phillips Recovery?

17 A. It does not.

18 Q. Destroy the evidence?

19 A. It does not.

20 Q. Okay. What happened to the alleged pseudoephedrine?

21 A. Phillips Recovery took that, I believe.

22 Q. So, that's gone?

23 A. It is.

24 Q. Did you ever test it?

25 A. No, I did not.

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

132

1 Q. Did you ever call Poison Control?

2 A. It was still in unopened blister packs that ---

3 Q. That's not what I asked.

4 A. Did I -- excuse me?

5 Q. That is not what I asked. Did you call Poison Control
6 to identify ---

7 A. I did not.

8 Q. Those pills aren't in evidence, are they?

9 A. They are not.

10 MR. HAWKS: I have no further questions.

11 THE COURT: Anything further of this witness?

12 MR. MATHEWS: No, Your Honor.

13 THE COURT: All right, you may come down.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: Anything from the defendant on this issue?

16 MR. HAWKS: Yes, Your Honor. One of the biggest
17 issues I have is that the pseudoephedrine, along with all
18 this other stuff, was destroyed, and the court and the jury
19 is just supposed to just assume that it's pseudoephedrine.

20 Never called Poison Control. Never identified the
21 pills in any way. Never tested them. We have no idea what
22 those pills are, and I think for that reason any mention of
23 them should be suppressed, and any mention of all this
24 stuff that they destroyed against their own policy should
25 be suppressed.

1 THE COURT: All right, anything from the state?

2 MR. MATHEWS: Just briefly, Your Honor. As we went
3 into, while Mr. Hawks may characterize it as against
4 policy, it's coming from DEA and SLED training and to
5 cleaning up hazardous sites for meth labs.

6 And I understand his assertion that he doesn't know
7 what these items were. I don't think the proper remedy for
8 this in any means would be suppression of evidence, of
9 evidence. If he wants to argue the credibility of the
10 witnesses, they are lying about what they said was there,
11 so be it. But I don't think that suppression is the proper
12 answer.

13 THE COURT: All right. Mr. Hawks, I'm going to read
14 your brief and I'll give you an answer in the morning. Is
15 there anything else on this list that you need to have
16 heard?

17 MR. HAWKS: Yes, Your Honor. It's under the heading
18 of exclusion. What I meant by that was -- I had talked a
19 little bit about this before lunch. They found another
20 drug at the scene that Mr. Sanders was not charged with.
21 That drug is called methylone. It is chemically similar to
22 MDMA, or ecstasy. My concern is that if this is mentioned
23 in any way in front of the jury, they're going to -- all
24 they're going to hear is meth. They're going to assume
25 it's methamphetamine. It is not, and I don't, I really

1 don't want that to be ---

2 THE COURT: Any problem with that?

3 MS. CAVANAUGH: No, Your Honor.

4 THE COURT: You know what he's talking about?

5 MS. CAVANAUGH: I do.

6 THE COURT: Okay. Won't be mentioned. I grant your
7 motion.

8 MR. HAWKS: Thank you, Judge.

9 THE COURT: Anything else?

10 MR. HAWKS: We already talked about the gun charge but
11 that, I think, has been remedied.

12 MS. CAVANAUGH: No, we haven't.

13 THE COURT: Well, I didn't tell, I didn't tell the
14 jury in voir dire, right.

15 MR. HAWKS: That's correct.

16 THE COURT: Doesn't mean they don't plan to argue it,
17 even probably in opening argument. I'm not sure what the
18 plan is. I mean, isn't that an element of the crime?

19 MR. HAWKS: It is, Your Honor, but either they hear he
20 was convicted of trafficking, which is going to make them
21 think, well, he's done it before ---

22 THE COURT: What?

23 MR. HAWKS: I'm sorry?

24 THE COURT: What did you say?

25 MR. HAWKS: He -- the violent crime they're referring

1 to was the trafficking crack cocaine.

2 THE COURT: Don't have say that.

3 MR. HAWKS: Right, but then the other alternative to
4 that is violent crime, which also is not going to sound
5 very good for Mr. Sanders.

6 THE COURT: Well, you know, I don't make the facts.
7 If he has ---

8 MR. HAWKS: Well, we're willing to stipulate that he
9 has the trafficking charge.

10 THE COURT: Well, how's he going to get -- you going
11 to stipulate his guilt?

12 MR. HAWKS: No. I mean, we can talk about him
13 pleading guilty to that separately.

14 THE COURT: Go ahead.

15 MR. HAWKS: I'm willing to -- we're willing to
16 stipulate to the fact that he was convicted of that crime.
17 Therefore, the jury ---

18 THE COURT: Did he have a firearm? You willing to
19 stipulate that he had a firearm?

20 MR. HAWKS: I'm not sure. I'd have to talk to my
21 client about that.

22 THE COURT: I think you'd better talk to him.

23 MR. HAWKS: Thank you.

24 THE COURT: Because it's -- what's the state's
25 position?

1 MS. CAVANAUGH: Your Honor, stipulation means that the
2 defense and the state agree that it becomes a fact on the
3 record. We have to prove the element that he's been
4 convicted of a previous crime classified under 16-160.

5 THE COURT: But you don't have to say what it is.

6 MS. CAVANAUGH: No, we don't. I will, I will -- if
7 he, if he -- but the jury still has to hear that he's been
8 convicted of a violent crime. That's an element that we
9 have to prove.

10 THE COURT: I understand that.

11 MS. CAVANAUGH: We'll -- if he's willing to stipulate
12 that he's been convicted of a violent crime, that's fine
13 and the jury hears that, but it's not fine ---

14 THE COURT: Well, he doesn't want violent, but he
15 certainly doesn't want trafficking. He, he doesn't want
16 trafficking more than he doesn't want violent.

17 MS. CAVANAUGH: Well, the jury has to hear one or the
18 other, Your Honor. That's part of what we have to prove.

19 THE COURT: I understand.

20 MS. CAVANAUGH: Beyond a reasonable doubt.

21 THE COURT: And I have not -- unless he pleads guilty
22 to it, right? He can plead guilty to anything at any time.

23 MS. CAVANAUGH: If he wants to plead guilty to that
24 before we start the trial, I then think ---

25 THE COURT: I can, I can withhold sentencing.

1 MR. HAWKS: If that's the only way to keep it out, I
2 will discuss that with my client.

3 THE COURT: Well, y'all talk about it. He's got --
4 it's a problem, okay?

5 MS. CAVANAUGH: But I would also argue, Your Honor,
6 that it's very similar to the burglary first statute in
7 that the prior, the two prior convictions that are needed
8 for enhancement for burglary first come in for a jury
9 because if they don't know that -- I realize there's no
10 case law on it, but ---

11 THE COURT: Well, you're right. I know that. He's
12 going to discuss it with his client.

13 Now, what about your sequestration?

14 MR. HAWKS: We would just ask that any officers be
15 kept separate, except the lead, during the trial.

16 THE COURT: Any problem?

17 MR. HAWKS: Or any witnesses. I'm sorry.

18 THE COURT: Lay witnesses?

19 MS. CAVANAUGH: No, Your Honor.

20 THE COURT: Witnesses with the exception of the
21 investigating officer. All right, motion is granted.

22 MR. HAWKS: Thank you, Judge. I have one more
23 exclusionary issue.

24 THE COURT: Well, you're running, running out of time.

25 MR. HAWKS: I know. It stems from the last hearing we

1 had, the *Lyle* hearing. We are never going to know that
2 that was pseudoephedrine and if they're telling the jury
3 that it's pseudoephedrine, I just, I would like it to be
4 not said to the jury.

5 THE COURT: Well, I can't tell them what to say. I
6 don't know. I mean, does it say Sudafed on the box?

7 MR. HAWKS: It's just a white pill. There's no box.

8 THE COURT: She said it was still in the blister pack.

9 MR. HAWKS: She was mistaken.

10 THE COURT: Okay. Just pills, just pills laying
11 around?

12 MR. HAWKS: I think she was referring to the sleeve
13 that comes out of the box. The box itself is not the
14 picture. All you can see are white pills, and two of them
15 are actually different size and shaped pills.

16 THE COURT: Well, until I see it, I can't -- let's,
17 let's hold that until...

18 MS. CAVANAUGH: Your Honor, there's actually pictures
19 of the blister pack, and the investigator saw the word, the
20 writing on the back of the pills, and it said Sudafed.

21 THE COURT: On the pill?

22 MS. CAVANAUGH: On the back of -- on the back of the
23 blister pack.

24 THE COURT: Did she take a picture of it?

25 MS. CAVANAUGH: She took a picture of the pills.

1 There's not a close up of Sudafed.

2 THE COURT: So, how does she know it's Sudafed?

3 MS. CAVANAUGH: Because she saw it on the back of the
4 blister pack, which she then put on her incident report.

5 THE COURT: Well, I've got to see this. I take a lot
6 of Sudafed, so maybe I can identify it.

7 Let's reconvene at 9:15 a.m. We'll continue this
8 discussion at that time. Jury will be here at 9:30. Thank
9 you very much.

10 (WHEREUPON, THE CASE IS AT EASE.)

11 *TUESDAY, MARCH 18, 2014*

12 (COURT RESUMES AT 9:16 AM.)

13 MS. CAVANAUGH: Your Honor.

14 THE COURT: You're on the record.

15 MS. CAVANAUGH: I realized last night that you did not
16 read to the state's witness list to the jury.

17 THE COURT: That's right. You're absolutely right.

18 MS. CAVANAUGH: Yes, so we probably need to take care
19 of that this morning.

20 THE COURT: We'll do it.

21 MS. CAVANAUGH: I updated the -- just so we -- I
22 substituted the witness list with it.

23 THE COURT: Got a new one.

24 MS. CAVANAUGH: Yes. Yes, sir.

25 THE COURT: Got a new one.

1 MS. CAVANAUGH: With the updated indictment number and
2 with the addition of 5851 and possession with intent to
3 distribute methamphetamine charge typed on there instead of
4 handwritten on there.

5 Also, I mentioned yesterday that the possession with
6 intent to distribute heroin indictment, the body of it is
7 correct. There was just a scrivener's error as far as the
8 CDR code and the statute number. So, I would just ask that
9 that be amended under *State vs. Gentry* under 17-19-100.

10 THE COURT: Any objection?

11 MR. HAWKS: No, Your Honor.

12 THE COURT: All right. I'll amend it, but the clerk
13 has not appeared, so I don't have -- the indictments are in
14 the possession of the clerk right now. So, we'll do it
15 before ---

16 MS. CAVANAUGH: Thank you, Your Honor.

17 THE COURT: --- the case is over.

18 MS. CAVANAUGH: Oh, and this is under the
19 sequestration you granted the defense yesterday.
20 Investigator Allison Ricard apparently has been throwing up
21 all night. So, if it's okay with the court and the
22 defense, she's not going to be able to get here until
23 lunch. So ---

24 THE COURT: As long as you only have one, only one
25 today. What are you asking?

1 MS. CAVANAUGH: If he can sit in her place this
2 morning.

3 THE COURT: Sure.

4 MS. CAVANAUGH: Thank you, but she'll be here at
5 lunch, though.

6 THE COURT: All right.

7 MR. HAWKS: I have no objection.

8 THE COURT: All right. Now, the destroyed evidence
9 question, tell me again, Mr. Hawks, how the destruction of
10 this evidence -- and we'll call it evidence. I'm not even
11 sure -- these things that were destroyed, how does that
12 affect your defense?

13 MR. HAWKS: Well, Your Honor, as we prepared for this
14 case, we considered that the state would probably try to
15 use the attempt language in the statute to establish Mr.
16 Sanders's guilt. If that is indeed their theory, then we
17 would have liked to be able to look at this evidence and
18 inspect it ourselves. Perhaps even have an investigator or
19 some sort of our own expert look at this evidence because
20 the issue will be if they choose to go that route, you
21 know, what stage of the process, if any, was this equipment
22 in? And there are pictures, of course, but the pictures
23 don't really show what it all looked like as a whole, and I
24 don't think they substitute the real physical evidence
25 which the jury is never going to be able to see, Mr.

1 Sanders is never going to be able to see, or his attorneys.

2 And again, some of this stuff may have been hazardous,
3 but a lot of it was common household items. I don't think
4 salt is hazardous or coffee filters, or anything like that.

5 THE COURT: Well, let me get more to the point. Your
6 brief says:

7 South Carolina Supreme Court clarified the stands
8 on destruction of evidence. To establish a due
9 process violation, the defendant must
10 demonstrate: (a) the state destroyed the evidence
11 in bad faith; and (b) that the evidence possessed
12 an exculpatory value.

13 Now, you haven't told me either of those.

14 MR. HAWKS: Well, I think it's or, one or the other.

15 THE COURT: Or. I'll take or.

16 MR. HAWKS: The bad faith is not following their own
17 policy, and if they're going to say that there's some
18 other, you know, SLED policy or state policy, they didn't
19 testify to any of that or present any of that to the court.

20 And then the exculpatory evidence is what I was just
21 saying. If we could see and look at this evidence and the
22 jury could look at it, I think they'd be able to tell that
23 this was not an active cook. It was not set up. It was
24 not operational, and instead all they're going to have is a
25 bunch of pictures. So, I think both prongs are met.

1 THE COURT: Okay. Well, what's the state's position?

2 MR. MATHEWS: Your Honor, at this point in time, I
3 don't think he's met either prong of that bad faith or any
4 exculpatory value, specifically as to bad faith.

5 If you're inclined to rule in favor of Mr. Hawks, I'd
6 ask that you hold off until we get more testimony in place
7 because testimony from the Phillips Recovery people can
8 explain a lot more the reasons for the destruction.
9 There's actually -- Sergeant Maldonado provided to me
10 earlier OSHA federal requirements that meth labs have to be
11 destroyed, and that can be explained later. So, there's
12 absolutely no bad faith.

13 And then the exculpatory value, it was saved as best
14 we could with the photographs.

15 MR. HAWKS: And may I reply?

16 THE COURT: If he's finished.

17 What was Ricard's testimony about the necessity for
18 destruction of the evidence?

19 MR. MATHEWS: Her, her testimony yesterday was that
20 the reason that the evidence was destroyed was -- and even
21 materials that were not hazardous themselves, they had come
22 into contact with hazardous fumes and chemicals and,
23 therefore, they have to be destroyed. They can't be saved.

24 THE COURT: What, was her testimony that there was a
25 requirement?

1 MR. MATHEWS: Yes, Your Honor.

2 THE COURT: And what, what did she say?

3 MR. MATHEWS: She -- the requirement, from my
4 understanding in her testimony, was from her training with
5 DEA and SLED.

6 THE COURT: All right. The only evidence that you
7 have are the pictures. Is that correct?

8 MR. MATHEWS: Of -- for the manufacturing?

9 THE COURT: Yeah.

10 MR. MATHEWS: For, for the manufacturing, we have
11 evidence of the pictures. We actually have methamphetamine
12 from that room that was collected.

13 THE COURT: All right. Well, I assume this is -- I
14 mean, that the defense is moving to suppress the pictures
15 since there's -- you can't suppress the evidence. I think,
16 I assume he's moving to suppress the pictures.

17 MR. MATHEWS: As far as -- that's my understanding,
18 yes, sir.

19 THE COURT: Not that they're not authentic but they
20 are -- he's going to tell me he can't cross-examine a
21 picture. Sort of like hearsay. Can't, can't cross-examine
22 writing.

23 Well, Mr. Hawks, at this stage of the proceedings, I
24 can't find any bad faith. There's testimony that from
25 Investigator Ricard that she did things according to what

1 she was taught she should do. And as in *Cheeseboro*, there
2 was no bad faith. There was no evidence of bad faith.
3 City police department -- I shouldn't say that -- lost the
4 gun. I tried a case in Kershaw a couple of years ago where
5 they lost the bullets. Never could prove that who shot
6 John. These things happen.

7 But I don't find any bad faith, and I -- it's hard for
8 me to, at this stage of the proceedings, perceive any
9 exculpatory value. If you had the bottle with residue in
10 it, or maybe your chemist could have analyzed that and find
11 that it was not methamphetamine maybe. I don't know. I
12 respectfully deny your motion. I'm going to allow it.

13 Anything else before we bring the jury?

14 MR. HAWKS: Yes, Your Honor. I, I would just like to
15 renew again any Riddle, Rule 5 Brady. There was some
16 things that came up yesterday, especially in Ricard's
17 testimony. The list of what Phillips Recovery took, sort
18 of a manifest, we haven't received that.

19 THE COURT: I thought you did have it.

20 MR. HAWKS: Well, we have some paperwork, but I
21 thought I heard Ricard say that there was an actual list of
22 each item taken.

23 THE COURT: I thought, I thought ---

24 MR. HAWKS: And, and a field test.

25 THE COURT: --- that's what they were flashing around

1 yesterday. I didn't see it. Four or five pages.

2 MR. HAWKS: Yeah, we have that stuff, Your Honor.

3 THE COURT: Oh. Okay.

4 MR. HAWKS: But she specifically testified that they
5 had a detailed list of each item taken and that there were
6 field tests done on the scene. We don't have any results
7 of field tests; we didn't know that any field tests had
8 taken place until yesterday.

9 THE COURT: How about the, how about the discovery
10 issue, Ms. Cavanaugh?

11 MS. CAVANAUGH: Your Honor, everything that we were
12 provided by Phillips Recovery Incorporated has been turned
13 over to Mr. Hawks. We have a -- and he confirmed receipt
14 of the discovery that I sent him. So, he has everything
15 that we have and that we were provided by both Investigator
16 Ricard and Phillips Recovery Incorporated.

17 THE COURT: Were there field tests that you know of?

18 MS. CAVANAUGH: We -- she -- we asked her about that.
19 There are -- she, I think what she -- she didn't actually
20 mean field tests. She said that they perform some sort of
21 test at the scene, an acid or a base. Not necessarily a
22 field test, not a field test for drugs, but Phillips
23 Recovery Incorporated, I think they can testify to that,
24 but we've provided everything ---

25 THE COURT: You plan to call them?

1 MS. CAVANAUGH: Excuse me?

2 THE COURT: Do you plan to call ---

3 MS. CAVANAUGH: Yes, sir. There is a representative
4 from -- one of the individuals who responded from their
5 company is, is on our witness list.

6 THE COURT: All right. Well.

7 MS. CAVANAUGH: And, I mean, if Mr. Hawks wants to go
8 over before the jury comes what he has from Phillips
9 Recovery and what I have is what he has.

10 THE COURT: You have what they have?

11 MR. HAWKS: I certainly wouldn't mind going over it to
12 try to decipher some of it.

13 THE COURT: Well, go ahead and do that. The jury is
14 not here yet. And, you know, at such a point in time that
15 there's this gush of information that was not turned over
16 to you, I would expect you to make the appropriate motion
17 at that time, Brady motion at that time.

18 MR. HAWKS: Well, I did ---

19 THE COURT: But right now I don't know what it is
20 either.

21 MR. HAWKS: Right. Did you want to go over -- we were
22 talking before we left yesterday about mentioning of the
23 pseudoephedrine because it was also destroyed. I believe
24 Ricard testified that she read it. Best evidence rule,
25 it's a writing. We need the writing.

1 MS. CAVANAUGH: Your Honor, it was documented in her
2 incident report that it was pseudoephedrine. There's
3 pictures of the pills in the blister packs that she
4 identified.

5 THE COURT: If she, if she witnessed it, she can say
6 what she witnessed.

7 All right, anything further?

8 MS. CAVANAUGH: Your Honor, we do need to know how to
9 address the firearm issue.

10 THE COURT: In opening? In opening?

11 MS. CAVANAUGH: Yes, Your Honor.

12 THE COURT: What's the matter with the firearm?

13 MS. CAVANAUGH: As far as possession of a firearm or
14 ammunition by a person convicted of a violent crime, we
15 need to know how to handle that.

16 THE COURT: Who needs?

17 MS. CAVANAUGH: The state does in our opening. I
18 mean, that's what he's charged with.

19 MR. HAWKS: I did spend a few minutes discussing
20 whether or not he should plead.

21 THE COURT: All right. I understand.

22 MR. HAWKS: If I could have just a few more to discuss
23 with him?

24 THE COURT: Sure. All right.

25 He's going to talk it over with his client. Let's

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

3 (OFF THE RECORD.)

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

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

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

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

12 MR. HAWKS: Yes, sir.

13 THE COURT: How do you wish to proceed?

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

16 THE COURT: All right. Bring him around.

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

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

21 MR. HAWKS: I do, Your Honor.

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

24 MR. HAWKS: I have, Your Honor.

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

1 plead?

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

3 EXAMINATION BY THE COURT:

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

9 DEFENDANT: Yes, sir.

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

13 DEFENDANT: Guilty.

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

16 DEFENDANT: Yes, sir.

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

19 DEFENDANT: Yes, sir.

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

F. SANDERS - EXAMINATION BY THE COURT

151

1 could make you testify at your own trial.

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

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

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

16 DEFENDANT: Yes, sir.

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

19 DEFENDANT: Yes, sir.

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

23 DEFENDANT: No, sir.

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

1 DEFENDANT: Yes, sir.

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

5 DEFENDANT: Yes, sir.

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

8 DEFENDANT: Yes, sir.

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

12 DEFENDANT: Excuse me?

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

16 DEFENDANT: Yes, sir.

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

19 DEFENDANT: Yes, sir.

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

22 DEFENDANT: Yes, sir.

23 THE COURT: All right, Solicitor.

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

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

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

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

14 DEFENDANT: Yes, sir.

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

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

1 DEFENDANT: Yes, sir.

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

5 MR. HAWKS: Thank you, Your Honor.

6 MS. CAVANAUGH: Thank you, Your Honor.

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

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

14 THE COURT: Yes, ma'am.

15 MS. CAVANAUGH: Thank you.

16 THE COURT: Defense ready?

17 MR. HAWKS: Yes, Your Honor.

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

19 MS. CAVANAUGH: Oh.

20 THE COURT: Hold the jury.

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

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

24 MS. CAVANAUGH: Okay.

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

1 (THE JURY ENTERS AT 10:03 AM.)

2 THE COURT: Good morning, ladies and gentlemen. Mr.
3 154, thank you for agreeing to serve as foreperson of this
4 jury.

5 Yesterday when I was asking you some questions about
6 whether you knew anything about the case or you knew any of
7 the people involved in it, I neglected or overlooked the
8 fact that I had not told you the name of the witnesses.
9 And it is important to know if you have any connection with
10 any of the witnesses in this case.

11 So, at this time before we begin the trial, I'm going
12 to read the list of names of witnesses, and the question is
13 the same as to each. Is any member of the jury panel
14 related by blood, connected by marriage, employment, or a
15 close personal acquaintance of any one of the following?
16 And as I go through it, just raise your hand if you know
17 any of these people.

18 If any of the witnesses are present in the courtroom,
19 I'm going to ask them to stand so that the jury can
20 identify them.

21 All these witnesses are not going to be here right
22 now, but they are potential witnesses that may be called
23 during the course of the trial, and the first, about first
24 ten of them are all going to be employees of the Richland
25 County Sheriff's Department.

1 Investigator Allison Ricard. If you know any of them,
2 just please raise your hand. Sergeant Jerry Maldonado. He
3 was here. Investigator Joseph Clarke, Investigator William
4 Gonzales, Investigator Chauncey Smith, Melody Galinski,
5 William Cedarstaff, Andy Farmer, Tara Kinney, Investigator
6 David Unger, Investigator Randy James. David Rusher with
7 Phillips Recoveries, William Lindsey, also with Phillips
8 Recoveries, Joshua Johnson, Sarah Ann Brassell or Brassell.

9 (NO ONE STANDS.)

10 THE COURT: All right. Ladies and gentlemen, before
11 we begin this trial, I want to tell you that this trial
12 might be different from what you might expect. Many people
13 do not have the chance to attend actual court sessions, as
14 you are now doing, and may think from watching television
15 or movies or books, reading books that trials are always
16 full of a lot of high drama and intense action and things
17 of that nature.

18 While all these things may be true at times, this
19 trial is not for entertainment. It's a fundamental part of
20 our democracy, a search for the truth in an effort to make
21 sure that justice is done between the parties before the
22 court. Searching for the truth and making sure that
23 justice is done is often a slow, deliberate, and repetitive
24 process, the opposite of what you might have seen on
25 television or in movies or read in books. In other words,

1 this trial is not a thirty-minute drama.

2 This courtroom is a place of honor dedicated to the
3 protection and preservation of citizens' rights through
4 what many have called the greatest justice system ever
5 created. The attorneys appearing before you are advocates
6 for their parties that they represent. But first and
7 foremost, they are officers of this court sworn to uphold
8 the integrity and fairness of our judicial system and to
9 help you in a search for the truth.

10 You should expect them to be professional, competent,
11 and ethical in the representation of their clients, and
12 remember that you've also taken an oath to try this case,
13 and you will take an oath in just a minute to try this case
14 to reach a fair and just verdict, and you're also expected
15 to be professional, reasonable, and ethical.

16 All right, Madame Clerk, if you will swear the jury.

17 (WHEREUPON, THE JURY IS SWORN.)

18 THE COURT: All right, ladies and gentlemen, now I'm
19 going to take just a few minutes and give you sort of an
20 overview of the trial of this case so that you'll
21 understand what will be happening from time to time during
22 the course of the trial.

23 The defendant is charged, as I told you yesterday,
24 with several indictments. He's charged first with
25 manufacturing methamphetamine; second, possession with

1 intent to distribute methamphetamine; third, possession
2 intent to distribute crack cocaine; fourth, the possession
3 with intent to distribute heroin; and finally, possession
4 of a controlled substance. I'm not sure exactly what that
5 substance is. Well, it looks like diazepam, a schedule IV
6 controlled substance which allegedly the defendant
7 possessed without a prescription.

8 These indictments, as I told you yesterday, are simply
9 the charges by which the case is brought into court. It's
10 not in any sense any evidence of the guilt or innocence of
11 the defendant. The defendant has pled not guilty to these
12 indictments and the state, therefore, has the burden of
13 proving each of the elements of these indictments beyond a
14 reasonable doubt. And it will be your duty, ladies and
15 gentlemen, to decide whether the state has met that burden.

16 You are to determine the facts from the testimony you
17 hear and any other evidence that may be presented during
18 the course of the trial. It's especially important that
19 you perform your duty of determining the facts diligently
20 and conscientiously because ordinarily there is no way to
21 correct an erroneous determination of the facts by a jury.
22 When you comply with your oath to impartially determine the
23 facts in this case, you will have fulfilled your duty as
24 jurors, and no one will have a right to criticize your
25 verdict.

1 And, on the other hand, and with equal emphasis, the
2 same law that makes you the judges of the facts makes me
3 the judge of the law. You must accept and follow the law
4 that I explain to you even though you may disagree with
5 what I tell you the law is. I cannot tell you what the
6 facts are. You should not disagree with me about what the
7 law is or what it should be. Your job is to take the law
8 as I explain it to you and apply it to the facts that you
9 find from the testimony of the witnesses and any other
10 evidence that's introduced during the course of the trial.
11 And after doing that, you will render your verdict, a true
12 and just verdict under the solemn oath you just took as
13 jurors.

14 The procedure that we will follow is basically that
15 the state will present its evidence first in the form of
16 witnesses' testimony and/or exhibits that may be part of
17 the record. The defendant will then have the opportunity
18 to present his defense, bearing in mind, however, there is
19 absolutely no burden on the defendant to present any
20 evidence at all. Following that, the attorneys will be
21 allowed to sum up their case, and I will instruct you on
22 the law of South Carolina as it applies to this, this case,
23 and after that, the case will be turned over to you for a
24 decision.

25 Now, let me explain to you two legal principles that

1 will guide us during the course of this trial. First is
2 what's known as the legal yardstick that you will use in
3 judging or measuring the evidence in this case. That legal
4 yardstick is known as the burden of proof and in a criminal
5 case, the burden of proof -- that is, the responsibility
6 for proving the case -- is on the State of South Carolina
7 to prove guilt beyond a reasonable doubt. Should the state
8 fail to meet that burden of proof, it would be your duty to
9 find the defendant not guilty.

10 There's absolutely no burden whatsoever on the
11 defendant to prove or disprove anything. There's no burden
12 on the defendant to testify or present any evidence because
13 the burden is and remains on the State of South Carolina to
14 prove guilt beyond a reasonable doubt.

15 And second, I ask you to recall my earlier comment to
16 the entire jury panel concerning the presumption of
17 innocence. This is a cardinal and fundamental rule of our
18 law that a defendant will always be presumed innocent of
19 the crime or crimes for which he is indicted. This
20 presumption of innocence is not simply a legal phrase or a
21 legal theory. It's a substantial right to which any
22 accused, including this defendant, is entitled.

23 Until I advise you to begin your deliberations, again
24 I'm going to ask you not to discuss this case with anyone,
25 including your fellow jurors, friends, family members, or

1 anyone involved in the case. And after the case is
2 submitted to you, I'm going to ask you to only discuss it
3 in the jury room with your fellow jurors. It is important
4 to keep an open mind during the course of this trial to not
5 decide any issue in the case until all the evidence has
6 been presented to you, and the parties have made their
7 closing arguments, and I've instructed you on the law in
8 this case.

9 Now in just a moment, the attorney for the state will
10 make what's called an opening statement. The attorney will
11 explain to you the issues in this case, or at least what
12 the attorney thinks the issues are in this case, and what
13 the evidence will prove. The attorney for the defendant
14 will also make an opening statement.

15 What the attorneys tell you during their opening
16 statements is not evidence in this case. It's only their
17 contention as to what the issues are and what the evidence
18 will show. The evidence will be presented to you by
19 testimony of sworn witnesses from this witness stand and by
20 any exhibits that may be introduced during the course of
21 the trial.

22 In determining what the true facts are in this case,
23 you must decide whether or not the testimony of the
24 witnesses is believable. In deciding whether or not to
25 believe a witness, you have the right to consider whether

1 the witness has an interest in the result of the trial,
2 whether the witness is prejudiced towards either the state
3 or the defendant, and opportunity for the witness to have
4 seen the matters and things about which the witness may
5 testify, and the way the witness acts on the stand.

6 Now, ladies and gentlemen, you and I do not ask
7 questions of witnesses, and we can't offer any exhibits.
8 This is not *CSI*. Your duty is to listen openly and
9 honestly to the evidence. Keep an open mind. As I said
10 earlier, do not form any conclusions or judgments until you
11 have received and considered all the evidence that's to be
12 presented by the attorneys in this case.

13 If you cannot hear a particular witness or myself or
14 one of the attorneys, please let me know so we can have
15 them speak up more clearly. If your view of an exhibit is
16 obstructed for any reason, please let me know. We can
17 correct that.

18 If you need to bring something to my attention during
19 the course of the trial, please notify one of the bailiffs.
20 If you need to contact me, it may be necessary for the
21 bailiff to require that you put such question in writing so
22 that I can have a record of it, and I will respond to you
23 as quickly as I can and as the law permits me to do.

24 Now, ladies and gentlemen, I want to thank you at this
25 time for your kind attention. I trust you will give the

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

4 Solicitor.

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

8 THE COURT: All right.

9 MR. MATHEWS: May it please the court?

10 THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

25 We're going to introduce evidence and elicit testimony

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

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

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

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

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

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

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

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

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

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

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

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

24 MR. HAWKS: Thank you, Your Honor.

25 THE COURT: Make your opening remarks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: Counsel, approach the bench briefly.

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 THE COURT: Call your first witness.

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

11 (OFF-THE-RECORD BENCH CONFERENCE.)

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

14 CHAUNCEY SMITH, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

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

18 WITNESS: Chauncey Smith.

19 DIRECT EXAMINATION BY MS. CAVANAUGH:

20 Q. Investigator Smith, where are you employed?

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

22 Richland County Sheriff's Department.

23 Q. Make sure you're loud enough.

24 A. Better?

25 Q. Yes, thank you.

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

173

1 A. Okay.

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

4 A. About ten years now.

5 Q. And what is your position?

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

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

8 A. Narcotics investigator. Narcotics investigator.

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

10 A. About a year and a half.

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

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

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

19 A. I was.

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

21 A. It was.

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

23 A. It's at 113 Rockingham, which is on the northeast side
24 of town right close to Flora and Brickyard Road.

25 Q. And is that in Richland County?

1 A. It is.

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

4 A. That is 113 Rockingham. I'm sorry.

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

7 A. It is.

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

10 MR. HAWKS: Without objection.

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

13 BY MS. CAVANAUGH:

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

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

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

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

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

175

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

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

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

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

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

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

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

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

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

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

1 THE COURT: Overruled.

2 BY MS. CAVANAUGH:

3 Q. Continue.

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

5 Again ---

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

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

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

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

16 Q. Brassell?

17 A. Sounds right.

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

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

177

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

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

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

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

9 A. Sergeant Maldonado.

10 Q. And he did that?

11 A. He did do that.

12 Q. And were you present?

13 A. I was.

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

16 A. He did.

17 Q. Did he seem coherent to you?

18 A. He did.

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

21 A. No, he did not.

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

24 A. They all did.

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

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

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

10 A. I was.

11 Q. And who was responsible for that?

12 A. Investigator Clarke.

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

14 A. Both.

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

17 A. He did and he signed them.

18 Q. And did you actually witness that?

19 A. I did.

20 Q. Did you sign as a witness?

21 A. I did.

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

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

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

1 seized located?

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

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

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

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

10 A. I did.

11 Q. And why ---

12 A. We all do.

13 Q. Why is that important?

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

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

19 A. I did, unfortunately.

20 Q. And also methamphetamine labs?

21 A. I did.

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

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

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

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

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

11 A. I did.

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

15 A. I do.

16 Q. And what are those photographs of?

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

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

181

1 THE COURT: All right, overruled.

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

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

6 BY MS. CAVANAUGH:

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

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

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

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

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

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

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

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

20 THE COURT: Overruled.

21 BY MS. CAVANAUGH:

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

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

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

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

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

19 MR. HAWKS: Objection.

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

22 (A PAUSE.)

23 MS. CAVANAUGH: I apologize.

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

183

1 BY MS. CAVANAUGH:

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

5 A. If bought and used correctly.

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

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

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

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

16 BY MS. CAVANAUGH:

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

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

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

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

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

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

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

9 A. There were. Like that.

10 Q. Were there are multiple spoons?

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

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

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

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

20 THE COURT: Overruled.

21 BY MS. CAVANAUGH:

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

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

185

1 A. There were.

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

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

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

10 A. I did.

11 Q. In his bedroom?

12 A. We did.

13 Q. And what is that photograph of?

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

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

17 A. It can be.

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

19 A. It was.

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

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

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

3 Q. Is that what ---

4 A. That's what that is.

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

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

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

11 THE COURT: Overruled.

12 BY MS. CAVANAUGH:

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

187

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

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

5 A. That's what generally ---

6 Q. --- your elbow?

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

8 Q. And are they supposed to be opened?

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

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

13 A. There were.

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

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

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

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

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

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

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

5 A. It does.

6 Q. Is salt actually used in making methamphetamine?

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

10 Q. And was salt located in his bedroom?

11 A. It was.

12 Q. By the camp fuel?

13 A. In very close proximity.

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

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

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

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

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

23 A. It was.

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

1 THE COURT: Overruled.

2 BY MS. CAVANAUGH:

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

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

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

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

13 Q. Is that a picture of the grinder?

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

16 Q. In his bedroom?

17 A. Yes.

18 Q. Were there...

19 (A PAUSE.)

20 Q. We can continue without this actually.

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

23 A. There were.

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

1 A. I was.

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

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

4 MR. HAWKS: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MS. CAVANAUGH:

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

8 Q. And where those syringes actually collected?

9 A. They were.

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

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

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

19 A. A process.

20 Q. Okay.

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

191

1 his opinion of what you generally find.

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

6 Go ahead.

7 BY MS. CAVANAUGH:

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

9 A. Typically in a meth ---

10 Q. --- process.

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

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

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

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

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

5 Q. And why were you concerned about that?

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

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

12 A. I did.

13 Q. And what did he indicate to you?

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

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

17 THE COURT: Overruled.

18 BY MS. CAVANAUGH:

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

1 power line.

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

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

7 Q. And what is that?

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

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

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

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

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

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

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

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

25 A. It was.

1 Q. And what is that?

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

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

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

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

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

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

18 A. It is.

19 Q. And are they wearing gloves?

20 A. They are.

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

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

25 Q. Like those?

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

195

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

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

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

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

11 A. I did not.

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

14 A. I did.

15 Q. And what was that?

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

19 Q. And where was that located?

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

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

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

1 it, which is narcotics.

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

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

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

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

8 MR. HAWKS: Without objection.

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

11 BY MS. CAVANAUGH:

12 Q. Where did you locate this box?

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

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

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

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

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

197

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

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

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

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

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

17 A. They were packaged.

18 Q. They were packaged?

19 A. Prepared for sale.

20 Q. Individually?

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

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

24 A. I was not the lead investigator.

25 Q. Who was the lead investigator?

1 A. Investigator Ricard.

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

4 A. She is.

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

7 A. They did not.

8 Q. Were they arrested for anything?

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

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

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

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

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

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

23 A. There were.

24 Q. And which ones were those?

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

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

199

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

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

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

11 Q. And the suits are for their protection?

12 A. They are.

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

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

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

20 A. All that Richland County ---

21 Q. --- contact with?

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

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

24 A. There was.

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

1 A. Yes.

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

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

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

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

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

14 THE COURT: Overruled.

15 BY MS. CAVANAUGH:

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

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

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

22 (A PAUSE.)

23 BY MS. CAVANAUGH:

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

25 A. I can.

C. SMITH - DIRECT EXAMINATION BY MS. CAVANAUGH

201

1 Q. And what, what is he wearing?

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

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

6 THE COURT: Record will so reflect.

7 BY MS. CAVANAUGH:

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

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

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

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

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

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

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

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

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

1 break.

2 WITNESS: Yes, sir.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: Anything you want to put on the record?

5 MR. HAWKS: Your Honor, I at this point would move for
6 a mistrial based on what Mr. Foster discussed in his
7 opening. We discussed yesterday that there would be no
8 mention of the controlled buy or the -- anything else that
9 led to the execution of the search warrant. They
10 themselves state -- stated on the record that it had
11 nothing to do with these charges here today. And Your
12 Honor ruled it should not be gone into. He then proceeded
13 to do that during his opening, and that is grounds for a
14 mistrial.

15 THE COURT: Overruled.

16 MR. HAWKS: Again the pseudo, Your Honor, for the same
17 reasons that...

18 THE COURT: Well, the officer's offered a lot of
19 testimony. Cross-examination is very important in a case
20 like this. You understand that?

21 MR. HAWKS: I do, Your Honor.

22 THE COURT: All right. Good. Let's take about a
23 ten-minute break.

24 (OFF THE RECORD.)

25 THE COURT: Is the state ready for the jury?

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

203

1 MS. CAVANAUGH: Yes, Your Honor.

2 THE COURT: Is defense ready?

3 MR. HAWKS: Yes, Your Honor.

4 THE COURT: Bring the jury.

5 (THE JURY ENTERS AT 11:26 am.)

6 THE COURT: All right, Mr. Hawks, you may begin your
7 cross-examination.

8 MR. HAWKS: Thank you, Your Honor. May it please the
9 court?

10 CROSS-EXAMINATION BY MR. HAWKS:

11 Q. Investigator Smith.

12 A. Good morning.

13 Q. Good morning. It's still morning.

14 So, you testified on direct that you'd been an
15 investigator, a narcotics investigator for about a year and
16 a half?

17 A. Right.

18 Q. And in that time, did you take any chemistry classes
19 or anything like that?

20 A. No, I did not.

21 Q. You're not a chemist?

22 A. No, I am not.

23 Q. You've never cooked meth?

24 A. No, I have not.

25 Q. But you in your direct refer to this as a meth lab.

1 A. I did.

2 Q. But it was not -- there was no cook when you came in.

3 A. What do you mean?

4 Q. There was no active cook.

5 A. An active lab as in the bottle still rolling? No.

6 Q. So, there was no chemical reactions going on when
7 y'all entered the room?

8 A. No apparent chemical reactions.

9 Q. And I want to take you back to when y'all came in the
10 home originally. You said it appeared that there were --
11 that individuals in the garage were about to do something?

12 A. I don't know.

13 Q. But you don't think Mr. Sanders was intoxicated when
14 he was advised of his rights?

15 A. I'm pretty sure he was not intoxicated.

16 Q. Okay.

17 A. He didn't appear that at all.

18 Q. You didn't write the incident report, did you?

19 A. I did not.

20 Q. Have you seen it?

21 A. I probably have seen it a few times.

22 Q. Investigator Ricard created this, right?

23 A. She did.

24 Q. The incident report. Now, when an investigator
25 creates one of these reports, they don't just go off on

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

205

1 their own memory, right?

2 A. No, generally not.

3 Q. What?

4 A. Not generally.

5 Q. They're going to ask all the other officers or some of
6 the other officers what happened?

7 A. Right.

8 Q. And y'all are going to sort of pool your information
9 to create an incident report?

10 A. No.

11 Q. Generally speaking?

12 A. No, not generally speaking. We don't pool our
13 information and prepare an incident report. Generally
14 that's the officer that -- the lead officer. Again, a lot
15 of times they're writing that report as all the other stuff
16 is going on, and there may be follow ups later on or
17 something to that effect.

18 Q. So, again not necessarily you, but Investigator
19 Ricard, she has the opportunity throughout the whole
20 process to ---

21 A. Are you asking me what Investigator Ricard did?

22 Q. No.

23 MS. CAVANAUGH: Object to this line of questioning.
24 It calls for speculation.

25 THE COURT: Overruled.

1 Go ahead. It's cross-examination.

2 MR. HAWKS: Thank you, Your Honor.

3 THE COURT: Allow him some leeway.

4 MR. HAWKS: I'll straighten my question out a bit.

5 BY MR. HAWKS:

6 Q. If you were writing an incident report, or any
7 officer, you have an opportunity all the way up until the
8 case is disposed to amend it?

9 A. Amend the?

10 Q. The incident report.

11 A. Or do a follow up or something else like that.

12 Q. Or supplemental report?

13 A. Perhaps.

14 Q. Okay.

15 A. Not, not always.

16 Q. But as long as the case is open, you have the
17 opportunity to act, or whoever is, is writing the report?

18 A. Are you asking me until it gets disposed of, can we
19 still write things down?

20 Q. Absolutely.

21 A. Yes.

22 Q. Okay, and you've seen this incident report?

23 A. I have.

24 Q. Okay, but there's nothing in here about smelling any
25 smell.

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

207

1 A. I can't see the -- I don't, I don't ---

2 Q. Would you like to read it?

3 A. --- know word for word what it said.

4 MR. HAWKS: May I approach the witness, Your Honor?

5 THE COURT: Yes.

6 BY MR. HAWKS:

7 Q. Is there anything in that report about a smell?

8 A. There is not.

9 Q. Thank you.

10 Now, how long have you been an officer?

11 A. For about ten years.

12 Q. Ten years, and in your training, you were taught how
13 to generate incident reports and the importance of those
14 incident reports?

15 A. We are.

16 Q. Because at some point, someone may be in trial.

17 A. We are.

18 Q. Okay. So, the smell wasn't important enough to
19 include in an incident report?

20 A. I didn't write the incident report. What I can say as
21 far as incident reports go, yes, that is a kind of brief of
22 what happened, kind of a generalization. It's not the be
23 all and end all. That's why we have officers. That's why
24 we have other things like that. You may remember things
25 later on, so on and so forth like that.

1 Q. But you testified in your direct that the smell was
2 overwhelming.

3 A. It was.

4 Q. And you described it, I think, sort of like cat urine?

5 A. A metallic kind of cat urine, yeah. It's hard to
6 really say exactly what it ---

7 Q. Hard to forget, though?

8 A. --- smelled like. Right.

9 Q. Not important enough for the incident report?

10 A. You don't have a block on there per se for what it
11 smelled like or anything like that. It may -- I mean, you
12 don't generally write every single thing. You don't put,
13 like, what the wallpaper looked like, what the carpet
14 looked like, so on and so forth. There are things you
15 don't put in there.

16 Q. But your testimony on direct was that this was a meth
17 lab.

18 A. It was.

19 Q. Yet the smell associated with meth labs was not
20 included in the incident report.

21 A. Well, I believe on that incident report you just
22 showed me, it stated that he stated that's what he was
23 doing.

24 Q. That's not what you testified to on direct.

25 A. That's what -- that piece of paper -- if I was writing

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

209

1 an incident report and someone told me they were making
2 methamphetamine in a meth lab, I probably would not have
3 put exactly what it smells like, but that means that it is
4 being made.

5 Q. Okay, but meth was not being made when y'all came in.

6 A. Actively? No. Perhaps a few minutes before.

7 Q. A few minutes?

8 A. Perhaps. I don't know.

9 Q. You testified on direct that you -- the third bottle
10 that you found in the backyard, I'd like to take a look at
11 that picture. Just a second to find it. Might be one of
12 these. This one. That wasn't found in the home, right?

13 A. No.

14 Q. Found in the backyard?

15 A. Right.

16 Q. Several days later?

17 A. No.

18 Q. No?

19 A. I don't think it was found several days later. I
20 don't know exactly when it was found.

21 Q. But it wasn't found that day?

22 A. I don't know when it was found. I believe it was
23 found maybe the next day.

24 Q. Okay, but we're clear that it was not found the day
25 you executed the search warrant?

1 A. I did not find it, no.

2 Q. Okay. No one found it the day you executed the search
3 warrant?

4 A. I did not find it; I don't know who found it.

5 Q. Okay.

6 A. Is that -- who -- it would help if I could see who
7 turned it in to evidence.

8 Q. I'm not sure I know.

9 A. Okay.

10 Q. My only question was that it was not found the day of
11 the execution.

12 A. I don't believe so, no.

13 Q. Okay. Thank you.

14 MR. HAWKS: Beg the court's indulgence.

15 (A PAUSE.)

16 BY MR. HAWKS:

17 Q. All right, let's take a look at some of these other
18 pictures, Investigator Smith. Scale.

19 A. Yes.

20 Q. Right? Certainly a drug user would also want to have
21 a scale.

22 A. Perhaps.

23 Q. Because you can't take drugs back to the store without
24 a receipt.

25 A. I've never purchased drugs in that capacity, but I

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

211

1 guess hypothetically you can't take them back.

2 Q. So, you have to be careful?

3 A. Sure, but in, in my experience in dealing with people
4 who buy drugs simply to use them, I've rarely seen them
5 pull out a scale as they buy narcotics.

6 Q. But it would behoove a drug user to measure what they
7 buy.

8 A. Now you're asking me to speak for a drug dealer or a
9 user. I can only tell you what I've seen from experience.

10 Q. Okay, but there is a perfectly legitimate reason for
11 someone who doesn't use drugs at all to have a scale?

12 A. There could be.

13 Q. And there's a perfectly legitimate reason for just
14 people who use drugs to have a scale?

15 A. I guess there could be.

16 Q. Okay. Let's move on here. The spoons, here's one
17 with some spoons. What are those used for? Here's a
18 better one.

19 A. That is generally used to heat the narcotics up to
20 pull it into a syringe.

21 Q. To use?

22 A. Or to distribute.

23 Q. In your experience as a narcotics investigator, you
24 come across people buying drugs in a syringe?

25 A. I have, yes.

1 Q. You have? Those spoons, though, were found in Mr.
2 Sanders's room, correct?

3 A. Correct.

4 Q. Let me see if I can get this right. The drugs are
5 sort of cooked in that spoon, so to speak?

6 A. No. Generally what happens, they're cooked in those
7 bottles. If you're talking about ---

8 Q. I'm sorry. I'm not specifically talking about meth or
9 anything.

10 A. Okay.

11 Q. When you are using a syringe to inject narcotics.

12 A. Okay.

13 Q. It has to be reduced to a liquid first?

14 A. Right.

15 Q. Okay, and the cut straws, I'm not sure what picture
16 that is. Again, that's for use to snort?

17 A. Generally.

18 Q. And you could use anything, right? It doesn't matter
19 if it's straws. You can use a dollar bill or paper?

20 A. Yeah. I've seen different things, yes.

21 Q. Again, generally that's for use?

22 A. People use straws to use narcotics.

23 Q. Right.

24 A. Yes.

25 Q. Okay, and the jars, does that have anything to do with

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

213

1 the manufacturing process?

2 A. It generally can. Depends on exactly how they are --
3 a lot of times -- if you want me to explain how the glass
4 jars could come into -- could make methamphetamine, I will
5 be happy to.

6 Q. That's okay. We'll move on. Now the camp fuel, maybe
7 not Coleman. Some other brand. That has a wide variety of
8 uses.

9 A. Sure.

10 Q. Probably every household in America has some kind of
11 fuel.

12 A. I don't know. I don't think I have any camp fuel in
13 mine, but yes, I know a lot of people have camp fuel.

14 Q. You can use it to camp, fill your Zippo, all sorts of
15 things?

16 A. I'm sure.

17 Q. And the batteries, I think the photo of them is in a
18 drawer with a flashlight. Perfectly legitimate use for
19 batteries, right?

20 A. Now, which batteries you talking about? The ones that
21 were ---

22 Q. The ones in the drawer.

23 A. --- in packaging, or the ones that had been opened?

24 Q. Yes, the unopened batteries. Here's a picture.

25 A. Okay. Yes, people buy batteries like that.

1 Q. And this one, that actually has a flashlight in it?

2 A. Can I see?

3 Q. Yeah.

4 A. That looks like batteries and a flashlight, packaged
5 batteries.

6 Q. Not unusual for a household.

7 A. Packaged batteries? No.

8 Q. Cold packs, perfectly legitimate use for those?

9 A. As long as ---

10 Q. The ones that were unopened?

11 A. As long as they're not cut open.

12 Q. And just to be clear. On direct you said you put
13 those in the freezer. Those are the ones that you crush
14 up, put on a wound?

15 A. Yes. Done correctly, that's what you do with them.

16 Q. Now, you said something on direct about some of this
17 evidence not being able to be collected.

18 A. Correct.

19 Q. Why would salt not be able to be collected?

20 A. Generally if you see salt on a table, you don't even
21 collect it. When you put it with a methamphetamine lab
22 which produces hot toxic and hazardous materials and gases
23 and fumes and so on and so forth, they are very toxic for
24 everyone that comes in contact with them. We cannot store
25 that with other stuff.

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

215

1 Q. But you found just a container of salt, household
2 salt?

3 A. That had been in close proximity to what we believed
4 was a meth lab or what was a meth lab.

5 Q. I show you another picture here. This is State's
6 Exhibit 28, the packaging.

7 A. Yes, wax packaging.

8 Q. Perfectly legitimate use for that?

9 A. Would be? Is that a question?

10 Q. Yeah.

11 A. I have absolutely no idea. The only thing I've seen
12 wax paper used for is to package narcotics.

13 Q. And people who use drugs, those drugs are usually
14 packaged?

15 A. In my experience, people buy drugs and they may just
16 get a piece of drug, whether it be crack cocaine, whether
17 it be whatever.

18 Q. They're packaged in something?

19 A. Sometimes they're not. You just hand them -- when I
20 have bought drugs as a narcotics officer, they will hand
21 you the drugs. A lot of times they just give them to you.

22 Q. But your testimony on direct was that Mr. Sanders had
23 drugs that were packaged for sale.

24 A. He did. That is how -- now, you can buy them
25 packaged. You can buy them unpackaged. I don't know if

1 you're asking me to generalize how you buy drugs is my
2 question.

3 Q. Well, my question, I guess, is if you were just using
4 the drugs, perfectly possible that they would be packaged?

5 A. Are you asking my experience with meth?

6 Q. Just in drug use in general.

7 A. Fair enough. With meth cooks, generally what they do
8 is they will process enough methamphetamine, if they're
9 using, to use themselves. They will generally put it in a
10 little plastic thing generally, and they will use it out of
11 that themselves. I've never seen them package it to hold
12 on to it.

13 Q. Okay.

14 A. They may package ---

15 Q. But ---

16 A. --- it to distribute it.

17 Q. Drugs in general, just because they're in a package,
18 doesn't mean the person's a dealer. They could also be a
19 user.

20 A. It depends on what quantity. It depends on a lot of
21 things.

22 Q. All else being equal, I'm just talking about package.
23 It's certainly possible that a user would have packaged
24 drugs?

25 A. Packaged drugs, yes. Generally not the packaging

1 itself.

2 Q. That's all I need.

3 Now the pseudoephedrine, did you test that?

4 A. I did not.

5 Q. Anybody test that?

6 A. I do not believe so.

7 Q. How do we know it's pseudo?

8 A. That's what it looks like.

9 Q. That's what it looks like?

10 A. Yeah, and it was written on the packaging as well.

11 Q. And the grinder, that could be used to grind all sorts
12 of things: marijuana, coffee, anything you want to grind.

13 A. It could be. That's not what that one was used for,
14 but it could be.

15 Q. And all the pseudoephedrine was destroyed. Is that
16 correct?

17 A. I believe so.

18 Q. What was allegedly Sudafed.

19 Now, you testified on direct that some of the syringes
20 had liquid in them.

21 A. Right.

22 Q. Where those ever tested?

23 A. I don't believe so. We don't generally test syringes.

24 Q. So, we don't know what was in those syringes?

25 A. I went off of what Mr. Jack Sanders told me was in the

1 syringes.

2 Q. You testified on direct that the bottle found in the
3 backyard, at that stage of the cooking process, it would be
4 hot to the touch?

5 A. No. If, if it was found after -- once the reaction is
6 done and they pull the drugs out of it, it's generally --
7 it's not -- it's pretty mundane looking. You can kind of
8 just set it there. It's still toxic, very toxic and
9 hazardous, but it doesn't continue with all the firing and
10 looking crazy stuff when it's actually cooking the drugs.

11 Q. Right, but you testified on direct that that would be
12 hot to the touch if it were recent.

13 A. If we -- right, but if we found it the next day, it
14 would not be hot anymore.

15 Q. Mr. Sanders ever say anything to you about being a
16 user?

17 A. I believe he said he used narcotics.

18 Q. I'm sorry?

19 A. I believe he did say he used them. I believe also in
20 that report you showed me -- I don't know. He said he sold
21 them or distributed them as well.

22 Q. Could you show me where you find that because I don't
23 see it. Just what you just said, that he sold drugs.

24 A. All right. Just give me just a second.

25 (A PAUSE.)

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

219

1 BY MR. HAWKS:

2 A. I'm sorry. It says making. I apologize.

3 Q. That's okay. The amount of methamphetamine that was
4 actually tested, about .08 grams, that's not a lot, is it?

5 MS. CAVANAUGH: Objection. As the investigator, he's
6 not going to know the results of the drug tests.

7 THE COURT: He can answer the question if he can.

8 BY MR. HAWKS:

9 A. Would .08 get you not sober? Yes. Is that what -- I
10 don't know what you mean by not a lot.

11 Q. Is that a large amount of drugs or any ---

12 A. Is it a ton? No.

13 Q. If this was a recent cook, even in the last few days,
14 there'd be a lot more than .08?

15 A. No, not necessarily. I've seen people sell it just as
16 quick as it comes out of the bottle.

17 Q. And although the statutory amount of a heroin, the
18 heroin y'all found, was, as Mr. Foster said in his opening,
19 ten times the amount, even that was only one point
20 something grams, right?

21 A. It takes a lot less weight of heroin. It's, it's just
22 a little powder. Crack generally will weigh heavier,
23 marijuana the same. Heroin is very powerful and very
24 small. It takes -- it doesn't -- you don't get much in
25 each little bindle as far as weight wise.

1 Q. But you only found 1.25 grams?

2 A. That's a pretty good bit of heroin. Like I said, you
3 usually don't light the thing. Generally it's melted into
4 those little spoons, so a small amount does a pretty good
5 bit.

6 Q. Did you have a chance to look at Mr. Sanders's arms?

7 A. I -- did I look at Mr. -- I probably looked at his
8 arms. I can't remember. I think it was pretty warm that
9 day. Probably, he probably had on short sleeves.

10 Q. He have track marks on his arm?

11 A. I don't recall.

12 Q. Would it surprise you if he had tracks mark -- track
13 marks on his arms?

14 A. It wouldn't surprise me.

15 Q. Because he is a user?

16 A. He said he was.

17 Q. You can also inject methamphetamine?

18 A. I've seen people inject methamphetamine. Well, I have
19 not seen it. I've seen the after results of it, yes.

20 Q. So, you don't have to snort it or smoke it? You can
21 inject meth ---

22 A. You can.

23 Q. --- as well, and it would be through that same process
24 using the spoon generally speaking?

25 A. Yes.

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

221

1 Q. Just want to ask you one more question about the
2 evidence.

3 A. Okay.

4 Q. Some of this stuff such as the unused batteries and
5 coffee filters, those were -- or, I'm sorry, the
6 pseudoephedrine or what is allegedly pseudoephedrine and
7 some of the batteries were still in their packaging.

8 A. Okay.

9 Q. So, why wouldn't the evidence room accept things like
10 that? Why was the -- why were those things destroyed?

11 A. Again, taken in a vacuum, if I go into a house and
12 there are batteries in a drawer, they are completely -- as
13 you get them at Walmart or wherever you purchase batteries
14 from, once things are around a meth lab,
15 I mean, the fire department has to come out. There's a lot
16 of -- a lot of times we have to decontaminate whole houses,
17 which can take hours. We have to pull out the showers to
18 shower people off in the room. I don't think you
19 understand quite how toxic the leftover stuff is. So,
20 anything that's been too close to it or associated with it
21 has to be destroyed.

22 Q. Even something that's still in its packaging?

23 A. The packaging itself could be infected or
24 contaminated.

25 Q. What about ---

1 A. If you're asking me scientific stuff, I don't know how
2 it contaminates it. I know the smell stays around a long
3 time, so ---

4 Q. We don't need to get into that.

5 A. Okay.

6 Q. The people from Phillips Recovery had on jumpsuits,
7 you said.

8 A. Something like jumpsuits, yeah.

9 Q. But you didn't have a jumpsuit?

10 A. No, I do not.

11 Q. So, did you come in contact with the meth lab?

12 A. I did.

13 Q. You did not?

14 A. I did.

15 Q. Okay. Did you have to receive any medical treatment?

16 A. At the time? No. Probably in the future. Wouldn't
17 surprise me.

18 Q. So, just as the packaged batteries could be
19 contaminated, you yourself could be?

20 A. Right.

21 Q. But you have done nothing to remedy that?

22 A. I mean, I take a shower. I do what I can, but I don't
23 know. Like I said, we don't dress up like spacemen when we
24 hit a house. We never ---

25 Q. But you ---

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

223

1 A. --- know what's ---

2 Q. --- didn't have to be destroyed.

3 A. What's that?

4 Q. You didn't have to be destroyed.

5 A. I had to be cleaned. I make sure all my clothes are
6 cleaned up and all that sort of stuff. Lysol my clothes
7 before I come in the house.

8 Q. But you weren't quarantined or anything of that
9 nature?

10 A. No.

11 MR. HAWKS: Beg the court's indulgence.

12 (A PAUSE.)

13 BY MR. HAWKS:

14 Q. A couple of brief questions.

15 A. Okay.

16 Q. You're familiar with the Richland County Sheriff's
17 Department evidence and property handbook?

18 A. Familiar with it? Yes, I've seen it. I can't quote
19 it.

20 Q. Is it a part of your training to go through this?

21 A. Go through the evidence room?

22 Q. No. The handbook.

23 A. I'm sure we go through it.

24 Q. So, you've read it before?

25 A. I've looked at it before.

1 Q. Have you ever read the section entitled *Clandestine*
2 *Laboratory Evidence Submissions*?

3 A. I probably looked over it.

4 Q. Do you need a refresher?

5 A. Probably.

6 Q. Take a second to look that over.

7 A. All right.

8 Q. And you can keep that.

9 A. Okay.

10 (A PAUSE.)

11 MS. CAVANAUGH: Your Honor, I would object to this
12 line of questioning.

13 THE COURT: Overruled.

14 MR. HAWKS: Thank you, Your Honor.

15 BY MR. HAWKS:

16 Q. Did you have a chance to look it over?

17 A. Sure. Where? Part F you're talking about?

18 Q. Yes, sir.

19 A. Okay. This is also dated from 2007. I don't know if
20 there's an updated one or not.

21 Q. This is the updated one.

22 A. Okay. I'm sorry.

23 Q. Does it say anything in there about destroying
24 evidence?

25 A. Well, what it says is evidence ---

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

225

1 Q. That's -- I'm sorry. The question was if it said
2 anything in there about destroying evidence.

3 A. If I can ---

4 MS. CAVANAUGH: Objection. He's allowed to explain
5 his answer.

6 THE COURT: Let him explain his answer.

7 BY MR. HAWKS:

8 A. So everyone will know what I'm looking at, it says:

9 Evidence collected from a suspected clandestine
10 laboratory must be inspected and approved for
11 submission by drug identification personnel prior
12 to submission.

13 What that would mean for me is that I would have to
14 get someone to come out, and I did, and okay it to turn it
15 in. The person we had out there to ID it said it was not
16 okay to turn it in to the evidence room because on father
17 down where it says:

18 Items not accepted due to potential safety
19 hazards are flammable substance ---
20 --- which a lot of that stuff is.

21 --- and any other biohazardous material deemed to
22 be dangerous by laboratory personnel.

23 Which was the people that were out there who could ID
24 what is dangerous and what is not dangerous.

25 Q. And biohazardous refers to biological waste like the

1 blood? That's what that word bio...

2 A. Are you telling me what it means or asking?

3 Q. I'm asking you.

4 A. I would -- when I see biohazard, usually it's, like,
5 some kind of thing that means toxic to me. It's not good
6 for you.

7 Q. And it doesn't say anything in there about destroying
8 the evidence?

9 A. It, it, it doesn't say -- it says the only things that
10 can be submitted are things that are not that. So, you
11 would generally assume that something else would have to
12 happen to the other stuff.

13 Q. Let's go to page 57.

14 A. 57? And again this isn't a policies and procedures.
15 This is just a handbook.

16 Q. Handbook for, for evidence, and I don't need you to
17 read anything. I'm just asking. Is there anything in
18 there about destroying evidence?

19 A. I would have to read the entire document because you
20 are asking me to pick out certain things. Generally, I
21 can't read a paragraph. A lot -- that's why I said I don't
22 know this word for word. I would probably have to look
23 this over from front to back and see. I don't -- I'm far
24 from a meth tech guy, which is why I don't get suited up.
25 I run in. I know it smells bad, I know it looks bad, and

C. SMITH - CROSS-EXAMINATION BY MR. HAWKS

227

1 we call people that know what to do with it, and they
2 dispose of it.

3 Q. Okay. We can move on. I just had a couple more
4 questions. Earlier you testified that -- I think this was
5 on your direct -- that the cook, if there was one, could
6 have been as recent as a few minutes before you had
7 arrived.

8 A. Could have.

9 Q. And then I asked you if it was unlikely that there
10 would be only such a small amount as .08 if a cook, it just
11 happened.

12 A. You're also taking in a vacuum that we find everything
13 that we're looking for when we go in that door. Again, the
14 bottle was found the next day. Sometimes we don't find
15 exactly what we're looking for. It may be hidden. It may
16 be put in somebody, and that happens quite regularly.

17 Q. But it would have to be one or the other, you agree,
18 right? It would either have to be a recent cook or a not
19 recent cook.

20 A. No. It took me quite a while to find that little box.
21 That little bit of methamphetamine could have been hidden
22 most anywhere.

23 Q. But you don't have it here today. All you have is the
24 .08.

25 A. And the syringes and so on and so forth, right.

1 MR. HAWKS: I have no further questions.

2 THE COURT: Redirect?

3 MS. CAVANAUGH: Yes, Your Honor.

4 REDIRECT EXAMINATION BY MS. CAVANAUGH:

5 Q. When was the search warrant actually executed? What
6 time of day?

7 A. 7:45 p.m.

8 Q. And so the cook could have occurred at any point
9 before 7:45 p.m?

10 A. Any time.

11 Q. And let's just be clear about this. A user of drugs
12 can also be a dealer of drugs?

13 A. Happens a lot.

14 Q. He went through each specific -- he went through
15 chosen household items and asked you if there was a
16 legitimate purpose for them. Do you remember that?

17 A. I do.

18 Q. When taken together in a bedroom, is there a
19 legitimate reason to have open cold packs, stripped lithium
20 batteries, plastic bottles with tubing, camp fuel, Drano,
21 salt, and methamphetamine, and a grinder, and Sudafed
22 tablets, and I don't know if I said this but an open cold
23 pack? Is there a legitimate reason to have all of those
24 items in the same location in a bedroom?

25 A. Yes. To manufacture methamphetamine.

C. SMITH - REDIRECT EXAMINATION BY MS. CAVANAUGH

229

1 Q. Which is ---

2 MR. HAWKS: Objection, Your Honor.

3 Q. --- illegal.

4 MR. HAWKS: Speculation.

5 THE COURT: I sustain that.

6 BY MS. CAVANAUGH:

7 A. I know of no legal use.

8 MR. HAWKS: Your Honor, I'd move to strike his ---

9 THE COURT: All right.

10 MR. HAWKS: Thank you, Your Honor.

11 THE COURT: Disregard his last answer, ladies and
12 gentlemen.

13 MS. CAVANAUGH: I'll rephrase.

14 BY MS. CAVANAUGH:

15 Q. In your experience as a narcotics investigator, the
16 combination of all those items that I just read out, what
17 does that indicate to you?

18 A. A meth lab in some form.

19 MR. HAWKS: Objection, Your Honor. She just changed
20 the way the question was asked.

21 THE COURT: All right, I sustain the objection. Just
22 strike that last answer.

23 MR. HAWKS: Your Honor.

24 THE COURT: I understand.

25 MR. HAWKS: At this point we have a matter of law.

1 THE COURT: When we've finished.

2 MR. HAWKS: Yes, Your Honor.

3 BY MS. CAVANAUGH:

4 Q. And as far as the bottle that was recovered in the
5 backyard, you did ask him about that bottle on April 23rd?

6 A. I did ask him about that when I thought there were
7 probably two more, but we only found one.

8 Q. And what did he tell you?

9 A. He said that they would -- he had put them in the
10 backyard or around the power line.

11 MR. HAWKS: Objection, Your Honor. We went over
12 the...

13 THE COURT: There's been a previous ruling on this
14 issue. Just follow my previous ruling, please.

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

16 (A PAUSE.)

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

18 WITNESS: Okay.

19 MR. HAWKS: None, Your Honor.

20 THE COURT: All right, you may come down. Thank you
21 very much.

22 WITNESS: Thank you, Your Honor.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Next witness.

25 MR. MATHEWS: Your Honor, state calls Melody Galinski.

M. GALINSKI - DIRECT EXAMINATION BY MR. MATHEWS

231

1 MELODY GALINSKI, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Have a seat in the witness box.
4 State your name and spell it for us, please.

5 WITNESS: I'm Melody Galinski, M-e-l-o-d-y
6 G-a-l-i-n-s-k-i.

7 DIRECT EXAMINATION BY MR. MATHEWS:

8 Q. Ms. Galinski, could you tell me where you work?

9 A. Richland County Sheriff's Department.

10 Q. And what do you do there?

11 A. I'm an evidence technician.

12 Q. And back in April of 2013, were you an evidence
13 technician then?

14 A. Yes, sir.

15 Q. And can you tell me as an evidence tech, technician
16 briefly what you do?

17 A. As an evidence technician, we take in the evidence
18 submitted by investigators and deputies. We log it into
19 the system and store it securely until it's needed for
20 court, testing, et cetera.

21 Q. Have you had a chance to review the property report,
22 Richland County, county case number 1304841823 regarding
23 Fred Sanders?

24 A. Yes, sir.

25 Q. And can you tell me what your involvement, initial

1 involvement was with the evidence for this?

2 A. Sure. On April the 24th, 2013 at 9:28 a.m., I logged
3 in the evidence, and then on...

4 Q. And just when I say logged, who did you receive it
5 from?

6 A. Oh, I'm sorry. Chauncey Smith.

7 Q. Did he give it directly to you?

8 A. It was actually in the, yeah, in the dropbox on -- he
9 submitted it April 23, 2013, at 2310.

10 Q. And is that dropbox kept secure?

11 A. It is. It is locked. The only people with the keys
12 are people in the evidence room.

13 Q. Was it still locked when you ---

14 A. Yes.

15 Q. --- received it, and how many items of evidence did
16 you receive?

17 A. From Chauncey, we had thirteen items.

18 Q. And when you received the evidence, was it sealed?

19 A. Yes, sir.

20 Q. Had it been tampered with?

21 A. No, sir.

22 Q. Had anyone opened it since Investigator Smith had put
23 it in the dropbox?

24 A. No, sir.

25 Q. Then moving again on to July the 11th of 2013, can you

M. GALINSKI - DIRECT EXAMINATION / CROSS-EXAMINATION 233

1 tell me what you did on that date?

2 A. On July 11th, I transferred items 4, 6, 5, and 7 to
3 Tara Kinney. She is a drug analyst upstairs, and she --
4 they were submitted to her for testing.

5 Q. And before that, where were they?

6 A. They were stored in evidence.

7 Q. Securely?

8 A. Yes, sir.

9 Q. And were they still sealed when you got them ---

10 A. They are sealed when we give them.

11 Q. --- to give them to Ms. Kinney?

12 A. Yes.

13 Q. Okay.

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

15 THE COURT: Cross-examination.

16 MR. HAWKS: Briefly, Your Honor.

17 CROSS-EXAMINATION BY MR. HAWKS:

18 Q. Good morning, afternoon, Ms. Galinski. Did Mr. -- or
19 Investigator Smith hand you that evidence directly to you?

20 A. No. He put it in the dropbox.

21 Q. And how do you know he's the one who put it in the
22 dropbox?

23 A. On the evidence bags, it has the submitter's
24 signature, date, and time.

25 Q. And then you had that evidence from that point until

1 July 11th?

2 A. Yes. It was logged in as evidence and filed securely.

3 Q. Did anyone to your knowledge touch that evidence?

4 A. No.

5 Q. Look at it, anything like that?

6 A. No. Once it's stored, we don't touch it until someone
7 checks it back out.

8 Q. And then on the 11th, July 11, 2013, you transferred
9 it to Ms. Kinney?

10 A. Yes.

11 Q. And then that was the end of your involvement?

12 A. That's the end of my involvement.

13 MR. HAWKS: No further questions.

14 THE COURT: Anything further?

15 MR. MATHEWS: No, Your Honor.

16 THE COURT: You may come down.

17 May this witness be excused?

18 MR. MATHEWS: Yes, Your Honor.

19 THE COURT: Without objection.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Next witness.

22 MR. MATHEWS: State calls William Cedarstaff.

23 WILLIAM CEDARSTAFF, BEING DULY

24 SWORN, TESTIFIES AS FOLLOWS:

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

W. CEDARSTAFF - DIRECT EXAMINATION BY MR. MATHEWS

235

1 State your name for the record, please.

2 WITNESS: William Cedarstaff.

3 DIRECT EXAMINATION BY MR. MATHEWS:

4 Q. Mr. Cedarstaff, where are you employed?

5 A. Richland County Sheriff's Department.

6 Q. And in what capacity?

7 A. I'm an evidence technician.

8 Q. Basically the same thing as Ms. Galinski, who just
9 testified?

10 A. That's correct.

11 Q. Have you had a chance to review the property report
12 number 201304841823 regarding Fred Sanders?

13 A. Yes, sir.

14 Q. Can you tell me your involvement with the evidence on
15 July the 25th of 2013?

16 A. On the 25th at 10:45 in the morning, I took and
17 checked out three items, three, number -- item number 3,
18 number 8, and number 9 to Tara Kinney. She's one of our
19 forensic chemists.

20 Q. Where did you get those items from?

21 A. Out of the evidence room in their secure locker.

22 Q. Secure locker?

23 A. Yes, sir.

24 Q. When you received those items, were they still sealed?

25 A. That is correct.

1 Q. Had they been tampered with in any way?

2 A. They had not.

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

4 MR. HAWKS: I don't have any questions, Your Honor.

5 THE COURT: All right, you may come down, sir. Thank
6 you very much.

7 Witness be excused?

8 MR. MATHEWS: Yes, sir.

9 THE COURT: Without objection.

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: Next witness.

12 MR. MATHEWS: State calls Sergeant Jerry Maldonado.

13 JERRY MALDONADO, BEING DULY SWORN,

14 TESTIFIES AS FOLLOWS:

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

16 State your name for the record.

17 WITNESS: Jerry Maldonado.

18 DIRECT EXAMINATION BY MR. MATHEWS:

19 Q. Sergeant Maldonado, where do you work?

20 A. Richland County Sheriff's Department.

21 Q. And what do you do in the sheriff's department?

22 A. Currently the sergeant over the Special Victims Unit.

23 Q. And back in April of 2013, what unit were you working
24 with?

25 A. I was the supervising sergeant in narcotics.

1 Q. How long did you work in narcotics?

2 A. I worked at the sheriff's department twenty-two years.
3 I've worked in narcotics approximately sixteen to seventeen
4 years.

5 Q. And did you have an occasion to serve a search warrant
6 or be involved in the service of research warrant at 113
7 Rockingham Road on April 23, 2013?

8 A. I, I was there, yes.

9 Q. And tell me your involvement with that, please.

10 A. Well, I, being the supervisor, we're -- I was there
11 during the briefing before we went to the house. Then we
12 executed the search warrant. Made entry. Once everyone
13 was gathered up, we located three people in the garage, and
14 the mother was in the house as well. We brought them to
15 the living room, and I mirandized them.

16 Q. When they were brought to the living room, where they
17 handcuffed?

18 A. Definitely the three were. The mother, I don't recall
19 whether she was or not. She was having some health
20 problems at the time, so.

21 Q. And at this point, was anyone under arrest?

22 A. They were being detained.

23 Q. So, they were not free to leave?

24 A. They were not free to leave, no, sir.

25 Q. And when you say you mirandized them, can you

1 specifically tell me what you did?

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

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

10 A. As a whole, that is correct.

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

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

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

21 A. Yes, sir, he did.

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

25 A. No, he did not.

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

3 A. Yes.

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

7 A. No, sir.

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

9 A. No, sir.

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

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

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

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

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

25 A. No, I did not.

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

2 (A PAUSE.)

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

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

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

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Approach the bench, counsel.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: Call your next witness.

13 MR. MATHEWS: State calls investigator Joe Clarke.

14 JOSEPH CLARKE, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Have a seat in the witness box.
17 State your name for the record.

18 WITNESS: Joseph Clarke.

19 DIRECT EXAMINATION BY MR. MATHEWS:

20 Q. Investigator Clarke, where do you work?

21 A. Richland County Sheriff's Department.

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

23 A. I am a Special Victims Unit investigator.

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

25 A. The Narcotics Unit.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

241

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

2 A. Thirteen years.

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

6 A. I did.

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

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

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

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

17 Q. Do you remember how many?

18 A. I believe it was three.

19 Q. Okay. Do you know their names?

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

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

23 A. I did.

24 Q. And which one did you talk to?

25 A. The defendant there.

1 Q. And what was his name?

2 A. Bud is what I recall.

3 Q. Fred Sanders?

4 A. Fred Sanders.

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

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

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

11 A. I was.

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

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

18 Q. Was he handcuffed at that time?

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

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

24 A. I did.

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

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

243

1 44. Do you recognize that?

2 A. I do.

3 Q. Can you tell me what that is?

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

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

9 A. It was.

10 Q. Was that read to Mr. Sanders?

11 A. It was.

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

14 THE COURT: Just 44? Just 44?

15 MR. MATHEWS: At this time.

16 MR. HAWKS: Without objection.

17 THE COURT: Without objection.

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

20 BY MR. MATHEWS:

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

23 A. I did.

24 Q. Can you read the statement to me?

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

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

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

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

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

25 I have read this statement of my rights and

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

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

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

14 A. Yes, he did.

15 Q. Did he sign it?

16 A. He did.

17 Q. Did you witness it?

18 A. I did.

19 Q. Did anyone else witness it?

20 A. Yes, Investigator Smith.

21 Q. Did he sign that?

22 A. He did.

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

25 A. I did.

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

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

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

20 A. No.

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

22 A. No.

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

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

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

247

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

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

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

6 BY MR. MATHEWS:

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

9 A. I did.

10 Q. Did you recover any items?

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

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

14 A. I do.

15 Q. Start with 46. What is that?

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

20 Q. Do you know where those were recovered?

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

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

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

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

17 A. They are.

18 Q. Did you seal the bag yourself?

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

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

25 A. Possibly, more than likely.

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

249

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

2 A. Sure.

3 Q. 47. What is that?

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

14 Q. And that was recovered by you?

15 A. It was.

16 Q. Did you write that on the bag?

17 A. Yes.

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

19 A. It is.

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

22 THE COURT: Any objection?

23 MR. HAWKS: Into evidence?

24 MR. MATHEWS: Yes.

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

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

3 THE COURT: All right.

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

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

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

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

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

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

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

20 (A PAUSE.)

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

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

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

J. CLARKE - DIRECT EXAMINATION BY MR. MATHEWS

251

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

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

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

11 MR. HAWKS: Thank you, Your Honor.

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

15 THE COURT: I understood that.

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

18 THE COURT: All right. Go ahead.

19 MR. MATHEWS: And make sure he approves.

20 (COUNSELORS CONFER.)

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

22 THE COURT: All right. Good.

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

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

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

4 Ready for the jury?

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

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

7 MR. MATHEWS: Yes, Your Honor.

8 THE COURT: All right, bring the jury.

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

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

11 MR. MATHEWS: Thank you, Your Honor.

12 BY MR. MATHEWS:

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

16 A. They are.

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

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

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

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

6 A. I did.

7 Q. What did he ---

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

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

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

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

18 A. I do.

19 Q. What is that?

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

22 Q. Whose statement is that?

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

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

25 A. It is.

1 Q. Did he sign that statement?

2 A. He did.

3 Q. Did he initial each page?

4 A. He did.

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

7 A. That is correct.

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

10 WITNESS: It's 45.

11 MR. MATHEWS: 45 into evidence as amended.

12 MR. HAWKS: Without objection.

13 THE COURT: Without objection.

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

16 BY MR. MATHEWS:

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

19 A. Certainly:

20 Question: Do you reside at 113 Rockingham?

21 Answer: Yes, sir.

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

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

1 Answer: Back left bedroom.

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

4 Answer: Yes, my mother.

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

7 Answer: No, sir.

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

11 Answer: Yes, sir.

12 Redaction there.

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

17 Answer: Yes, sir.

18 Question: How do you use or take meth?

19 Answer: Inject and/or smoke.

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

22 Answer: Yes.

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

24 Answer: I apologize.

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

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

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

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

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

16 A. That's correct, yeah.

17 Q. Okay.

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

19 THE COURT: Cross-examination.

20 MR. HAWKS: Briefly, Your Honor.

21 CROSS-EXAMINATION BY MR. HAWKS:

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

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

J. CLARKE - CROSS-EXAMINATION BY MR. HAWKS

257

1 Q. And there's no question in here about cooking meth?

2 A. No, sir.

3 Q. And why would someone take the caps off the syringes
4 and replace them with pen caps and tape?

5 A. I don't know.

6 Q. Could it be that it would be more secure?

7 A. That's one reason, sure.

8 MR. HAWKS: Beg the court's indulgence.

9 (A PAUSE.)

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

11 THE COURT: Redirect?

12 MR. MATHEWS: No, Your Honor.

13 THE COURT: All right, you may come down.

14 May this witness be excused?

15 MR. MATHEWS: Yes, Your Honor.

16 THE COURT: All right, without objection.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: All right, ladies and gentlemen, let's
19 take our lunch break at this time. I'm going to excuse you
20 now until 2:00, ask you to be back in your jury room at
21 2:00. That will give you a little over an hour to attend
22 to personal affairs and perhaps get some lunch. Hope the
23 weather is not too bad out there, but unfortunately I don't
24 have a cafeteria here that I can feed you.

25 But nevertheless, I'm going to ask you again not to,

1 not to discuss this case with anyone else over the lunch
2 break or among yourselves when you return to the jury room.

3 Have a pleasant lunch. We'll see you at 2:00. Thank
4 you very much.

5 (THE JURY EXITS AT 12:37 PM.)

6 THE COURT: All right, Mr. Hawks.

7 MR. HAWKS: Thank you, Your Honor. May it please the
8 court? At this time I would again be moving for a
9 mistrial.

10 In pretrial motions yesterday, we decided there was to
11 be no mention of any prior bad acts, and you ruled that was
12 the case. They were not to do that. She then deliberately
13 asked a question that would elicit that response, and the
14 officer gave that response even though both were instructed
15 yesterday not to do that.

16 We are objecting obviously to that being heard by the
17 jury, but it's too late. The bell has already been rung;
18 there is no way that they can unhear that statement even if
19 you give a curative instruction, which we would agree to if
20 that's the only solution. But even that we would object to
21 because, like I said, there's just no way to unring the
22 bell or unhear something.

23 At this point, especially after the opening statements
24 about the search warrant, there is no way for Mr. Sanders
25 to have a fair trial. The jury already thinks he's cooked

1 meth in the past, which is exactly what we were trying to
2 avoid.

3 THE COURT: What did you hear his testimony to be?

4 MR. HAWKS: Well, I'd have to play it back to have any
5 sort of certainty, but it sounded like she said -- well,
6 she asked the question about what else he said up in the
7 bedroom, and then he said something along the lines of he
8 had cooked meth in the past.

9 THE COURT: I didn't hear that.

10 MR. HAWKS: Or he had cooked meth ---

11 THE COURT: I didn't hear that, but ---

12 MR. HAWKS: He cooked ---

13 THE COURT: --- I'm not arguing with you.

14 MR. HAWKS: And it was clearly in regard to the past.

15 MS. CAVANAUGH: Actually, Your Honor, I made sure to
16 phrase my question specifically to -- the question I asked
17 related to the bottle that he found in the bedroom. There
18 was absolutely no testimony regarding prior bad acts or
19 past. He never referenced anything about prior bad acts.
20 That did not come from his testimony. I would remember
21 that.

22 THE COURT: All right. Well, I'll get the court
23 reporter to play it back for me over the lunch hour. I'll
24 take a look at.

25 MR. HAWKS: Thank you, Honor.

1 THE COURT: See, see exactly what he said. Anything
2 else?

3 MR. HAWKS: Well, I would just add in there also his
4 statement about there being no other legitimate use for
5 those items.

6 THE COURT: Well, you know, it's a fine line when a
7 person who's involved in the -- on the drug team or however
8 they characterize their employment, if they see these
9 things over and over again, they tend to believe that
10 that's what -- that's the way it's done and that's the way
11 they see it done. It's not expert testimony, but if it's
12 anything, it's 701 type testimony. It's experience or
13 experience-based testimony.

14 I think you, I think you had the opportunity to
15 cross-examine him on his knowledge of cooking, and I think
16 you did that. So, I think that's a jury issue. I'm not
17 going to grant a motion in that regard. So, I respectfully
18 deny your motion.

19 MR. HAWKS: Thank you.

20 THE COURT: But I will take a look at this prior bad
21 act issue.

22 MR. HAWKS: Thank you.

23 THE COURT: All right.

24 MS. CAVANAUGH: Your Honor, I do have one issue I
25 wanted to address before our witness takes the stand after

1 lunch.

2 The gun, as far as mention of a gun collected in his
3 bedroom, not the fact that he was convicted of a second, is
4 that admissible testimony that there was a gun collected?
5 Not that he was in possession the gun illegally.

6 THE COURT: Why, why even do it? I'm not making a
7 ruling. I'm just asking.

8 MS. CAVANAUGH: Well, I mean ---

9 THE COURT: You've already got a conviction on the
10 possession of the gun whether he was a prior convicted
11 felon or not.

12 MS. CAVANAUGH: My only basis for the introduction of
13 the gun being found in his bedroom would be it's commonly
14 associated with drugs. I just want to be clear so the
15 witness doesn't testify to that if it's objectionable.

16 THE COURT: I think it will get an objection. I would
17 probably sustain it, all right? It's not necessary.

18 MS. CAVANAUGH: Thank you, Your Honor.

19 MR. HAWKS: Thank you, Your Honor.

20 THE COURT: Anything else?

21 MR. HAWKS: Nothing from defense.

22 THE COURT: 2:00. Thank you very much.

23 (OFF THE RECORD.)

24 (SPOONS WITH STRAWS MARKED AS STATE'S EXHIBIT NUMBER
25 48 FOR IDENTIFICATION.)

1 THE COURT: Be seated. Thank you. State ready to
2 proceed?

3 MS. CAVANAUGH: Yes, Your Honor.

4 THE COURT: Defense ready?

5 MR. HAWKS: Yes, Your Honor.

6 THE COURT: All right, with regard to the defense
7 motion on the prior bad acts issue, I've asked the clerk to
8 queue up the testimony of Investigator Smith with just the
9 response to the question about something to do with what
10 did he do with the bottles or something to that nature.

11 Will you play that back, please, Madame Court
12 Reporter?

13 (WHEREUPON, THE REQUESTED PORTION OF TESTIMONY IS
14 PLAYED FOR THE COURT.)

15 THE COURT: All right, as I understand, he said he had
16 put them, in response to the question about the bottles, he
17 had put them under the power line or something like. In
18 other words, I don't see that that involved prior bad acts.
19 I see it that he says that your client said he had put the
20 bottles from this event, I assume. I don't see that he
21 said he put them in the past, he put them in the -- or hid
22 them under the power lines. I don't think it arises to a
23 403, 404(b) violation.

24 All right, bring the jury, please.

25 Motion is respectfully denied.

W. GONZALES - DIRECT EXAMINATION BY MS. CAVANAUGH

263

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

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

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

8 THE COURT: Well, write it out.

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

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

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

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

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

18 WITNESS: William Gonzales.

19 DIRECT EXAMINATION BY MS. CAVANAUGH:

20 Q. Good afternoon, Investigator Gonzales.

21 A. Good afternoon, ma'am.

22 Q. Where are you employed?

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

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

1 A. A little bit over thirteen years.

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

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

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

8 A. Yes, ma'am.

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

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

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

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

16 Q. Were you involved in the execution of the search
17 warrant at 113 Rockingham Road?

18 A. That's correct.

19 Q. And was that April 23, 2013?

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

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

22 A. Yes, ma'am.

23 Q. --- of the search warrant?

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

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

1 occasion?

2 A. Yes.

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

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

7 Q. Where, where his bedroom was?

8 A. Located, right.

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

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

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

18 A. I did.

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

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

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

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

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

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

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

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

19 A. Yes, ma'am.

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

22 A. Absolutely.

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

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

W. GONZALES - DIRECT EXAMINATION BY MS. CAVANAUGH

267

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

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

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

4 A. That's correct.

5 Q. --- during the search?

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

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

9 (A PAUSE.)

10 BY MS. CAVANAUGH:

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

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

19 Q. But that wasn't you?

20 A. That's correct.

21 Q. Okay.

22 MS. CAVANAUGH: Thank you.

23 THE COURT: Cross-examination.

24 MR. HAWKS: Thank you, Your Honor.

25 CROSS-EXAMINATION BY MR. HAWKS:

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

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

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

5 A. Probably not active at the moment.

6 Q. Not operative?

7 A. Yes, sir.

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

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

11 Q. A lot of clutter?

12 A. A lot of clutter.

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

14 THE COURT: Anything further?

15 MS. CAVANAUGH: Nothing further.

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

17 This witness be excused? Without objection.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Next witness.

20 MS. CAVANAUGH: State calls Investigator David Unger.

21 DAVID UNGER, BEING DULY SWORN,

22 TESTIFIES AS FOLLOWS:

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

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

D. UNGER - DIRECT EXAMINATION BY MS. CAVANAUGH

269

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

2 DIRECT EXAMINATION BY MS. CAVANAUGH:

3 Q. Investigator Unger, where are you employed?

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

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

8 A. Just over ten years.

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

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

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

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

15 Q. Did you have an occasion to assist in the execution of
16 113 Rockingham Road?

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

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

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

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

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

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

1 A. Yes, ma'am.

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

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

5 (A PAUSE.)

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

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

11 A. That's correct.

12 Q. I'm going to show you what's marked as State's Exhibit
13 42 and ask if you recognize that.

14 A. Yes, ma'am. That's the ashtray with yellowish, rock-
15 like substance.

16 MS. CAVANAUGH: Your Honor, at this time I'd move to
17 introduce State's Exhibit 42 into evidence.

18 MR. HAWKS: Without objection.

19 THE COURT: Without objection.

20 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 42.)

22 BY MS. CAVANAUGH:

23 Q. And this is a picture of the yellow, rock-like
24 substance that you collected?

25 A. Yes, ma'am.

W. GONZALES - DIRECT EXAMINATION / CROSS-EXAMINATION

271

1 Q. In the garage?

2 A. Yes, ma'am.

3 Q. Once you collected it, who did you actually turn it
4 over to?

5 A. Investigator Chauncey Smith.

6 Q. And how was that documented?

7 A. It's documented on the bottom of this evidence bag.

8 Q. And does he actually sign for it?

9 A. He does.

10 MS. CAVANAUGH: Beg the court's indulgence.

11 (A PAUSE.)

12 MS. CAVANAUGH: Thank you, Investigator. Please
13 answer any questions from the defense.

14 WITNESS: Yes, ma'am.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION BY MR. HAWKS:

17 Q. Just very briefly, Investigator. Did you happen to go
18 into Mr. Sander's room as well?

19 A. I do not remember if I went into his actual room or
20 not, but we cleared the entire house, the entry team. So,
21 there is a chance I probably went in that room.

22 Q. Do you remember it being very messy and cluttered?

23 A. I do not.

24 Q. How about the garage?

25 A. The garage was cluttered, yes. I remember that.

1 MR. HAWKS: Nothing further.

2 THE COURT: Anything further?

3 MS. CAVANAUGH: No, Your Honor.

4 THE COURT: All right, you may come down.

5 Witness be excused?

6 WITNESS: Thank you, Your Honor.

7 THE COURT: Without objection.

8 (THE WITNESS EXITS THE STAND.)

9 MS. CAVANAUGH: State calls Investigator Randy James.

10 RANDY JAMES, BEING DULY SWORN,

11 TESTIFIES AS FOLLOWS:

12 CLERK OF COURT: Have a seat in the witness box.

13 State your name for the record, please.

14 WITNESS: Investigator Randy James.

15 DIRECT EXAMINATION BY MS. CAVANAUGH:

16 Q. Investigator Randy James, good afternoon. Where are
17 you employed?

18 A. Richland County Sheriff's Department, Narcotics Unit.

19 Q. And how long have you been employed in the Narcotics
20 Unit?

21 A. I've been with Richland ten years. I've been with
22 narcotics for five.

23 Q. Is part of your duties with the Narcotics Unit to
24 assist in the execution of search warrants?

25 A. Yes, ma'am.

R. JAMES - DIRECT EXAMINATION BY MS. CAVANAUGH

273

1 Q. And did you assist in the search warrant at 113
2 Rockingham Road?

3 A. Yes, ma'am.

4 Q. Let me show you what's been marked as State's Exhibit
5 48 and ask you to take out the evidence bag and see if you
6 recognize your signature.

7 A. Yes, ma'am.

8 Q. Okay, and what does it indicate that you collected
9 from that residence?

10 A. Spoons, straws with residue in them.

11 Q. And were those items individually packaged?

12 A. Were what items, ma'am?

13 Q. Were the spoons separate from ---

14 A. Yes, ma'am.

15 Q. Okay. When you ---

16 MS. CAVANAUGH: Your Honor, at this time I would move
17 to introduce State's Exhibit 48 into evidence.

18 MR. HAWKS: My same objection about not establishing
19 chain.

20 MS. CAVANAUGH: I'll hold off. We'll wait. Just for
21 ID purposes only.

22 THE COURT: For ID purposes only.

23 BY MS. CAVANAUGH:

24 Q. Did you -- do you wear gloves when you collect the
25 evidence from ---

1 A. Do I wear glasses, ma'am?

2 Q. Gloves.

3 A. Gloves, yes, ma'am.

4 Q. And who did you turn these items over to that day?

5 A. I believe Mr. Smith, Chauncey Smith, one of our
6 narcotics agents.

7 Q. Okay, and just to be clear, it's not your
8 responsibility to do any type of testing. You just collect
9 ---

10 A. No, ma'am. We just collect the evidence. We bag it,
11 and we turn it in to the scribe or the person who takes
12 care of all the evidence, which was Mr. Smith.

13 MS. CAVANAUGH: Beg the court's indulgence.

14 (A PAUSE.)

15 MS. CAVANAUGH: Thank you, Investigator James.

16 THE COURT: Cross-examination.

17 MR. HAWKS: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. HAWKS:

19 Q. Investigator James, spoons and straws, those are for
20 using drugs?

21 A. Pardon me, sir? I can't hear you.

22 Q. Spoons and straws, those are for consuming drugs?

23 A. They can be used for that, yes, sir.

24 Q. Did you go into the defendant's bedroom?

25 A. I searched several areas of the location that evening.

R. JAMES - CROSS-EXAMINATION BY MR. HAWKS

275

1 Q. Would you say the bedroom was really messy, cluttered?

2 A. I'd say the bedroom had a lot of paraphernalia,
3 narcotics paraphernalia throughout the house and that room,
4 yes. It was cluttered with clothing and other items.

5 Q. Did you go in the garage, too?

6 A. I searched a little bit in the garage; I didn't do too
7 much in the garage. Mostly in the bedroom and the
8 residence kitchen area and such.

9 Q. Would you say the garage was also pretty cluttered?

10 A. Like I say, sir, I didn't say spend much time in the
11 garage. I may have walked in there for a few minutes, but
12 I didn't actually search through the garage.

13 MR. HAWKS: I have nothing further, Your Honor.

14 THE COURT: Anything further?

15 MS. CAVANAUGH: Nothing further, Your Honor.

16 THE COURT: All right, you may come down.

17 This witness be excused? Without objection.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Next witness.

20 MR. MATHEWS: State calls Sara Brassell.

21 SARA BRASSELL, BEING DULY SWORN,

22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness box.

24 State your name for the record and spell your first and
25 last, please.

1 WITNESS: Sara Brassell, S-a-r-a B-r-a-s-s-e-l-l.

2 DIRECT EXAMINATION BY MR. MATHEWS:

3 Q. Good afternoon, Ms. Brassell.

4 A. Good afternoon.

5 Q. My name is Foster Mathews. I work for the solicitor's
6 office. You and I have not spoken prior to today, have we?

7 A. No, we have not.

8 Q. We are here today in the interest of Fred Sanders. Do
9 you know Fred Sanders?

10 A. Somewhat, yes.

11 Q. And first tell me about yourself. How old are you?

12 THE COURT: Mr. Mathews.

13 A. Twenty-nine.

14 THE COURT: Hold on. Can you pull up a little closer
15 to that microphone so we can hear you? You're very
16 soft-spoken. We need to be able to hear you. Thank you
17 very much.

18 BY MR. MATHEWS:

19 Q. Twenty-nine?

20 A. Yes.

21 Q. And where do you live?

22 A. Currently nowhere.

23 Q. Okay. You're in jail right now?

24 A. Yes.

25 Q. For what?

S. BRASSELL - DIRECT EXAMINATION BY MR. MATHEWS

277

1 A. For shoplifting.

2 Q. And that's already finished?

3 A. Yes.

4 Q. And while we're on the subject, you do have a prior
5 conviction in 2007 for fraud, don't you?

6 A. I do.

7 Q. Tell me how you know Mr. Sanders.

8 A. I just met him when I -- one day whenever I was going
9 to there for drugs.

10 Q. Was that the day that you were arrested?

11 A. It was the day before.

12 Q. The day before?

13 A. Uh-huh.

14 MR. HAWKS: I can't hear her, Your Honor.

15 THE COURT: I'm trying.

16 Can y'all hear her? Okay, lady on the back says they
17 can't hear.

18 WITNESS: Okay.

19 THE COURT: There we go.

20 BY MR. MATHEWS:

21 Q. Now I'm going to go to the date of April 23rd of last
22 year when you were arrested. What was going on on that
23 day?

24 A. Just using drugs and, I mean, nothing was going on and
25 cops came in and, you know, raided the place. I'd been

1 there all night, been up all night just getting high.

2 Q. What kind of drugs?

3 A. Just every kind. Heroin, Molly, which is also MDNA or
4 something like that, and crack cocaine, marijuana.

5 Q. Who provided these drugs?

6 A. Fred Jack Sanders.

7 MR. HAWKS: Objection, Your Honor. We have a matter
8 of law.

9 THE COURT: Approach the bench.

10 (OFF-THE-RECORD BENCH CONFERENCE.)

11 THE COURT: All right, ladies and gentlemen, go to the
12 jury room for just a minute. I've got lawyers talking in
13 both ears. Don't discuss the case among yourselves while
14 you're in the jury room.

15 (THE JURY EXITS AT 2:31 PM.)

16 THE COURT: Mr. Hawks, what's your objection?

17 MR. HAWKS: Your Honor, last week, Wednesday, March
18 12th, I received the jail list by email for Thursday, March
19 13. On it was Sara Ann Brassell. Obviously, I was alerted
20 by this. I then immediately sent the solicitor an email
21 asking her what was going on. She never replied.

22 There is nothing in the discovery whatsoever about
23 this woman giving a statement at the scene, giving a
24 statement afterwards at a time prior to this trial, or them
25 talking to her last week.

1 I renewed all my discovery motions both yesterday and
2 today. Her name was on the witness list, but this is
3 information that the defense should be provided.

4 THE COURT: What information?

5 MR. HAWKS: That she was going to testify and that
6 she had information about this case. We have been
7 preparing ---

8 THE COURT: Why else would she be on a witness list?

9 MR. HAWKS: Well, I did learn yesterday that she was
10 on the witness list but prior to that, I had no idea.
11 We've been preparing this, for this trial for weeks.

12 THE COURT: When was defense notified that this
13 witness was ---

14 MS. CAVANAUGH: Your Honor.

15 THE COURT: --- a potential witness?

16 MS. CAVANAUGH: Your Honor, her name was included in
17 the discovery that was provided to Mr. Hawks when the
18 initial discovery was turned over back in -- well, I don't
19 have the exact dates, but her name was provided in the
20 incident report to Mr. Hawks whenever initial discovery was
21 sent over.

22 Yes, he did notice that she was on the jail list. As
23 I stated, she coincidentally is in jail right now for
24 shoplifting. When we were looking for her as we were
25 preparing for this case, that is where we found her.

1 I brought her over. I told her exactly what I wanted
2 to talk to her about that -- about. She indicated that she
3 did not want to talk to me in any way related to this case
4 until she talked to her lawyer.

5 As soon as she said that, I ceased conversation with
6 her, and I did not hear anything further except that her
7 lawyer, who is sitting in the courtroom, Mr. Moak, informed
8 me that she was willing to testify.

9 So, her name was provided to Mr. Hawks well before
10 yesterday in the discovery because it, as has been stated
11 several times in this case, she is -- she was arrested at
12 the scene when they executed the search warrant.

13 And also she was on the jail list this morning. He
14 was -- she's been in the holding cell all day. He could
15 have talked to her at some point today or had someone else
16 talk to her.

17 THE COURT: When was he notified she was to be a
18 witness, potential witness in this case other than
19 discovery many months ago?

20 MS. CAVANAUGH: Well, Your Honor, when he was provided
21 the witness list yesterday morning. However, her name and
22 her address and her contact information has been available
23 to him as long as I've had the case.

24 THE COURT: Mr. Hawks.

25 MR. HAWKS: Well, I believe any conversation with her,

1 even if it's just her saying she wants to talk to her
2 lawyer, would be discoverable information that was not
3 handed over to us. And I find it very hard to believe that
4 they put her up here without any idea of what she was going
5 to say. Even if it came through her attorney, that's still
6 discoverable information. Just because I knew that she was
7 in the incident report, that's not putting me on notice for
8 what I'm supposed to be defending against.

9 MS. CAVANAUGH: Your Honor, my argument is that's what
10 cross-examination is for.

11 MR. HAWKS: I, I wasn't finished, Your Honor.

12 This is another thing of a long list of discovery
13 violations. This is trial by ambush, Judge.

14 THE COURT: How about it? It does seem a little late.
15 You talked to the -- to her counsel about her testimony?

16 MS. CAVANAUGH: Not about the substance of it. Just
17 that she was willing to testify.

18 THE COURT: Why? About what?

19 MS. CAVANAUGH: About the drugs that were located in
20 the garage that she was arrested for.

21 THE COURT: So, you did talk to him about her
22 knowledge of this case.

23 MS. CAVANAUGH: As referenced in the incident report
24 that the crack cocaine was located ---

25 THE COURT: As relates to this case.

1 MS. CAVANAUGH: Yes.

2 THE COURT: That's what I said.

3 MS. CAVANAUGH: Yes, because that's what her
4 involvement in this case was relating to ---

5 THE COURT: Well, I know.

6 MS. CAVANAUGH: --- as was related in the incident
7 report.

8 THE COURT: What's your motion, Mr. Hawks?

9 MR. HAWKS: I would again move for a mistrial.

10 THE COURT: Denied.

11 MR. HAWKS: Then I would move to suppress any
12 testimony from this witness.

13 THE COURT: All right, I'll grant it.

14 MR. HAWKS: Thank you. I guess we'll need a curative
15 instruction for what she's already said.

16 THE COURT: Well.

17 MR. HAWKS: And I believe she mentioned another prior
18 bad act.

19 THE COURT: Well, give me a proposed curative
20 instruction.

21 You can come down, ma'am.

22 (THE WITNESS EXITS THE STAND.)

23 (A PAUSE.)

24 THE COURT: You got another witness?

25 MS. CAVANAUGH: We do, Your Honor. Yes, sir.

1 THE COURT: Bring the jury, please.

2 (THE JURY ENTERS AT 2:39 PM.)

3 THE COURT: Ladies and gentlemen of the jury, let me
4 explain something. In any trial, we have adopted what are
5 called rules of evidence. Everybody has to play by the
6 rules, even if it's an individual pro se person that's in
7 court, and sometimes these rules are pretty strict about --
8 and I don't make the rules. I try to enforce the rules.
9 I'm sort of a traffic cop up here that tries to enforce the
10 rules.

11 I have ruled that that last witness that was on the
12 stand was brought in front of you improperly. Now, you may
13 have questions about that, and I'll be glad to discuss it
14 in more detail later, but I'm going to ask you -- I have
15 ruled that bringing her in front of you at this time is
16 improper, and that that deals with things like notice and
17 other issues. But I'm going to ask you to disregard her
18 testimony.

19 It was somewhat of a surprise to me, but based on the
20 objection of the defendant that rules had not been followed
21 with regard to this witness, I have agreed with the defense
22 and ruled that this witness was brought before you
23 improperly. And as I say, I'm going to ask you to
24 disregard her testimony, and we will now continue with the
25 trial.

1 Call your next witness, Solicitor.

2 MS. CAVANAUGH: Thank you. State calls investigator
3 Allison Ricard.

4 ALLISON RICARD, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Have a seat in the witness box.
7 State your name for the record and spell your last name,
8 please.

9 WITNESS: Allison Ricard, R-i-c-a-r-d.

10 DIRECT EXAMINATION BY MS. CAVANAUGH:

11 Q. Investigator Ricard, where are you employed?

12 A. With Richland County Sheriff's Department.

13 Q. And how long have you been with the sheriff's
14 department?

15 A. Approximately six years.

16 Q. And what is your current position with the sheriff's
17 department?

18 A. I work for the Drug Suppression Team.

19 Q. In April of 2013, what was your position?

20 A. I was an narcotics investigator.

21 Q. And as a narcotics investigator, what were some of
22 your responsibilities?

23 A. We follow up on tips. We execute search warrants,
24 follow up on basic drug complaints.

25 Q. And how long were you in the Narcotics Unit?

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

285

1 A. Approximately three years.

2 Q. Did you -- were you the lead investigator in the case
3 we're here about today, Fred Jack Sanders?

4 A. I was.

5 Q. Was a search warrant obtained for his residence?

6 A. It was.

7 Q. And where was this residence located?

8 A. At 113 Rockingham Road in Richland County.

9 MS. CAVANAUGH: Beg the court's indulgence.

10 (ENLARGED MAP MARKED AS STATE'S EXHIBIT NUMBER 49 FOR
11 IDENTIFICATION.)

12 BY MS. CAVANAUGH:

13 Q. Investigator Ricard, I'm going to show you what's
14 marked as State's Exhibit 49. Is that an overhead view of
15 113 Rockingham Road?

16 A. It is.

17 MS. CAVANAUGH: Your Honor, at this time I'd move to
18 introduce State's Exhibit 49 into evidence.

19 MR. HAWKS: Without objection.

20 THE COURT: Without objection.

21 (ENLARGED MAP MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 49.)

23 BY MS. CAVANAUGH:

24 Q. So, is that residence located in an actual
25 neighborhood?

1 A. It is.

2 Q. Okay. With other houses in close proximity to each
3 other?

4 A. It is.

5 Q. Can you describe where you went upon entry of the
6 home?

7 A. When our unit made entry, I helped secure Mr. Sander's
8 mother in the living room, and then once the residence was
9 secure, we began searching throughout the residence.

10 Q. And when you say secured his mother, what -- I mean,
11 what do you mean by that? She was elderly, right?

12 A. She was. She was not placed in handcuffs, I don't
13 believe. Once everything was under control and we made
14 sure there were no threats in the house, we began
15 searching.

16 Q. Okay, and did you go into the garage?

17 A. I did.

18 Q. And who was located in the garage?

19 A. Ms. Sara Ann Brassell and Joshua Johnson and Fred Jack
20 Sanders were all three located in the garage.

21 Q. Okay, and what were they -- what did it appear that
22 they were doing in the garage?

23 A. We noticed a white rock substance that was located in
24 an ashtray in plain view on the floor. It appeared that
25 they had been sitting on a couch located in the garage in

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

287

1 close proximity to this white rock substance.

2 Q. Okay, and in your experience, is that white rock
3 substance, was that believed to be drugs?

4 A. It was.

5 Q. Were they advised of their rights by Sergeant
6 Maldonado?

7 A. They were. They were all brought into the living room
8 area, and I believe that's where Sergeant Maldonado gave
9 Miranda to everybody.

10 Q. And specifically as it relates to the defendant, Mr.
11 Sanders, did he appear to understand his rights to you?

12 A. He did.

13 Q. Did he seem like he was incoherent or under the
14 influence of anything to where he couldn't understand them?

15 A. He did not.

16 Q. And did he acknowledge that he understood them?

17 A. He did.

18 Q. What were your primary responsibilities during the
19 search?

20 A. Once we discovered we had a potential meth lab at this
21 residence, based on my training and experience as a
22 certified meth lab, I put on a hazmat suit and full
23 respirator, breathing apparatus.

24 There was a very strong chemical smell coming from Mr.
25 Sander's bedroom, and at that point we started collecting

1 items: plastic bottles, plastic tubing.

2 Q. And I'll stop you there. You mentioned your training
3 and experience, and you said something about your
4 certification. Can you describe what kind of training
5 you've received as in meth lab specifically?

6 A. The training is put on through the DEA and SLED. It
7 basically ---

8 Q. What, what is the DEA?

9 A. The Drug Enforcement Administration.

10 Q. Okay.

11 A. And it basically informs you of what to look for in
12 meth labs. It explains what items and chemicals and
13 equipment are used to manufacture manufacture meth, how it
14 is smoked, how it's injected, the volatile chemicals that
15 are involved, the hazardous waste that comes off of the
16 product, and the proper techniques for cleaning up a meth
17 lab site.

18 Q. And is this a week-long course? How ---

19 A. It is. It is a week-long course.

20 Q. And when did you go to that training?

21 A. In 2013.

22 Q. Okay, and did you receive a certification?

23 A. I did.

24 Q. And what was that? What was that certification
25 called?

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

289

1 A. Basic, or Basic Clandestine Lab Investigations.

2 Q. Okay. So, what types of -- you, you've mentioned that
3 you put on a hazmat suit. What did you notice that caused
4 you to put on your suit?

5 A. There was a very strong chemical smell predominantly
6 in Mr. Sander's bedroom. Once we got in there, we located
7 numerous bottles and plastic tubing, batteries that been
8 stripped apart and the lithium removed out of them. And
9 this is where the majority of the chemical smell was coming
10 from, the biggest hazard at the moment, if you will.

11 Q. Why was that smell, the chemical smell that you
12 mentioned, why was that significant to you?

13 A. The distinct odor is consistent with a recent
14 manufacturing. Active meth lab is how we label it. There
15 was not an actual active cook in the room, but based on the
16 very strong odor, one had been cooked recently in the room.

17 Q. And the search warrant, this was executed around 7:45
18 that evening, right?

19 A. Yes, I believe so.

20 Q. Okay. You mentioned various items that were located
21 in his room. Was there plastic bottles with tubing?

22 A. There were.

23 Q. And were they located in the trash can?

24 A. Yes. That's what it looked like when we made entry.

25 This is untouched before we had started processing the

1 scene.

2 Q. Did you also locate pseudoephedrine, pseudoephedrine
3 in his room?

4 A. Yes. I believe that was located on a desk near his
5 bed. There were unopened blister packs of Sudafed; it said
6 on the back that it was Sudafed.

7 There was also in close proximity to that a pill
8 crusher with white residue consistent with the
9 manufacturing of methamphetamine. They will take the
10 Sudafed pills and put them in a pill crusher and crush it
11 prior to cooking the actual meth.

12 Q. And did you actually collect the grinder in this case?

13 A. We did. The blue pill crusher was collected, and I
14 believe was submitted in the paraphernalia.

15 (COLLECTION OF ITEMS MARKED AS STATE'S EXHIBIT NUMBER
16 50 FOR IDENTIFICATION.)

17 BY MS. CAVANAUGH:

18 Q. I'm going to ask you to look at this bag and see if
19 you recognize your signature on it.

20 A. I do.

21 Q. And what, what, what is in that bag?

22 A. This is various paraphernalia consistent with
23 manufacturing in the sale of narcotics, specifically the
24 blue pill crusher here that was located with the Sudafed
25 pills. There's various wax paper bags which are consistent

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

291

1 with the sale or the selling of methamphetamine and heroin,
2 the various pipes used to smoke methamphetamine.

3 Q. Now, none of these items were actually tested, right?

4 A. They were not.

5 MS. CAVANAUGH: Your Honor, at this time I'd move to
6 introduce State's Exhibit 50 into evidence.

7 MR. HAWKS: Again, Your Honor, my same objection about
8 not establishing chain.

9 MS. CAVANAUGH: They weren't tested, and she just did.

10 MR. HAWKS: Tara Kinney has not yet testified.

11 THE COURT: Just mark them for ID or separate them.

12 MS. CAVANAUGH: Your Honor, may we approach?

13 THE COURT: Well, the question is where did they go
14 from there from her.

15 BY MS. CAVANAUGH:

16 Q. Once you collected these items, where -- who did you
17 turn them over to?

18 A. Investigator Smith, where he documents in the search
19 warrant exactly what was collected and where.

20 Q. And do you -- are they already in this bag sealed when
21 you turn it over?

22 A. Yes.

23 MS. CAVANAUGH: Your Honor, at this time we move to
24 introduce State's Exhibit 50. Investigator Smith has
25 already testified.

1 THE COURT: Did what?

2 MS. CAVANAUGH: Investigator Smith has already
3 testified as to what he turned in, and this was part of
4 that.

5 THE COURT: Did he identify that?

6 MS. CAVANAUGH: Yes. He identified the pictures.

7 THE COURT: Just mark it for ID.

8 BY MS. CAVANAUGH:

9 Q. But again, this contains, that bag contains items that
10 are located in this picture?

11 A. Correct.

12 Q. And those are consistent with the manufacture of
13 methamphetamine in your experience as an investigator?

14 A. Yes, both the manufacturing and the wax paper bags
15 specifically are for the sale of the methamphetamine.

16 Q. Okay. Did you make a decision to contact Phillips
17 Recovery Incorporated in this case?

18 A. Yes. Based on the training and experience through the
19 DEA and SLED class or course that we got certified through,
20 we are required by OSHA, I believe, to contact a hazardous
21 cleanup crew.

22 Our laboratory in our evidence room is not allowed to
23 accept hazardous chemicals and items that have been
24 exposed, especially in clandestine labs. So, we contacted
25 a company called Phillips Recovery. They come out to the

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

293

1 scene, and this specific night they come out and collected
2 numerous items from this house.

3 Q. Okay, and how is that, how is that -- can you describe
4 that process as in it's in the house? I mean, how do y'all
5 transfer the evidence from the room and make the decision
6 to turn it over to Phillips?

7 A. Once we realized we had a meth lab, I put on the
8 hazmat suit, and I am responsible for taking the pieces and
9 equipment and the chemicals outside, and everything is
10 documented and photographed before we begin any of this
11 process. Then Phillips Recovery is contacted.

12 They arrive on scene. They make a documented list of
13 everything that they are taking into custody, and we also
14 get a receipt showing that this company has destroyed it.

15 Q. Okay, and do they classify the materials as hazardous
16 and nonhazardous?

17 A. They do based on the specific items, items like the
18 camp fuel, the stripped lithium batteries, the acetone.
19 All of this is what they consider hazardous. There is
20 other nonhazardous waste like the empty blister packs that
21 we may collect, the bottles, our actual hazmat suits. This
22 company takes all of this and disposes of it.

23 Q. And we've talked a lot about -- we've mentioned the
24 word meth lab. Are there different types of meth labs that
25 you've come in contact with in your experience?

1 A. There are. The one that we had this evening or the
2 evening in question was consistent with the one-pot method
3 of manufacturing.

4 Q. And is that, is that different from, for instance, a
5 car, what might be found in a car or what might be found in
6 perhaps a bigger laboratory?

7 A. The one-pot can -- it's very portable. One-pots can
8 be cooked in cars. They can be cooked in hotel rooms.
9 They can be cooked just about anywhere. There are a couple
10 other different types of meth labs. There's a red
11 phosphorus method. This is bigger, super labs more common
12 in Mexico.

13 Q. Okay. Was this lab considered operative?

14 A. There was not an active cook, and what we consider an
15 active cook is the chemicals were not in the bottle
16 actually producing meth when we made entry. That process
17 is -- lasts anywhere from thirty minutes to an hour, and --
18 but all of the equipment was found in his room and
19 throughout this house, showing us that he had cooked there
20 recently.

21 MR. HAWKS: Objection, Your Honor, based on the prior
22 bad act.

23 THE COURT: Overruled.

24 BY MS. CAVANAUGH:

25 Q. Were you the only one on scene that had the authority

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

295

1 to make a decision to call Phillips Recovery?

2 A. There are -- or were at the time, I believe, two
3 investigators that were on scene that are what we consider
4 clan-lab certified. This was my case, and I made the
5 determination. Once I saw enough evidence that we had an
6 actual meth lab, I made the call to Phillips Recovery, yes.

7 MS. CAVANAUGH: Beg the court's indulgence.

8 (A PAUSE.)

9 BY MS. CAVANAUGH:

10 Q. You said that your training included information on
11 how to actually make meth using the one-pot method?

12 A. Correct.

13 Q. I'm going to go through the individual photographs,
14 and I've taken them out of order, so feel free to put them
15 in the proper order.

16 (A PAUSE.)

17 Q. And explain to me how each of these items are used in
18 the one-pot method, and if you could show the jury pictures
19 as ---

20 A. Okay.

21 Q. --- you explain it.

22 A. These are pictures of Sudafed pills located in Fred
23 Sanders's room. He -- or to manufacture meth, you will
24 take these Sudafed pills, crush them up in this pill
25 crusher here, and here's a picture of the pill crusher.

1 Q. And that was located beside the Sudafed, the pill
2 crusher?

3 A. This was, yes, beside the Sudafed. I believe it was
4 on his dresser or desk that was in his bedroom.

5 You'll crush the Sudafed. These are pictures of
6 instant cold packs. These are commonly used if you have a
7 injury, a sore muscle. The intended purpose for these cold
8 packs is you crush them, and they instantly turn cold.

9 This is a photograph of an opened cold pack consistent
10 with manufacturing meth. What they will do is cut the pack
11 open and there is -- I believe it's ammonium nitrate beads
12 in the bottom of this, also with the water bladder. They
13 will discard the water bladder and pour the chemicals
14 inside of this into a plastic bottle.

15 Then they will add the Coleman camp fuel. This is a
16 gallon size, I believe, bottle of Coleman camp fuel that we
17 located in Fred's room. They will add this, the Sudafed,
18 the ammonium nitrate from the cold packs, combine all of
19 these in a large plastic bottle.

20 And then these are pictures of batteries. These are
21 unopened. However, these are located in his trash can. He
22 has actually taken the metal battery, cut it, and pulled it
23 apart. The white strips that you see here, when they come
24 out of the battery, they have black strips of lithium on
25 them. He takes the lithium off of the strips and cuts them

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

297

1 up in these little pieces and puts this in the plastic
2 bottle as well.

3 MR. HAWKS: Objection, Your Honor. She's speculating
4 about what he did, what he would do.

5 WITNESS: I'm explaining the process.

6 THE COURT: Overruled.

7 BY MS. CAVANAUGH:

8 A. And then they add basically a cap full of water. This
9 lithium is highly reactive with water; it immediately
10 starts the reaction. It's actually flammable if it comes
11 in contact with water, which is why a lot of times these
12 meth labs will explode and catch fire. So, this starts the
13 process of extracting the meth from the Sudafed in the
14 Sudafed tablets.

15 They let that cook, as we say. At that point, it's an
16 active bottle. It cooks anywhere from thirty minutes to an
17 hour, basically a tornado. We call it rolling. It starts
18 rolling.

19 Once all of that action stops, they pour off or
20 extract the liquid out of the bottle. Commonly put it in
21 glass jars like these that were located on the desk in Mr.
22 Sanders's room. And with this liquid, they will create an
23 acid gas generator. These are consistent -- bottles used
24 to make the gas generators, and they will poke a hole in
25 the top and run a plastic tube and basically run the tube

1 from this bottle into this that has the liquid in it.

2 After the -- it's gassed, as we call it, the white
3 solid meth will fall to the bottom of the glass jars. He
4 then pours the liquid from these jars through a coffee
5 filter and let's that dry, and that's the finished meth
6 product.

7 Q. And can they be -- can the finished meth product be
8 stored in liquid form?

9 A. It can. Basically prior to salting it out, prior to
10 gassing it, this is meth liquid. Commonly after they
11 convert it and dry it in the filters, users will liquefy it
12 and put it in syringes to sell to use, to shoot. It's just
13 a form of using the meth.

14 Q. And can it also be placed in powder form in these wax
15 papers?

16 A. Yes. That is a hundred plus small, tiny wax paper
17 bags. This box was located in Jack Sanders's room as well.
18 This is consistent with packaging to sell the drugs. The
19 wax paper isn't used for any of the actual use of the drug.

20 Q. But in fairness, it also can be used for use, for
21 personal use?

22 A. True, yes.

23 Q. And users can also be dealers, is that correct, in
24 your experience?

25 A. Absolutely, absolutely,

A. RICARD - DIRECT EXAMINATION BY MS. CAVANAUGH

299

1 Q. What is your interaction with the representatives from
2 Phillips Recovery Incorporated on the scene?

3 A. Once they arrived on the scene, we basically produced
4 an inventory of all the items that I removed out of the
5 house, all of the items that -- they were taken into
6 custody, and they give us an itemized list of everything
7 that they take and that they destroy.

8 Q. And their company is responsible for the disposal of
9 hazardous and nonhazardous waste seized from this home?

10 A. They, they are. They are responsible for basically
11 all of the meth labs in the state at this point.

12 Q. So, Phillips Recovery Incorporated is used for most
13 meth labs in this state?

14 A. Yes.

15 MS. CAVANAUGH: Beg the court's indulgence.

16 (A PAUSE.)

17 BY MS. CAVANAUGH:

18 Q. As a result of your investigation and the drugs seized
19 from this home, did you take out the appropriate warrants?

20 A. I did.

21 Q. And those were for possession with intent to
22 distribute crack cocaine, possession with intent to
23 distribute methamphetamine, possession of a controlled
24 substance, manufacturing methamphetamine?

25 A. Yes.

A. RICARD - DIRECT EXAMINATION / CROSS-EXAMINATION 300

1 Q. Okay, and did you have -- did you come in contact with
2 Mr. Sanders in this case?

3 A. I did.

4 Q. And is he present in the courtroom?

5 A. He is. He is the gentleman in the middle of the table
6 with the long black beard.

7 MS. CAVANAUGH: Your Honor, let the record reflect she
8 has identified the defendant.

9 THE COURT: So reflect.

10 MS. CAVANAUGH: Thank you, Ms. Ricard.

11 THE COURT: Cross-examination?

12 MR. HAWKS: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MR. HAWKS:

14 Q. Investigator Ricard, in your three years of training,
15 did you learn how to generate an incident report?

16 A. I did.

17 Q. And that's very important.

18 A. It is.

19 Q. And you want to be as detailed as you can possibly be.

20 A. Yes.

21 Q. And did you fill out the incident report in this case?

22 A. I did.

23 Q. You have it in front of you?

24 A. I do.

25 Q. Is there any mention of a smell in the incident

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

301

1 report?

2 A. There is not.

3 Q. I'm going to take you back to when the search warrant
4 was initially executed. When you say that you secured
5 Fred's mother, she was handcuffed?

6 A. Is a statement or a question?

7 Q. That's a question.

8 A. Okay. I assisted in that, yes.

9 Q. She was handcuffed?

10 A. I did not handcuff her, no.

11 Q. But she was handcuffed?

12 A. All right.

13 Q. You know how old that woman is?

14 A. I do not.

15 Q. Would it surprise you that she's in her sixties?

16 A. It would not.

17 Q. Earlier in your direct, you were talking about some
18 training you had with meth. You said that took place in
19 2013.

20 A. Correct.

21 Q. When in 2013?

22 A. I believe February 2013.

23 Q. So, it was prior to this ---

24 A. Yes.

25 Q. --- search warrant execution?

1 A. Yes.

2 Q. And I'm assuming in your -- in that training, you also
3 learned about pseudoephedrine itself?

4 A. Correct.

5 Q. And I'm assuming in that training they told you that
6 pseudoephedrine can be used to get high by itself?

7 A. I do not recall that.

8 Q. Do you know that pseudoephedrine can be used to get
9 high?

10 A. Are you educating me on?

11 Q. I'm asking you a question.

12 A. What was the question?

13 Q. Do you know that meth -- excuse me, pseudoephedrine
14 can be used by itself to get high?

15 A. If you say so.

16 Q. Did you know that you can take it by itself, take more
17 than is recommended?

18 A. You can.

19 Q. And get high?

20 A. You can.

21 Q. Did you know that you can crush it up and sniff it and
22 get high?

23 A. You can.

24 Q. Okay, and I know we've been through this over and
25 over, but this was not an active cook.

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

303

1 A. There was not an active bottle, correct. All of the
2 equipment, chemicals, and everything was in place for a
3 lab, yes.

4 Q. It was in place?

5 A. Yes.

6 Q. So the two bottles you found in the garbage can, that
7 would be in place, ready to cook?

8 A. Those are spent bottles. They can only be used once,
9 and there were multiple bottles located in the trash can,
10 consistent with multiple cooks.

11 Q. Was there a -- were there bottles set up to cook?

12 A. There was not an active cook, if that's what you're
13 asking.

14 Q. But your testimony is that it was set up, the lab was
15 set up. It was a meth lab.

16 A. These are very portable items. Just a couple bottles.
17 They can be moved fairly easily.

18 Q. So, nothing was set up to cook then?

19 A. All the items were in place. There was nothing
20 cooking at the time.

21 Q. In place. You mean in the garbage can?

22 A. In the room, yes.

23 Q. In the garbage can?

24 MS. CAVANAUGH: Objection. He's trying to put words
25 in her mouth.

1 THE COURT: That's part of cross-examination. She can
2 answer the question.

3 BY MR. HAWKS:

4 Q. Any information that Phillips Recovery used to make
5 their decision come from you?

6 A. I'm not sure what you're asking. Phillips Recovery
7 doesn't make any decisions. They just ---

8 Q. So, you made the decisions?

9 A. They take all of the items and destroy them.

10 Q. The reports from Phillips Recovery were filled out by
11 the company, not you?

12 A. I am present when they are filled out, but yes, their
13 personnel filled them else.

14 Q. So, do you give them information to help them fill out
15 those reports, or did you?

16 A. Basic information such as location.

17 Q. Such as the status of the meth lab?

18 A. No. I don't think that is included in their report.

19 Q. So, they decide on the status?

20 A. I don't think that's included in the Phillips Recovery
21 report.

22 Q. Have you seen it?

23 A. I have.

24 MR. HAWKS: Beg the court's indulgence.

25 (A PAUSE.)

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

305

1 MR. HAWKS: May I approach the witness, Your Honor?

2 BY MR. HAWKS:

3 Q. Who filled that out, form out?

4 A. This is actually not the report from Phillips
5 Recovery. This is a report from SLED.

6 Q. Who filled it out?

7 A. Our -- the Richland County chemist is required to
8 report to SLED. It has nothing to do with Phillips
9 Recovery.

10 Q. What's that man or woman's name who filled this else?

11 A. I believe Andy Farmer filled it out.

12 Q. And where did he get the information that's listed in
13 this report?

14 A. Based on my incident report.

15 Q. But it doesn't say in your incident report that the
16 laboratory status is operational.

17 A. No. My incident report does not say that, no.

18 Q. So again, where did Mr. Farmer get the information to
19 fill out this report if not from your incident report?

20 A. Other -- from what he received from Phillips Recovery.

21 Q. So, Phillips Recovery did have something to do with
22 this report?

23 A. No. That is a completely separate report that gets
24 reported to SLED basically just stating that we had a lab,
25 and they are responsible for the funding to destroy the

1 items.

2 Q. But the lab was not operational if it was, in fact, a
3 lab?

4 A. Correct.

5 Q. Thank you.

6 In your training, did you learn yourself how to cook
7 methamphetamine?

8 A. We did.

9 Q. Have you ever cooked methamphetamine?

10 A. The chemist that taught the class cooked it as a
11 demonstration during the class.

12 Q. And you witnessed that?

13 A. We did.

14 Q. And in that time, I'm guessing you learned why water
15 is dangerous in the process?

16 A. We did.

17 Q. And it's dangerous because if it comes in contact with
18 the lithium, kaboom, right?

19 A. Yes.

20 Q. But you don't have to use water to make meth, do you?

21 A. There are numerous ways to make meth.

22 Q. In the one-pot method, you do not have to use water,
23 do you?

24 A. Based on my training and experience, yes. That is how
25 we were shown ---

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

307

1 Q. So, you're not aware ---

2 A. --- in the one-pot.

3 Q. --- you do not need water?

4 A. Are you educating me on how to make meth?

5 Q. I'm just asking you if you're aware that you do not
6 need water.

7 A. Okay. There may be a method that, that does not need
8 water.

9 Q. Thank you. In fact, the dangerous part is the
10 shaking. There's two dangerous parts: the water and the
11 shaking of the pot.

12 A. No, sir. All of the chemicals combined are dangerous.
13 The ---

14 Q. Perhaps. I'm talking about the method, the method of
15 cooking. The shaking that has to take place to release the
16 gas and the water that may or may not be used, those two
17 are the risks that are associated with making meth.

18 A. Those are not the only risks, no.

19 Q. Those are the risks associated with the manufacturing
20 process.

21 A. No. Those are not the only.

22 Q. Okay?

23 A. Risk.

24 MR. HAWKS: Beg the court's indulgence.

25 (A PAUSE.)

A. RICARD - CROSS-EXAMINATION BY MR. HAWKS

308

1 BY MR. HAWKS:

2 Q. I want to go back to the smell briefly. That smell
3 you noticed when you opened the bag of used bags?

4 A. No. I noticed the smell upon entering the room.

5 Q. But that's where the smell was emanating from.

6 A. It was emanating from the trash can which had the used
7 gas generators, the plastic bottles and the tubing, and
8 this -- rest of the remaining parts of the battery. The
9 actual spent lithium is in the bottles.

10 Q. Right. So, you didn't find spent lithium in the room?

11 A. Yes. It was in the trash.

12 Q. The source of the smell was the used batteries?

13 A. It is a combination of all that I listed.

14 MR. HAWKS: Beg the court's indulgence.

15 (A PAUSE.)

16 BY MR. HAWKS:

17 Q. One last question. Do you remember when we spoke back
18 in October, and you told me you thought he was a user, not
19 a dealer?

20 MS. CAVANAUGH: Objection.

21 A. I do not recall that conversation.

22 THE COURT: She's answered.

23 MR. HAWKS: That's all I have, Your Honor.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION BY MS. CAVANAUGH:

A. RICARD - REDIRECT EXAMINATION BY MS. CAVANAUGH 309

1 Q. Mr. Hawks was asking you about this particular report.

2 A. Yes.

3 Q. And whether the lab was operational or not. What is,
4 what is checked on this report?

5 A. There are multiple boxes. The actual box that is
6 checked says: Operational, not in production. So, the --
7 that means that all of the equipment and chemicals were
8 there, but there was not an active cook when we made entry.

9 Q. And there's a box for abandoned?

10 A. There is.

11 Q. And that was not checked, correct?

12 A. Correct. I believe there's also a box for operational
13 cooking. I'm not sure what this -- what the other one is.

14 Q. Operation -- operational and production?

15 A. Yes. That is not checked.

16 Q. And in production just means that thirty minute period
17 that you described?

18 A. Correct.

19 Q. Where ---

20 MR. HAWKS: Objection, Your Honor. She's leading.

21 THE COURT: Sustained.

22 BY MS. CAVANAUGH:

23 Q. And what does in production mean?

24 A. It's there thirty minutes to an hour that the bottom
25 is actually rolling and cooking the meth product.

1 MS. CAVANAUGH: Beg the court's indulgence. Thank
2 you.

3 THE COURT: Any recross?

4 MR. HAWKS: No thank you.

5 THE COURT: All right, you may come down. Thank you
6 very much.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Approach the bench, counsel, please.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: All right, ladies and gentlemen of the
11 jury, counsel tells me the next witness might be somewhat
12 lengthy. So, let's take our afternoon break at this time.
13 Just retire to the jury room, relax for a few minutes, and
14 we'll call you in about ten minutes. Don't discuss the
15 case among yourselves while you're in the jury room.

16 (THE JURY EXITS AT 3:20 PM.)

17 THE COURT: All right, Ms. Cavanaugh, you had a
18 question.

19 MS. CAVANAUGH: Yes, Your Honor. As far as the
20 evidence that I was -- State's Exhibit 50 that I was trying
21 to ---

22 THE COURT: You haven't been ---

23 MS. CAVANAUGH: They weren't ---

24 THE COURT: --- haven't been denied.

25 MS. CAVANAUGH: Yes, Your Honor. They weren't --

1 that, that was just paraphernalia. The pictures have
2 already been introduced. It was the grinder, the box of
3 wax paper, and I believe just various other items that were
4 already shown in the photographs. Nothing was tested, so
5 chain should not be an issue.

6 Investigator Ricard testified that she collected those
7 items, and then Investigator Smith had already testified
8 that the items that he received as described in the search
9 warrant were properly sealed and turned in to the evidence
10 room. But none of those items in State's Exhibit 50 were
11 actually tested. So, I'm not quite sure why Mr. Hawks was
12 objecting to them being admitted.

13 THE COURT: All right.

14 MR. HAWKS: If Tara Kinney was responsible for them at
15 some point.

16 MS. CAVANAUGH: She wasn't, though.

17 MR. HAWKS: Well, I don't know that.

18 THE COURT: Has any evidence technician said that
19 these were turned in to them?

20 MS. CAVANAUGH: Yes. Melody Galinski testified that
21 all the items turned in to her, and she mentioned 1 through
22 13, which is included, that was included in 1 through 13.

23 THE COURT: 1 through 13?

24 MS. CAVANAUGH: Yes, Your Honor.

25 THE COURT: What is that?

1 MS. CAVANAUGH: The item numbers associated with
2 the...

3 THE COURT: I don't have 1 through 13.

4 MS. CAVANAUGH: Oh. I apologize. Well, this, State's
5 Exhibit 50, is indicated on the chain of custody report,
6 and Lucas, Mr. Hawks has under items 1 and 2. And Ms.
7 Galinski, when she testified, said that when she retrieved
8 those items from the evidence locker, that they were sealed
9 properly in the bags that Investigator Smith testified that
10 he sealed when he came in contact with the evidence.

11 THE COURT: You think that's inadequate chain?

12 MR. HAWKS: Well, if -- Galinski also testified that
13 she then turned it over to Tara Kinney, who's not
14 testified.

15 THE COURT: Well.

16 MR. HAWKS: And chain wouldn't be an issue if I would
17 have gotten the chain before ---

18 THE COURT: No. Chain can always be an issue.

19 Is -- who is Tara Kinney?

20 MS. CAVANAUGH: She's a -- she's the chemist who
21 actually tested the drugs in this case.

22 THE COURT: Oh, okay. Well, then, these drugs weren't
23 tested.

24 MS. CAVANAUGH: They're -- it's just ---

25 THE COURT: It's like the gun.

1 MS. CAVANAUGH: It's not the gun and it's not the
2 drugs.

3 THE COURT: Right.

4 MS. CAVANAUGH: It's the paraphernalia associated ---

5 THE COURT: It's like the gun.

6 All right, objection is overruled.

7 MR. HAWKS: Thank you, Your Honor.

8 THE COURT: Let them come in.

9 MS. CAVANAUGH: Oh, Your Honor.

10 THE COURT: Yes.

11 MS. CAVANAUGH: That also should be what -- that also
12 should be State's Exhibit 47.

13 THE COURT: Well, if, if that's what Galinski
14 testified.

15 MS. CAVANAUGH: 48 and 47.

16 THE COURT: Did she testify with regard to those
17 items?

18 MS. CAVANAUGH: Yes, Your Honor, she did, and these
19 items were not testified by Tara Kinney, and chain is
20 established.

21 THE COURT: So, there's no more chain with regard to
22 those? Is that what you're ---

23 MS. CAVANAUGH: Not with these, yes, sir.

24 THE COURT: Is that what you're telling me?

25 MS. CAVANAUGH: Yes, Your Honor.

1 THE COURT: No chain? No chain.

2 MS. CAVANAUGH: So, State's Exhibit 47 and 48 have
3 been ---

4 THE COURT: Admitted.

5 MS. CAVANAUGH: Thank you.

6 THE COURT: Ten minutes.

7 (CONTAINER WITH SYRINGES MARKED INTO EVIDENCE AS
8 STATE'S EXHIBIT NUMBER 47.)

9 (SPOONS AND STRAWS MARKED INTO EVIDENCE AS STATE'S
10 EXHIBIT NUMBER 48.)

11 (COLLECTION OF ITEMS MARKED INTO EVIDENCE AS STATE'S
12 EXHIBIT NUMBER 50.)

13 (OFF THE RECORD.)

14 THE COURT: State ready to proceed?

15 MS. CAVANAUGH: Yes, Your Honor.

16 THE COURT: Defense ready to proceed?

17 MR. HAWKS: Yes, Your Honor.

18 THE COURT: Bring the jury.

19 (THE JURY ENTERS AT 3:44 PM.)

20 THE COURT: Solicitor, you may continue. Call your
21 next witness.

22 MS. CAVANAUGH: State calls Tara Kinney.

23 TARA KINNEY, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Have a seat in the witness box.

T. KINNEY - VOIR DIRE EXAMINATION BY MS. CAVANAUGH 315

1 State your name for the record, and spell your last name,
2 please.

3 WITNESS: My name is Tara Kinney, K-i-n-n-e-y.

4 VOIR DIRE EXAMINATION BY MS. CAVANAUGH:

5 Q. Tara, where are you employed?

6 A. I work for the Richland County Sheriff's Department.

7 Q. And how long have you been employed with the sheriff's
8 department?

9 A. I've been there about five and a half years.

10 Q. And what is your position at the sheriff's department?

11 A. I work in the Forensic Sciences Laboratory in the drug
12 identification section. I'm a drug chemist.

13 Q. And could you describe your education background for
14 us?

15 A. Sure. I have a bachelor of science degree in forensic
16 chemistry from Eastern Washington University. I did an
17 internship with the Washington State Patrol Crime
18 Laboratory conducting a research project on methods of
19 manufacturing methamphetamine. That research was also
20 published in a scientific journal.

21 I have training from the Richland County Sheriff's
22 Department, whom I received my competency in drug
23 identification from. I've also had training with the DEA,
24 Drug Enforcement Administration, Special Testing and
25 Research Laboratory. I'm also certified to respond to and

1 process clandestine laboratory scenes. That certification
2 is through National Environmental Systems. I'm also a
3 member of Clandestine Laboratory Investigating Chemists
4 Association and the Clandestine Laboratory Investigators
5 Association, CLIC and CLIA.

6 Q. And what is meant by the term clandestine,
7 clandestine?

8 A. Clandestine lab usually refers to a homemade or
9 improvised laboratory set up. Around here, the term is
10 usually used to refer to methamphetamine manufacture.

11 Q. And are -- can you describe the Richland County
12 laboratory? Is it certified? Is it recognized by any
13 outside agencies?

14 A. Yes. The Richland County Sheriff's Department
15 Forensic Sciences Laboratory is an accredited laboratory.
16 Our accreditation is through ASCLD/LAB. They're an
17 international accrediting body. We have been accredited
18 for approximately five years.

19 Q. And as you just went over your education and your
20 training as a chemical analyst, that -- does that include
21 the study of methamphetamine labs and precursor chemicals
22 used to make methamphetamine?

23 A. Yes. The clandestine laboratory certification that I
24 have, in order to be able to respond to those processes,
25 those scenes, requires week-long training, a specified

T. KINNEY - VOIR DIRE EXAMINATION / DIRECT EXAMINATION 317

1 number of hours. And they go over all of the safety
2 factors, the processes, the methods that are employed to
3 make the methamphetamine, as well as other labs also.

4 Q. And you're also certified by the sheriff's department
5 as a chemist and an analyst qualified to perform forensic
6 testing on certain drugs?

7 A. Yes, I am.

8 Q. Or controlled substances is the correct term?

9 A. Yes.

10 Q. Have you testified as an expert in court before?

11 A. Yes.

12 Q. And how many times approximately?

13 A. Approximately ten times.

14 Q. And in a general sessions court?

15 A. In general sessions, civil, magistrate, and federal
16 court.

17 MS. CAVANAUGH: Your Honor, at this time I'd ask that
18 Ms. Kinney be qualified as an expert in chemical analysis
19 and clandestine laboratory investigations.

20 THE COURT: Any objections or voir dire?

21 MR. HAWKS: No, Your Honor.

22 THE COURT: So admitted.

23 DIRECT EXAMINATION BY MS. CAVANAUGH:

24 Q. Tara, what is methamphetamine? What is, what is that?

25 A. Methamphetamine is a stimulant, meaning that it will

1 increase your heart rate, blood pressure. It's essentially
2 what they refer to as an upper.

3 Q. And it's an illegal substance. Is that correct?

4 A. It is. It's a schedule II substance.

5 Q. And is methamphetamine also known as crystal meth?

6 A. There are a lot of street names that are used to refer
7 to methamphetamine; that's one of them.

8 Q. Does the manufacturing of methamphetamine differ from
9 the manufacturing of other type of drugs?

10 A. Yes. There are different processes to manufacture
11 different types of substances.

12 Q. And is the process of making methamphetamine
13 potentially dangerous?

14 A. Yes, very dangerous.

15 Q. What about the process makes it dangerous?

16 A. The chemicals that are used in the process have a lot
17 of safety concerns and factors. There are a lot of strong
18 acids and bases; they're very corrosive. They can cause
19 chemical burns to the skin, the eyes, nose, and throat,
20 cause respiratory irritation.

21 Flammable liquids are also involved in the process,
22 which can be an inhalation hazard as well in addition to
23 the flammability. Reactive metals are used. Some of them
24 are so sensitive that they can react just with the humidity
25 in the air and ignite and burn.

T. KINNEY - DIRECT EXAMINATION BY MS. CAVANAUGH

319

1 Q. And is methamphetamine -- can it be made by using --
2 by combining legal substances?

3 A. Yes. A lot of the materials used in the clandestine
4 manufacture of methamphetamine are common household
5 chemicals that can be purchased at a lot of the retail
6 outlets: Walmart, Targets, et cetera.

7 Q. When these -- and there's been pictures shown several
8 times. The household goods that you mentioned that are
9 legal that can be used to manufacture methamphetamine, what
10 are those?

11 A. Some examples of those would be drain openers, your
12 drain cleaners that you would use to unclog a drain, your
13 Red Double Eye, et cetera. Coleman fuel or camp fuel, also
14 called white gas, can be used in the process. Starter
15 fluid, which is ether. Lithium batteries, just the regular
16 batteries that you would buy at the store are employed in
17 the process as well.

18 Q. When methamphetamine is actually manufactured, does it
19 create a distinct smell?

20 A. Often time there's a strong chemical odor associated
21 with the manufacture.

22 Q. The items that you described, lithium, the Drano, the
23 camp fuel, is that -- can that be used in the one-pot
24 method to manufacture meth?

25 A. Yes.

1 Q. You mentioned lithium from batteries. How do you
2 actually get the lithium from the batteries when
3 manufacturing meth?

4 A. The batteries, if you would picture a typical battery,
5 has a plastic casing around it. If you remove that casing,
6 the lithium is actually rolled up inside and you can unroll
7 it. It's kind of a ribbon-like tape inside, and that's
8 what they remove and then tear it to pieces to be able to
9 use in a one-pot.

10 Q. And is the stripping of the lithium from the batteries
11 itself, by itself dangerous as well?

12 A. Yes, very dangerous. As I said before, lithium is a
13 very reactive metal, which means that it reacts very
14 violently with water. Even the humidity in the air, the
15 moisture from your skin sometimes is enough to cause it to
16 start burning or catch fire.

17 Q. Materials associated with meth labs, can they be
18 stored in the Richland County evidence room?

19 A. No. Once we go to the scene and determined that it is
20 a meth lab, the chemicals that we find at that site are,
21 are considered hazardous waste. The Richland County
22 Sheriff's Department is not recognized as a storage
23 facility for hazardous waste. So, we can't accept those
24 chemicals into our facility for storage.

25 Q. So, if there was any meth residue left on any of those

T. KINNEY - DIRECT EXAMINATION BY MS. CAVANAUGH

321

1 items that you described that were located in his bedroom,
2 would you have tested those items?

3 A. It depends on the item. The bottles that contain the
4 used chemicals would be disposed of by the disposal
5 recovery team. Sometimes items that they suspect may
6 contain a finished product are collected as evidence and
7 submitted. For example, a coffee filter with white powder
8 in it, that, that could be collected and submitted as
9 evidence.

10 Q. Were you responsible for testing the drugs, most of
11 the drugs that were seized in this case that were able to
12 be transferred to the Richland County evidence room?

13 A. Yes. I did test a number of items associated with
14 this case.

15 Q. Okay, and we'll go through each of those items
16 individually. I'm going to show you what's marked as
17 State's Exhibit 43, which I believe has already been
18 admitted into evidence. Can you -- did you actually test
19 this box?

20 A. Yes, I did.

21 Q. Okay, and how can you tell that you -- how is it
22 documented that you tested the box?

23 A. On each item that we receive into the laboratory for
24 testing, we label it with the case number, the individual
25 item number, and then our initials.

1 Q. Okay, and what is the item number associated with the
2 actual box itself?

3 A. This item is labeled as item 9.

4 Q. And once you -- did you receive the box from the
5 evidence room?

6 A. I did.

7 Q. And was it properly sealed and packaged in the bag?

8 A. It was. We have as a laboratory policy established
9 that when we go down to the evidence room to collect
10 evidence to take back to the lab to test, if anything is
11 not properly sealed, we don't accept it into the
12 laboratory.

13 Q. And why is it important that it's properly sealed?

14 MR. HAWKS: Objection, Your Honor. She's leading.

15 THE COURT: Don't lead your witness.

16 BY MS. CAVANAUGH:

17 Q. Why does it need to be sealed?

18 A. Making sure that the evidence is properly sealed helps
19 us to maintain the integrity of the evidence and show the
20 chain of custody.

21 Q. Once you retrieved the box when the evidence room,
22 what did you do with the individual items in that box?

23 A. This item contains a number of segregated
24 compartments. So, I sub-itemed each compartment as its own
25 item number and then tested the contents that were in each

T. KINNEY - DIRECT EXAMINATION BY MS. CAVANAUGH

323

1 section.

2 Q. And did you assign each compartment within that box a
3 number?

4 A. I did.

5 Q. And it was just based on how the -- was that based on
6 how the box was kept ---

7 MR. HAWKS: Objection, Your Honor. She's leading
8 again.

9 Q. How did you ---

10 THE COURT: Just ask her the question.

11 MS. CAVANAUGH: I'm sorry.

12 BY MS. CAVANAUGH:

13 Q. Did you assign a number to each compartment?

14 A. I did.

15 Q. I'll direct you to your report. What -- first of all,
16 can you describe the testing that you used for that box,
17 for the drugs in that box?

18 A. For items that come to us for laboratory confirmation,
19 we do essentially two parts to the analysis. The first is
20 a presumptive screening type test, and then we do a
21 confirmatory test, which is instrumental analysis.

22 So, on these items I would have done a chemical test,
23 which is a color test. Essentially we add a small portion
24 of each of the substances to a chemical, and it produces a
25 distinctive color reaction depending on what may be

1 present. Then we'll take a small sample and run it on one
2 of our instruments, and that's considered confirmation for
3 the presence of the substance. We also run the certified
4 reference materials on the instrument to compare those
5 samples to.

6 Q. And what did your testing reveal as far as item number
7 9.1?

8 A. Item number 9.1, that compartment contained a small
9 metal-type screw and a piece of paper napkin containing a
10 white, rock-like substance. That white, rock-like
11 substance was confirmed to be cocaine base, which is crack
12 cocaine. It's a schedule II substance, and it had a weight
13 0.18 grams.

14 Q. And go on to item 9.2.

15 A. 9.2 in that green box was an empty compartment, so
16 there was no analysis for that sub-item.

17 Q. And the compartment that was labeled item number 9.3,
18 what did that contain?

19 A. Item 9.3 contained a blue Ziploc bag containing a tan
20 or brown rock-like substance.

21 Q. Go ahead.

22 A. That substance was confirmed to be heroin, which is a
23 schedule I substance, and it had a total weight of 0.94
24 grams.

25 Q. Continue to item number 9.51.

T. KINNEY - DIRECT EXAMINATION BY MS. CAVANAUGH

325

1 A. Item 9.51 was a clear Ziploc bag containing a tan or
2 brown rock-like substance. That was also confirmed to be
3 heroin with a weight of 0.26 grams.

4 Q. And item number 9.61, what is that? What was that
5 confirmed to contain?

6 A. 9.61 were two glassine bags. Glassine bag is what we
7 refer -- it's essentially like a wax paper-type consistency
8 and it's folded into a small sort of envelope. That's what
9 we refer to as a glassine bag.

10 There were two of those rubber banded together, and
11 each contain a tan brown powder. Both of those bags were
12 confirmed to contain heroin with a total net weight of 0.05
13 grams.

14 Q. And so part of your testing -- does part of your
15 testing include getting the weight of the drug?

16 A. Yes. Before we perform any testing on it, each item
17 is weighed. We removed all of the outer packaging. So,
18 the weight reflected on the report where it says net weight
19 means that it's just the weight of the substance itself.
20 It does not include any of the packaging.

21 Q. And why is important to get the weight?

22 A. A lot of the state statutes have a threshold value.
23 Essentially, a weight limit determines whether it's a
24 simple possession, for example, or ---

25 MR. HAWKS: Objection, Your Honor. She's improperly

1 stating the law.

2 THE COURT: You can call her on it, but that's her
3 interpretation. I'm going to allow her to testify.

4 BY MS. CAVANAUGH:

5 Q. You can continue.

6 A. As I was saying, some of the substances have a weight
7 associated with a certain charge.

8 Q. So, it takes it from simple possession to possession
9 with intent to distribute as far as ---

10 A. Correct.

11 Q. --- charging decisions?

12 A. Correct.

13 Q. And what was the total amount of heroin that was found
14 in that green box?

15 A. I don't have a total weight of all the items summed
16 together. Just for the heroin?

17 Q. Yes.

18 A. I believe 1.25 grams.

19 Q. Okay.

20 A. If my math is correct.

21 Q. Did you test other drugs in this case?

22 A. I did. There were other items.

23 Q. Oh, actually I apologize. Before we continue, I'm
24 going to show you what's marked as State's Exhibit 47.

25 A. Okay.

T. KINNEY - DIRECT EXAMINATION BY MS. CAVANAUGH

327

1 Q. And these -- what does this bag contain?

2 A. It appears to contain a sharps container with some
3 syringes or hypodermic needles.

4 Q. Okay, and did you test any of the syringes in this
5 case?

6 A. No.

7 Q. And why was that?

8 A. That's also part of our laboratory policy. Sharps
9 obviously present a hazard. So, if we have other evidence
10 in the case, those remain untested.

11 Q. Because of the safety concerns? Is that what you just
12 said?

13 A. Yes.

14 Q. I'm going to show you what's been marked as State's
15 Exhibit 48. Did you test any items in this bag?

16 A. Yes.

17 Q. And what were the results of those tests? First of
18 all, what are those items?

19 A. There are a number of items contained within this bag.
20 I'd have to look at the front. This appears to be my item
21 number 8. It was a clear Ziploc bag labeled: Found in
22 subject's room-Sanders. And it contained four metal spoons
23 with white residue.

24 Q. And what were the results of your -- of those tests?

25 A. These spoons, the residue was scraped from the spoons

1 which -- and confirmed to contain methamphetamine.

2 Methamphetamine is a schedule II substance, and the net
3 weight of that powder was 0.08 grams.

4 Q. And did you do any testing on the straws that were
5 located in the bag?

6 A. Yes, I did. There were a number of straws in this
7 Ziploc bag. I removed one and tested one of the straws.

8 Q. And what were the results of that test?

9 A. The one straw that I tested was also confirmed to
10 contain methamphetamine, and there was no weight obtained.

11 Q. Did you test other drugs in this case?

12 A. There were additional items that I tested in this
13 case.

14 Q. And which item numbers were -- did you test?

15 A. Item number 4, 5, 6, and 7.

16 Q. I'm going to show you what's marked as State's Exhibit
17 46 and ask you if that corresponds with what you tested.

18 A. It appears to be the items that I tested.

19 Q. And is that based on the packaging and the label?

20 A. Based on the case number and written item number and
21 my initials on the item inside.

22 Q. And again, how was this package -- what condition was
23 this in when you checked it out of the evidence room?

24 A. The evidence was sealed.

25 MS. CAVANAUGH: Your Honor, at this time move to

T. KINNEY - DIRECT EXAMINATION BY MS. CAVANAUGH

329

1 introduce State's Exhibit 46 into evidence.

2 MR. HAWKS: Without objection.

3 THE COURT: Without objection.

4 (PILLS AND POWDER SUBSTANCES MARKED INTO EVIDENCE AS
5 STATE'S EXHIBIT NUMBER 46.)

6 BY MS. CAVANAUGH:

7 Q. And what was item number 4 labeled as?

8 A. Item number 4 was a purple Ziploc bag labeled: Garage
9 ashtray under couch. And it contained a white, rock-like
10 substance.

11 Q. And what was that confirmed to contain?

12 A. The rock-like substance was confirmed to be cocaine
13 base, which is crack cocaine, with a net weight of less
14 than 0.02 grams.

15 THE COURT: With what? I didn't hear you.

16 WITNESS: A net weight of less than 0.02 grams.

17 BY MS. CAVANAUGH:

18 Q. And did you test item number 5?

19 A. I did.

20 Q. And what was the label on item number 5?

21 A. Item number 5 was a clear plastic corner bag
22 containing a chunky white powder. That was confirmed to be
23 cocaine base, or crack cocaine, with a net weight of 0.04
24 grams.

25 Q. And what was item number 6 labeled?

1 A. Item number 6 was a clear Ziploc bag with a black
2 panda bear logo containing five round, green tablets. All
3 those tablets were visually consistent with the same logo.

4 Q. And what were the results of that test?

5 A. I tested one of the five tablets. That one tablet was
6 confirmed to contain diazepam, which is a schedule IV
7 substance.

8 Q. Is that -- is it commonly known as -- by another name?

9 A. It is. It's also called Valium.

10 Q. And that is a controlled substance?

11 A. Schedule IV.

12 Q. And is a prescription required for that substance?

13 A. Yes.

14 Q. And item number 7?

15 A. Item number 7 was a clear Ziploc bag with an eight-
16 ball logo containing two round, green tablets. Both were
17 visually consistent with the same logo, and it also had
18 multiple pieces of broken tablets. Again, from that one
19 tablet was confirmed contained -- to contain diazepam.

20 Q. And is that -- is it usual for you to only test one if
21 there's additional pills found?

22 A. For legitimate pharmaceutical tablets, we identify
23 them with published literature, and then we'll select one
24 tablet to confirm.

25 MS. CAVANAUGH: Beg the court's indulgence.

T. KINNEY - DIRECT EXAMINATION / CROSS-EXAMINATION

331

1 (A PAUSE.)

2 BY MS. CAVANAUGH:

3 Q. Earlier you testified that there was over 1 gram of
4 heroin found throughout his bedroom.

5 A. Correct.

6 Q. Is -- what is the significance of there being over a
7 gram found in one, in one area?

8 A. Heroin is a very potent drug. So, there are a lot of
9 factors that go into determining what a dosage is for a
10 specific person. So, that varies quite a bit.

11 Q. Do you -- are you familiar ---

12 MR. HAWKS: Objection, Your Honor. She's not a
13 doctor.

14 THE COURT: Overruled. Go ahead.

15 BY MS. CAVANAUGH:

16 Q. What is -- is a dosage unit classified by statute?

17 A. Not for heroin.

18 MS. CAVANAUGH: Beg the court's indulgence. No
19 further questions.

20 THE COURT: Go ahead.

21 MR. HAWKS: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. HAWKS:

23 Q. Good afternoon, Ms. Kinney.

24 A. Hello.

25 Q. Going to take you back to the beginning of direct.

1 Solicitor asked you a little bit about the dangers of
2 cooking meth.

3 A. Uh-huh.

4 Q. One of those dangers is the water being exposed to the
5 lithium.

6 A. Uh-huh. Correct.

7 Q. With the one-pot method of cooking, you don't
8 necessarily have to expose it to water to complete the
9 process.

10 A. Technically, that's incorrect.

11 Q. Okay. Could you go ahead and explain that?

12 A. For the one-pot method, typically a small amount of
13 water is added after all of the other ingredients to
14 kickstart the reaction. Also, water is generated as a
15 byproduct of part of the reaction.

16 Q. That's what I was trying to get at. I'm sorry. So,
17 you can use water from the outside to speed up the process?

18 A. It doesn't necessarily speed up the reaction, but it
19 does sort of kickstart the process.

20 Q. Okay, but the reaction that's going on outside
21 generates water, which does the job ---

22 A. It does ---

23 Q. --- without introducing outside water?

24 A. It does generate water.

25 Q. Now, you also testified about hazardous material not

T. KINNEY - CROSS-EXAMINATION BY MR. HAWKS

333

1 -- can't test that?

2 A. Correct.

3 Q. Okay, but why, why wasn't the nonhazardous material
4 tested in this case?

5 A. I don't know what materials you referring to. I
6 didn't respond to this particular scene for processing.

7 Q. But you did testify that things like a used coffee
8 filter or a bottle that may have some resin in it, those
9 could be tested?

10 A. If the officers on scene feel that it would establish
11 that there was finished product, they might collect those
12 items just to help show the process. If they weren't
13 collected, you would have to talk to the investigators on
14 scene.

15 Q. Okay. Let's talk a little bit about the drugs you did
16 test. Going to start with the crack cocaine, and just so
17 the jury understands, that is basically cocaine that has
18 been made into crack cocaine at some point?

19 A. Crack cocaine is still cocaine, yes. It's just in a
20 different form.

21 Q. And when you test crack cocaine, the amount that you
22 test, does that include the cutting agents used to create
23 crack cocaine?

24 A. The weight that we report is the weight of the
25 substance that we receive. We don't do what's called

1 quantitation or purity determination. We just identify
2 that it -- either a substance is present or not.

3 Q. So that the weight -- and there's two of them. Well,
4 three actually. The .18, the .02, and the .04 of crack,
5 that -- those weights are not necessarily all cocaine?

6 A. They could or might not be.

7 Q. Okay. Can you describe to the jury how small .02
8 grams of anything is?

9 A. 0.02 is essentially our cutoff limit for a reportable
10 weight. It's a very, very tiny amount. Probably similar
11 to a couple of grains of salt maybe.

12 Q. Very, very small?

13 A. Very small.

14 Q. And because there could be other agents not
15 necessarily included in those weights, it's possible that
16 the actual amount of cocaine is even smaller?

17 A. Like I said, we don't do purity determination. So, I
18 can't comment on the amount of cocaine present in the
19 sample.

20 Q. But it is possible in each weight that it is actually
21 less than the amount?

22 A. Correct. There could be other cutting or diluting
23 agents present.

24 Q. And your lab does not test purity?

25 A. No.

T. KINNEY - CROSS-EXAMINATION BY MR. HAWKS

335

1 Q. Is there any labs in South Carolina that test purity?

2 A. As far as state or local labs, I'm not sure. I know
3 the DEA does purity determination and quantitation. If we
4 ever have a request for that, that's who we send our cases
5 to.

6 Q. And that -- no request was made in this case?

7 A. No.

8 Q. Let's switch to the heroin. There could also be
9 cutting agents used in heroin bought on the street as well?

10 A. Absolutely.

11 Q. And what might those be?

12 A. Some common ones that we encounter are caffeine,
13 dextromethorphan.

14 Q. And so the weights that you found for the heroin, it
15 is possible that those are, in fact, less than the weights
16 you found because there could be cutting agents?

17 A. It's possible there were cutting agents.

18 Q. But you don't test for them?

19 A. We don't test for them. Some of them we could
20 identify them if they were present in a significant
21 quantity, but we don't determine how much was present. And
22 we don't confirm them, meaning we don't order a certified
23 reference material of those cutting agents to be able to
24 report them out or specifically name them on report the way
25 that we do with controlled substances.

1 Q. Were any cutting agents found in any of the testing in
2 this case?

3 A. I would have to look at my data.

4 Q. Do you have it with you?

5 A. I do.

6 Q. And that question was only for the heroin. I
7 understand that all crack necessarily has cutting agents.

8 (A PAUSE.)

9 A. You're interested in just the heroin?

10 Q. Yes, ma'am, and we can start with 9.3, item 9.3.

11 A. Give me just a second.

12 (A PAUSE.)

13 A. Okay.

14 Q. Were there any cutting agents found in item 9.3?

15 A. My instrumental analysis did not indicate that there
16 were any significant amounts of additives or dilutants
17 present.

18 Q. But that's not necessarily a determination of purity.
19 Just other substances.

20 A. Correct.

21 Q. How that item 9.51?

22 A. Again my instrumental analysis doesn't indicate any
23 significant levels of any other substances present.

24 Q. And by significant levels, are you referring to that
25 .01 number or some other number?

T. KINNEY - CROSS-EXAMINATION BY MR. HAWKS

337

1 A. No. It's not referring to the weight of the substance
2 that would report at all.

3 Q. Okay, and then I won't bother with 0.5 since that's
4 extremely small. And just to be totally clear, that's
5 actually, what, zero point -- let me say this right -- .025
6 added together with another .025, and that ---

7 A. I'm sorry, for which item?

8 Q. That would be item 9.61.

9 A. Not necessarily. I do have the weights of each of the
10 individual bags if you'd like them.

11 Q. That's fine. I was just trying to point out that they
12 are -- that it's from two separate tests.

13 A. Right. That's the combined weight of the two bags.

14 Q. Now, you described a little bit in your direct, stuff
15 comes in in packages on the items, and in order to
16 determine the most accurate weight, you have to subtract
17 the weight of the packaging for the item. Is that right?

18 A. We don't necessarily subtract the weight of the
19 packaging. Our process is a little bit different.

20 Q. I was just trying to make it simple, but you do weigh
21 the item that it comes in first?

22 A. When we go to weigh an item, we have our scale we
23 refer to as a balance. We typically will take some kind of
24 a weighing vessel, whether it's a piece of weigh paper or a
25 plastic container that we call a weighing boat depending on

1 how big the substance is.

2 We'll place that on the balance first and zero the
3 balance so that the weight of that container is subtracted
4 out. Then we'll remove the substance from whatever
5 packaging it's in onto the weighing paper or weigh boat and
6 place that back on the balance, and that is the weight that
7 is captured.

8 Q. And as far as the methamphetamine in this case, the
9 one that was tested, .08 -- I'm going to try to find the
10 item number. I believe it's item 8. That was on four
11 separate spoons?

12 A. Correct. There were four spoons.

13 Q. So, again, it might not necessarily be equally
14 apportioned, but the .08 that you came up with came off of
15 four separate spoons?

16 A. Correct.

17 Q. And do you have the individual weights of those
18 spoons?

19 A. No. With residues, because there's such a small
20 amount, it's virtually unweighable individually. They're
21 all scraped and combined, and then that total amount is
22 weighed.

23 Q. And that .08, that's also a very small amount?

24 A. It is a small amount, yes.

25 Q. And if it were divided by the four spoons, that would

T. KINNEY - CROSS-EXAMINATION BY MR. HAWKS

339

1 make it even smaller?

2 A. Yes.

3 Q. Did you have a chance to test any pseudoephedrine in
4 this case?

5 A. No. I did not receive any tablets that contained
6 pseudoephedrine.

7 Q. But you would have gone through the same process if
8 you had? Figure out what it is in your literature, then
9 test one of the tablets?

10 A. Correct.

11 Q. Or pills?

12 A. Correct.

13 Q. I'm going to go back and talk about the crack. Can
14 you get high on such small amounts like .02, .04?

15 A. I think that's beyond my area of expertise. I'm not a
16 toxicologist.

17 Q. And as for the heroin, the purity of that heroin,
18 would it be important to the user as far as how much he or
19 she could take without overdosing?

20 A. It could be, yes.

21 Q. And so not only the weight of the heroin is important
22 but also the purity?

23 A. For the user.

24 Q. So, if the total amount, 1.25, was let's say not very
25 potent, that would sort of qualify that amount?

1 MS. CAVANAUGH: Objection. That is a lot of
2 speculation.

3 THE COURT: Ask, ask the question again. I'm not
4 sure.

5 MR. HAWKS: Let me rephrase.

6 BY MR. HAWKS:

7 Q. You testified on direct that that is a large amount,
8 1.25, for an individual user.

9 A. 1.25 grams is a significant amount of heroin.

10 Q. But there is a possibility that it's not very
11 significant because it could have a very low purity?

12 A. It's possible.

13 Q. And the syringes that were talked about on direct,
14 those were not tested?

15 A. Correct.

16 Q. So, we don't really know what was in those?

17 A. No.

18 Q. Or you don't know?

19 A. I don't know what was in them, no.

20 Q. And you are not a lawyer. Is that correct?

21 A. Correct.

22 Q. So, you don't necessarily know how to -- or you don't
23 have training to decipher statutory law?

24 A. Correct.

25 MR. HAWKS: Beg the court's indulgence.

1 (A PAUSE.)

2 MR. HAWKS: No further questions.

3 THE COURT: Redirect?

4 MS. CAVANAUGH: Nothing, Your Honor.

5 THE COURT: All right, you may come down, ma'am.

6 Thank you very much.

7 May this witness be excused? Without objection.

8 MS. CAVANAUGH: Yes, sir.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: Approach the bench, please.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: Checking the schedule.

13 (A PAUSE.)

14 THE COURT: All right, ladies and gentlemen, the next
15 witness will be somewhat lengthy, and I think it's probably
16 wise to go ahead and adjourn for the afternoon. We may
17 finish this case tomorrow. I'm not quite sure, but we're
18 moving along pretty well. So, I'll excuse you now until
19 9:30 in the morning. Ask you to be back in the jury room
20 at 9:30.

21 Again, don't discuss the case with anyone over the
22 evening hours, please. Don't do any research on the case,
23 please, and have a pleasant evening. We'll see you at 9:30
24 in the morning. Thank you very much.

25 (THE JURY EXITS AT 4:32 PM.)

1 THE COURT: Mr. Hawks, you have something for the
2 court?

3 MR. HAWKS: Yes, Your Honor. I allowed Ms. Cavanaugh
4 to read this. If you'd like to take a look?

5 THE COURT: I assume she objects.

6 MR. HAWKS: I don't know, and it's just the top one.
7 You actually already did the bottom one.

8 MS. CAVANAUGH: I, I don't object to this. I'm
9 confused about when he wants you to read that.

10 THE COURT: Oh, I'll read it in the morning when they
11 come back refreshed.

12 (A PAUSE.)

13 THE COURT: Okay, that's fine.

14 MR. HAWKS: Thank you, Judge.

15 THE COURT: 9:30.

16 (WHEREUPON, THE CASE IS AT EASE.)

17 *WEDNESDAY, MARCH 19, 2014*

18 (COURT RESUMES AT 9:35 AM.)

19 THE COURT: State ready to proceed?

20 MS. CAVANAUGH: We are, Your Honor.

21 THE COURT: Defense ready to proceed?

22 MR. HAWKS: We are, Your Honor.

23 THE COURT: Any housekeeping matters that need to be
24 taken up before we bring the jury?

25 MS. CAVANAUGH: None from the state, Your Honor.

1 MR. HAWKS: None from the defense.

2 THE COURT: All right, bring the jury.

3 (THE JURY ENTERS AT 9:37 AM.)

4 THE COURT: Good morning, ladies and gentlemen.

5 One matter I want to mention to you. As I told you
6 yesterday from the bench, that we operate by certain rules
7 called the Rules of Civil Procedure and the Rules of
8 Evidence, Criminal Procedure, the Rules of Evidence.

9 I want to call to your attention to the fact that any
10 -- this defendant is on trial for, as you know, what the
11 charges are in this indictment, and any reference to any
12 prior conduct of the defendant is not admissible. And you
13 are to disregard any and all mention made by any of the
14 witnesses in this case which make reference to the prior
15 conduct on the part of the defendant.

16 As I say, the defendant is to be tried on the issues
17 in front of you, five indictments in front of you, not on
18 any past behavior, all right?

19 MR. HAWKS: And, Your Honor, just for the record, I am
20 objecting to the curative instruction being the appropriate
21 remedy, and I'm basing that on all my prior objections and
22 motions regarding its incorporation.

23 THE COURT: All right. Thank you very much.

24 Solicitor, call your next witness.

25 MR. MATHEWS: State calls William Lindsey.

1 WILLIAM LINDSEY, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Have a seat in the witness box.
4 State your name for the record and spell your last name,
5 please.

6 WITNESS: My name is William Lindsey, L-i-n-d-s-e-y.

7 DIRECT EXAMINATION BY MR. MATHEWS:

8 Q. Mr. Lindsey, where do you work?

9 A. I'm a recovery technician and a chief field operations
10 officer for PRI, which is Phillips Recovery Incorporated.

11 Q. And now explain to me exactly what that is.

12 A. We recover the materials used in the manufacturing of
13 methamphetamine for SLED, for State Law Enforcement.

14 Q. And what is your area that you encompass?

15 A. We, we recover materials from the entire state.

16 Q. How are you called out to a site?

17 A. We are dispatched through SLED OD. I receive a call
18 once the seizing agency notifies SLED. They go through a
19 written checklist with the OD, and then we're notified of
20 the location, who the seizing officer is, the type of lab,
21 and we usually contact them and try to get an update of
22 what they actually have at that scene.

23 Q. Now, why are you called instead of an agency trying to
24 clean it up themselves?

25 A. Well, there's two different phases actually of meth

W. LINDSEY - DIRECT EXAMINATION BY MR. MATHEWS

345

1 lab work. There is a recovery action, which is what we do.
2 We remove the materials strictly for law enforcement under
3 the direction of the officer in charge at the scene. Those
4 items are cataloged, profiled, and then put on a haz waste
5 on nonhaz waste manifest. The officer signs for those, and
6 then we procure those, take those to the impound, and
7 eventually they're shipped off. The actual cleanup is, is
8 referred to as remediation or remedial work, which is --
9 involves the removing of carpet and things like that, and
10 we do not do any of that. That's not our job.

11 Q. And now you go out to the scene. Are you wearing a
12 hazmat suit?

13 A. We have the capabilities of using different levels of
14 protection, but our job is -- once law enforcement
15 identifies the materials -- typically they will profile
16 those, bring those out, do their evidence, whether they're
17 doing fingerprinting, photographing, sampling. Once that
18 is done under direction of the officer in charge, then we
19 do the removal at that point.

20 Q. And why would you do the removal, say, for something
21 like a meth lab? What makes a difference than any other
22 drug situation?

23 A. Well, a meth lab, they've changed over the years. I
24 got involved in this once I retired from the fire
25 department. I worked with DEA from 2005 to 2009, and since

1 then the way that meth is manufactured now has changed. It
2 seems like more the trend, everything is smaller. And the
3 materials, even though they're smaller, they're mixed all
4 together now pretty much at one time, and they're treated
5 as a hazardous device.

6 They can be looked at -- they have the possibility or
7 there's a high likelihood, if that is an active cook, the
8 device actually exploding. So, we have to treat that as a
9 device that, that someone normally wouldn't handle in a
10 normal fashion.

11 Q. And you mentioned that -- how long have you worked for
12 Phillips Recovery?

13 A. I was involved initially in 2003. We did some initial
14 work with the DEA getting ramped up because at that time,
15 the DEA was actually handling their own recovery. And this
16 program that, that we're working under has been around for
17 many years. It's been refined and remodeled, but SLED took
18 this over after the federal money in 2010 dried up.

19 The state began their own recovery program modeled
20 after the DEA's program, and there was an extensive meth
21 committee put together of over fifty different people from
22 different groups, and they discussed how and what would be
23 the best method in doing this. And this is a recognized
24 program, and we've been doing it for SLED since its
25 inception, which would've started in October of 2010. And

W. LINDSEY - DIRECT EXAMINATION BY MR. MATHEWS

347

1 we've recovered right now nearly, I would say, 1000 in the
2 state of South Carolina.

3 Q. So, now with every meth lab in the state, you go out,
4 your group goes out?

5 A. There is one other group that is under contract; they
6 run pretty much in the upstate and in a two-county area.
7 The majority of the time, at least for two years, we were
8 the sole agency that did, did respond in this state. We
9 ran 455 calls in 2011. We did 430 -- excuse me, that would
10 be 455 in 2012. We did 430 last year in 2013. This year
11 we are looking at number 95.

12 Q. And this process of removal and destruction, is that
13 common nationwide with meth labs?

14 A. Absolutely. It is imminent danger, and one of the
15 things that is our job is to remove that imminent danger
16 and protect the public. So, the seizing agency cannot do
17 an arrest or, or do this processing and just leave the
18 materials there. That would, that would take a chance of
19 children or elderly or other people that wanted to use it
20 for bad reasons to come by and take these materials and
21 actually use them again.

22 Q. And now if you go into a one-pot meth lab -- are you
23 familiar with those?

24 A. Absolutely.

25 Q. Tell me some common items that, if you went on to a

1 scene, you would see and take.

2 A. The hundreds and hundreds of recoveries that I have
3 done, the typical items for a one-pot would be ammonium
4 nitrate, which the trend now is to get it from cold packs.
5 Number two would be crystal drain opener, which is nothing
6 but lye, which is crystallized lye. That is used in the
7 process. Coleman or some type of camp fuel. It could be
8 liquefied ether. It could be lighter fluid, any flammable
9 or Naptha product that is used to actually dissolve or cut
10 the pseudoephedrine pills that is in there.

11 And then probably the most dangerous of that would be
12 the lithium strips, and lithium is required as a part of
13 that process. And lithium is stripped from batteries that
14 we commonly buy at Home Depot, Walmart, wherever you buy
15 lithium batteries. And they literally take a pipe cutter,
16 and they open that battery up and remove the lithium
17 strips, strip it from the magnesium oxide, and then ball it
18 up and put it into this vessel. The only thing they need
19 to start that process would be to add a small amount of
20 water. Once that water is added into that bottle, then
21 that reaction takes place. And at that time, you can have
22 failure of a bottle, which is very common. When you read
23 about individuals being burnt, that is a result of usually
24 the vessel over pressurizing or the container failing.

25 Q. All right. I'm going to go specifically to this

W. LINDSEY - DIRECT EXAMINATION BY MR. MATHEWS

349

1 incident now. Did you have indication to go on to scene at
2 113 Rockingham Road in Columbia, South Carolina, on April
3 the 23rd of 2013?

4 A. Yes, sir.

5 Q. Can you tell me how you got the call and what you did?

6 A. We were dispatched through SLED. I received a call,
7 one of many probably that day. We've run as many as eight
8 labs in a day all over the state. So, they're very
9 prevalent. We average at least one and a half calls per
10 day if you do the math.

11 That particular call there, we were notified. Told
12 that Richland County ---

13 MR. HAWKS: Objection, Your Honor.

14 A. --- had just been in that area.

15 MR. HAWKS: That's hearsay.

16 THE COURT: All right, just kind of what he did when
17 he got the call.

18 BY MR. MATHEWS:

19 Q. Just, just say what you did once you got a call.

20 A. Oh. Okay. Once we responded to that call, we arrived
21 on the scene. Got with the officer in charge. They
22 notified us of the materials that were there. They had
23 segregated those into a given area. And at that time, once
24 we said if you're done with the evidence gathering,
25 whatever is pertinent to your investigation, once it's

1 released to us, we get their permission to go ahead and
2 start profiling and packaging the materials.

3 Q. And the materials that you took that day, packaged,
4 were any of those uncommon or something you don't normally
5 take when you go out to a lab?

6 A. No, sir.

7 Q. The materials that you collected and seized that day,
8 in your experience and training, were those consistent with
9 a meth lab?

10 A. I've seen it hundreds of times, yes, sir.

11 Q. And do you have a copy of your report?

12 A. I do.

13 Q. In it, it shows that you took some waste materials?

14 A. Yes, sir.

15 Q. Can you explain to me what that is and the
16 significance of that?

17 A. And we're talking about the nonhazardous, nonregulated
18 materials that ---

19 Q. Yes.

20 A. Yes, sir. That has to do with the materials that are
21 used in conjunction with the manufacture of meth, and that
22 can be empty containers. It can be tubing. It can be
23 scales. It can be coffee filters that they use to actually
24 dry the meth out. It can be a variety of materials but --
25 that are common or associated with the meth lab.

W. LINDSEY - DIRECT EXAMINATION BY MR. MATHEWS

351

1 I can tell you that the amount of material we removed,
2 it was 15 pounds. There are some calculations can be used
3 to determine the amount of meth manufactured by the amount
4 of waste that is present. These is kind of a rule of thumb
5 that says about 7 pounds for every ounce of meth. But in
6 this particular case, at 15 pounds that's usually about
7 double what we normally take off of a scene.

8 Q. So, there was a significant amount of waste?

9 A. 15 pounds of, of nonhazard. Right. That's, that's at
10 least double what we normally remove.

11 Q. And any of the hazardous materials that you remove
12 from a scene, where do those end up?

13 A. Those are actually introduced into the waste, the
14 waste stream. Once they are documented, that is a legal
15 document. A manifest is developed. The officer on scene
16 signs for that material; they receive a copy of that. That
17 material is secured at a location, and for security reasons
18 we have to -- it is actually fenced and monitored and all
19 that. It's taken there.

20 Within seven to ten days, those materials are moved to
21 a facility in Virginia and eventually end up in Cincinnati,
22 Ohio, where they are destroyed. And we receive a
23 certificate of destruction that says the waste that was --
24 yes, I'm sorry. The waste that was generated at that site
25 has traveled through the waste stream, and SLED eventually

1 receives that certificate of destruction with that case
2 file showing those materials were destroyed, neutralized,
3 or incinerated.

4 Q. And why is it so important that's so secure?

5 A. Because we don't want it to end up back on the street
6 being used and -- for bad purposes.

7 MR. MATHEWS: Thank you. I have no further questions
8 at this time.

9 WITNESS: Okay.

10 THE COURT: Cross-examination.

11 MR. HAWKS: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. HAWKS:

13 Q. Mr. Lindsey.

14 A. Yes, sir.

15 Q. The nonhazardous material you were just talking about
16 on direct, that would have included unused items. Is that
17 correct?

18 A. Unused as what could be used in the manufacture of
19 meth?

20 Q. Unused in the sense that they were still in packaging.

21 A. Correct. I mean, you can -- if they have coffee
22 filters, we, we remove coffee filters that are common in
23 the use of manufacturing of meth many times that are still
24 in the original packaging.

25 Q. Okay and, in fact, there was some of those in this

W. LINDSEY - CROSS-EXAMINATION BY MR. HAWKS

353

1 case?

2 A. We do not itemize the nonhaz. It is, it is broken out
3 as trash and debris, but typically that is something you
4 would find at a meth lab. It's, it's not what we find.
5 It's how we find it.

6 Q. So, some of that 15 pounds you were talking about
7 included trash or unused items such as clean coffee
8 filters, unopened packs of batteries, things of that
9 nature?

10 A. That's correct.

11 Q. And only the items deemed to be hazardous are then
12 taken to Cincinnati and eventually destroyed?

13 A. Right. The, the nonhaz trash has to be tracked, and
14 it is tracked the same that the hazardous materials are
15 tracked. They actually go to a landfill in Anderson
16 County, which the, the EPA and Environmental -- DHEC has
17 encouraged, if we can, have these materials remain within
18 the state. That it has to be a certified landfill that can
19 take that type of waste. And that particular landfill can
20 take the nonhazardous waste, and that's where it goes. But
21 it is tracked the same way that the haz is tracked, and a
22 certificate of destruction is issued for it also.

23 Q. And that goes to Anderson County here in South
24 Carolina?

25 A. That's correct.

1 Q. And this was not an active cook?

2 A. It -- when we arrived on the scene, if -- the officer
3 notifies us it's an active cook, but active can mean a
4 couple of different things in that it may not be showing
5 signs of cook at that time. But if you were to open the
6 container or breach the container in any way, it may start
7 the process of reacting again. In other words, it, it, it
8 goes to a static state, and it, it will hold at that time.
9 But if you introduce -- if you release that pressure, that
10 will start that rolling process or method again.

11 Q. But there was ---

12 A. We treat, we treat materials as active.

13 Q. There was no meth being cooked when y'all arrived at
14 the scene?

15 A. I wouldn't -- we don't determine that. We, we handle
16 the materials. We don't make the determination whether
17 meth is being cooked or not. We go by the materials we
18 recover.

19 Q. So, when you first came in contact with these
20 materials, were they still in their original state?

21 A. They would be -- the officer -- the typical procedure
22 for removal of processing meth labs statewide as law
23 enforcement is trained to do that, they will remove these
24 materials and segregate it as best they can into
25 flammables, corrosives, reactive materials, and then trash

W. LINDSEY - CROSS-EXAMINATION BY MR. HAWKS

355

1 and debris. And then once they gather their evidence, they
2 turn that scene over to us. We try to verify the
3 materials. We can do infield Ph testing to determine how
4 corrosive it is; we can do some basic flammability testing.

5 In that particular case, we removed two quarts of what
6 we refer to as strips and oil, which is lithium strips. It
7 can be a combination of lithium, the backing of the
8 battery, which is manganese oxide, the casings themselves.
9 All of those are considered to be hazardous. They're
10 removed, put into a container, and quenched with motor oil
11 to make sure that they are not water reactive. And we did
12 remove two quarts of, of strips that had been stripped from
13 batteries.

14 Q. And so the oil in your report is referring to the oil
15 you used to neutralize?

16 A. That's -- it's adulteration. That's correct. In
17 other words, we do that to make sure that that material
18 won't react. Once lithium dries out, it, it is moisture
19 sensitive and literally there's been several occasions
20 where officers have been burned just by simply touching it
21 with a wet glove.

22 Q. And so any tests you did on the scene would have been
23 to determine how best to neutralize any hazardous material?

24 A. Right. If we could, if we could render it as safe as
25 possible. In other words, handling these materials are

1 dangerous in itself, and when we're looking at the best way
2 to handle this material because it has to move through the
3 waste stream, we want to make sure we do it correctly.

4 I can tell you that we've handled over 3000 for SLED,
5 and no one -- no container has ever been rejected. All of
6 them went through the waste stream and have been disposed
7 of.

8 Q. And that's because when you dispose of these items,
9 you want to make sure that you're not mixing them in any
10 sort of way?

11 A. That's correct.

12 Q. You want to neutralize it before you dispose of it?

13 A. That's absolutely correct.

14 Q. And so when you arrived on this scene, the law
15 enforcement officers had already removed the items from
16 where they were originally at and sort of segregated them
17 for you?

18 A. That -- that's typically what is done.

19 Q. And where exactly were those items found when you came
20 in? Where did they have them?

21 A. From my memory, they were at the front of the
22 structure.

23 Q. Front of the house?

24 A. The front of the house.

25 Q. And batteries themselves are dangerous to dispose of?

W. LINDSEY - CROSS-EXAMINATION BY MR. HAWKS

357

1 A. Well, they're, they're a material that needs to be
2 documented and disposed of properly, correct.

3 Q. In fact, even average citizens should dispose of
4 batteries properly.

5 A. Well, that's what we all are trying to do, the correct
6 thing, right.

7 MR. HAWKS: Beg the court's indulgence.

8 (A PAUSE.)

9 MR. HAWKS: I have nothing further, Your Honor.

10 MR. MATHEWS: Nothing for redirect, Your Honor.

11 THE COURT: All right, sir, you may come down.

12 (THE WITNESS EXITS THE STAND.)

13 THE COURT: Next witness.

14 MS. CAVANAUGH: Your Honor, at this time the state
15 rests.

16 THE COURT: All right.

17 All right, ladies and gentlemen, that's all the
18 evidence you will hear from the state. Now as I told you
19 at the beginning of the trial, the defendant has the
20 opportunity to present a defense but need not do so. But
21 at this time, I need to discuss with the attorneys the
22 schedule for the remaining part of the trial, and so I'm
23 going to ask you to go to the jury room for a few minutes
24 while I take care of that.

25 And again, don't discuss the case among yourselves

1 while you're in the jury room. We're moving right along.

2 (THE JURY EXITS AT 10:00 AM.)

3 THE COURT: Motion for the state?

4 MS. CAVANAUGH: None, Your Honor.

5 THE COURT: From the defense?

6 MR. HAWKS: Yes, Your Honor, thank you. At this time
7 I am renewing any and all objections and motions up to this
8 point for all the reasons I have argued to this court. And
9 I am making a new motion, another mistrial motion, but I
10 want to be clear how I phrase this one.

11 This motion is based on the cumulative effect of three
12 separate what I consider to be inadmissible pieces of
13 evidence that have come out in this trial. The first would
14 be during the state's opening. They referred to the search
15 warrant which Your Honor ruled that they were not supposed
16 to get into. Also while making reference to that search
17 warrant, it was a prior bad act which Your Honor also ruled
18 state was not allowed to get into.

19 Second incident occurred during Chauncey Smith's,
20 Investigator Smith's testimony. He mentioned prior
21 disposals of meth waste, specifically the bottles. That
22 was also a prior bad act that Your Honor ruled should not
23 be admitted.

24 And then the third was when Sarah Brassell attempted
25 to testify. She mentioned something about getting drugs

1 from the defendant on a prior occasion. Not only was this
2 a discovery violation which we've already discussed, but it
3 was yet another mention of a prior bad act.

4 And, Your Honor, perhaps each one of these taken by
5 themselves could be cured with a curative instruction. But
6 when you take all of them together, there is simply no way
7 that the jury can forget all three of those or that any
8 curative instruction could fix or erase that from their
9 minds. And because of that, defense is now moving again
10 for a mistrial based on the overwhelming effect of all
11 three of those inadmissible things that the jury has heard.

12 THE COURT: State's position?

13 MS. CAVANAUGH: Your Honor, I believe that you --
14 well, you've denied each of his motions previously, as well
15 as the search warrant issue that was mentioned in the
16 opening. We never agreed, nor did you rule that we
17 couldn't mention that a search warrant was obtained for the
18 house.

19 Mr. Mathews did not go into it in the opening, the
20 basis of the search warrant. He just said that there was a
21 search warrant that allowed officers to enter the home,
22 which is necessary information for the jury to know. He
23 did not mention anything about the basis for that search
24 warrant, which I believe would be the issue that Mr. Hawks
25 has related to the confidential informant in the controlled

1 buy.

2 Secondly, as far as the testimony from Investigator
3 Smith, we already addressed this yesterday. You actually
4 listened to the testimony over the lunch break, and
5 Investigator Smith never mentioned anything about prior bad
6 acts or bottles that were used in previous buys.
7 Everything that he mentioned related to the bottles in the
8 yard was in direct response to him asking Mr. Sanders about
9 where the other bottle was in relation to what was found in
10 his room. There was never any reference in Mr. Smith's
11 testimony about prior bad acts or previous cooks.

12 And as far as Sara Brassell's testimony, a mistrial is
13 an inappropriate remedy. You did give a curative
14 instruction and struck any of her testimony from the
15 record, and did not allow us to question her even though we
16 did not know exactly what she was going to say because we
17 had not talked to her yet. So, I believe that Mr. Hawks's
18 basis for the mistrial is unfounded, Your Honor.

19 THE COURT: All right. All right, I respectfully deny
20 your motion. Anything further?

21 MR. SHIPMAN: Yes, Your Honor. We move for a directed
22 verdict on all the charges. I'll start with the
23 manufacturing methamphetamine charge.

24 The state has offered no evidence that there was any
25 active cook. In fact, they said over and over there was no

1 active cook going on. All they found was debris.

2 There isn't a whole lot of case law on manufacturing
3 methamphetamine. However, there is a substantial case law
4 on manufacturing for moonshine, mostly from the forties and
5 fifties. The three cases I will reference will be *State*
6 *vs. Quick*, *State vs. Reeves*, and *State vs. Jackson*. All of
7 these are from the forties, and I can provide you the
8 citations of those if you'd like.

9 *State vs. Quick*, there's some language in there that
10 says that:

11 In order to attempt to moonshine, there has to be
12 an overt act that goes so far as towards the
13 accomplishment of the crime to amount to the
14 commencement of its consummation.

15 And then there's some other case law that says the
16 law, the law doesn't concern itself merely with guilty
17 intent. So, it's clear that he has to -- intending to
18 manufacture is not the crime charged. It's taking a step
19 so far towards its consummation that it's basically done at
20 that point.

21 *State vs. Quick*, he was convicted, Mr. Quick, was
22 convicted at trial but it later overturned, saying the
23 judge should have granted a directed verdict because while
24 the agents came upon a still that was assembled, and there
25 was even mash in the tank, Mr. Quick was arrested about 100

1 yards away carrying 100 pounds of yeast and sugar in his
2 vehicle. And they said that that was not an act so far
3 forward.

4 *State vs. Reeves* and *State vs. Jackson*, both of their
5 convictions stood. Reeves was caught actually pouring
6 sugar into the barrel, and he was arrested, and his
7 conviction for manufacturing stood. Then in *State vs.*
8 *Jackson*, the mash was actually in a state of fermentation
9 at the time, and I believe he was located near it. There
10 was a fire burning under the kiln and evidence.

11 I believe that all the state has managed to show in
12 this case is closer to *Quick* than it is to either *Reeves* or
13 *Jackson*. They found a pile of debris, but they conceded
14 several times there was no active cook. He may have
15 intended to cook again at some other time, which they've
16 also tried to show, but they can't show that he was
17 actively engaged at the time.

18 There was no act proven or offered into evidence that
19 would show any kind of consummation of the final crime.
20 So, on that basis we would move for a directed verdict for
21 the manufacturing methamphetamine.

22 As to the PWID crack and PWID meth, the state hasn't
23 -- there's not even enough to get over the inferential
24 weight in these cases, in those two cases. The only
25 evidence for distribution that they have offered is

1 circumstantial in nature.

2 The police officer alleged that the syringes were
3 packaged for sale, which, you know, it is merely opinion
4 testimony. And as we've showed, those syringes are as
5 likely packaged for sales as they are for use. The same
6 with the spoons on which the methamphetamine was found.

7 You know, and I believe the standard for that is the
8 state has to show substantial circumstantial evidence in
9 order to get past a directed verdict on those, and we
10 don't, we simply don't believe that there is potential --
11 and specifically, I would like to add to the substantiality
12 of the circumstantial evidence the Supreme Court last year
13 in *State vs. Logan*. Although there's no -- the court of
14 law makes no difference between direct and circumstantial,
15 to the extent that the state allows circumstantial
16 evidence, all the circumstances must be consistent with
17 each other, and when taken together point conclusively to
18 the guilt of the accused beyond a reasonable doubt.

19 I think it's been shown clearly that these
20 circumstances can fall either way towards distribution or
21 use. They don't -- they're not consistent with one
22 another, pointing all in one direction of distribution.
23 And so I, I don't believe there's even an issue on those
24 two PWID charges to turn over to the jury, and so we'd
25 request a directed verdict of not guilty on that and have

1 possession only presented to them.

2 As for the PWID heroin, the state has made a --
3 inferential weight there. So, we don't believe that there
4 is -- we don't believe that one is susceptible to the same
5 kind of analysis, Your Honor.

6 THE COURT: That it?

7 MR. SHIPMAN: Thank you, Your Honor.

8 THE COURT: What's the state's position?

9 MS. CAVANAUGH: Your Honor, I will just address each
10 one individually, and I believe the standard is any
11 evidence not overcoming circumstantial evidence, and that
12 the court considers that in the light most favorable to the
13 state.

14 As far as the directed verdict in the manufacturing
15 methamphetamine, on the defense's theory, the -- any -- the
16 only time anyone could be arrested for manufacturing
17 methamphetamine is within the thirty-day window of the
18 active cook. The legislature has recognized that that is
19 unreasonable and enacted a statute specifically to, to
20 address that. And 44-53-375(d) states ---

21 THE COURT: Wait, 375 what?

22 MS. CAVANAUGH: (d).

23 THE COURT: (d).

24 MS. CAVANAUGH: States that:

25 Possession of the equipment or materials -- or

1 excuse me, possession of equipment or
2 paraphernalia used in the manufacture of
3 methamphetamine gives rise ---

4 I believe they phrase it as prima facie, that:

5 Gives rise to a permissive inference for the
6 violation of possession of intent -- or excuse
7 me, of manufacturing methamphetamine.

8 Also, there were several investigators that testified
9 as to the chemical smell that was emanating from the
10 defendant's room and his trash can area, which indicates
11 that there had been a recent cook. And, therefore, we do
12 believe that there is evidence that overcomes the directed
13 verdict for the manufacture of methamphetamine indictment,
14 Your Honor.

15 As far as intent to distribute heroin, again the total
16 amount of heroin that was located in various places in that
17 green box weighed 1.2 -- the total is 1.25 grams that Tara
18 Kinney testified to .13, anything over .13 is deemed as
19 permissive inference to -- and for possession with intent
20 to distribute, Your Honor.

21 THE COURT: Say that again. One three?

22 MS. CAVANAUGH: Yes, Your Honor. Anything over .13
23 grams, which is ---

24 THE COURT: Okay. All right.

25 MS. CAVANAUGH: In the statute it's referred to as 2

1 grains, but that's equal to the point ---

2 THE COURT: Okay. I understand. I understand.

3 MS. CAVANAUGH: Right.

4 THE COURT: I thought you said 1.3.

5 MS. CAVANAUGH: I apologize.

6 THE COURT: Go ahead.

7 MS. CAVANAUGH: .13 grams.

8 The fact that it's packaged in different compartments
9 in the actual green box, as well as I believe there was
10 testimony related to the handling as it was packaged for
11 sale, in addition to the wax papers that were located in
12 his bedroom, the box of wax papers that are used to
13 actually -- commonly used to hold heroin. We believe that
14 is evidence that overcomes the direct -- their directed
15 verdict motion, Your Honor, possession and attempt to
16 distribute heroin.

17 As far as possession with intent to distribute crack
18 cocaine, while it is less than the inference weight, again
19 there was testimony that he had scales in his room, which
20 is commonly associated with distribution of drugs, as well
21 as a box of a large amount of wax -- unused wax paper that
22 is used to contain crack cocaine.

23 As far as -- there was testimony as far as the crack
24 that was located in that box. It was packaged for sale.
25 That's located in different areas of that green box. And

1 he admits in his written statement that the crack cocaine
2 is his. And when the investigators entered the garage,
3 there was crack cocaine located in between each of the
4 individuals. It can inferred that he was going to share
5 that crack cocaine with the two individuals that were
6 there. So, I believe that we overcome the directed verdict
7 motion for possession with intent to distribute crack
8 cocaine as well.

9 As far as possession with intent to distribute,
10 distribute methamphetamine, again there were scales located
11 in his room. The residue of methamphetamine was confirmed
12 around where the equipment and materials used to
13 manufacture were found. While the syringes weren't tested,
14 there were four individual syringes that were found in his
15 room that he confessed contained liquid methamphetamine.

16 I think that, combined with the fact that he had all
17 the materials needed to manufacture, is enough evidence to
18 overcome their directed verdict motion on possession with
19 intent to distribute methamphetamine indictment, as well as
20 the possession of a controlled substance. I'm not sure if
21 they even made a motion for that, but there was testimony
22 from Investigator Clarke that he recovered what was
23 confirmed to be diazepam, five pills of diazepam, which is
24 commonly known as Valium. Some of those pills were
25 actually crushed, and that he did not have a prescription

1 for those pills. And again in his written statement, he
2 confesses that those pills were his. So, I believe that we
3 can overcome each of their directed verdict motions on the
4 indictments, Your Honor.

5 MR. SHIPMAN: May I reply?

6 THE COURT: Yes, sir. Yes, sir.

7 MR. SHIPMAN: I would just like to point out the
8 375(d) language is, is merely the possession of the
9 equipment or paraphernalia is merely prima facie evidence
10 of the intent to manufacture, which, as I said, the law
11 does not punish the intent. It publishes the act. So,
12 they may prove that he had an intent to manufacture, but
13 they still have not proven any overt act taken to
14 manufacture methamphetamine.

15 As for the PWID charges, the scales, the paper, the
16 syringes, the spoons, those cut both ways towards personal
17 use and distribution. And so I don't think it's a, I don't
18 think it's a circumstantial, inferential, fragile chain
19 that points all in one direction as the standard set out by
20 the court requires. So, we respectfully request directed
21 verdicts on that, those bases.

22 As for the PWID heroin, we're, we're conceding that
23 they've got the inferential weight, and I don't -- as far
24 as the value, we're conceding that, you know, that there's
25 enough to turn that over for possession.

1 THE COURT: All right, with regard to your motion for
2 directed verdict on all charges, I feel the evidence goes
3 beyond mere conjecture or suspicion, and that there is
4 evidence, either direct or circumstantial or some
5 combination of both, which reasonably tends to prove the
6 guilt of the defendant, or from which that guilt might be
7 logically and reasonably deduced if that evidence is taken
8 in the light most favorable to the state. So, I must
9 respectfully deny your motion for a directed verdict.

10 Now, does the defendant plan to present a defense?

11 MR. HAWKS: Your Honor, we at this time would request
12 a short recess to talk to him about that.

13 THE COURT: All right, let's, let's do this. What are
14 his, if any, impeachable offenses?

15 (A PAUSE.)

16 THE COURT: Got it?

17 MS. CAVANAUGH: Yes, Your Honor. It appears he has a
18 shoplifting conviction from -- excuse me, he has two counts
19 of shoplifting from 2010, one shoplifting third from 2010,
20 and then a giving false information to police from 2009.
21 Those appear to be his only impeachable convictions from
22 the past ten years. He has numerous drug offenses, but we
23 realize that those don't come in unless the door is opened.

24 THE COURT: You agree?

25 MR. HAWKS: Your Honor, the only argument I can make

1 would be that the -- those three charges are simply not
2 relevant, and that the probative value would be extremely
3 minimal and outweighed by prejudice.

4 THE COURT: No. I think I commonly allow the state to
5 use those.

6 Now, they're not using drug offenses, so have you
7 discussed with your client whether he intends to testify or
8 not?

9 MR. HAWKS: I have, Your Honor. It's sort of an
10 ongoing discussion.

11 THE COURT: All right. Let me talk to him a minute.

12 Mr. Sanders, would you stand, please? Mr. Sanders, at
13 this time I'm going to explain to you certain of your
14 rights. If you do not understand anything I say, please
15 let me know. If you want me to explain anything in more
16 detail, please let me know. Do you understand?

17 DEFENDANT: Yes, sir.

18 THE COURT: We've reached the stage of this trial
19 where you may present your defense. You have the right to
20 claim the protections given to you by the Fifth Amendment
21 to the Constitution of the United States. This amendment
22 states in part: No person shall be compelled in any
23 criminal case to be a witness against himself. This means
24 that you cannot be required to testify in this case. You
25 have the right to testify on your own behalf. However, no

1 one can make you testify. This is a personal right. No
2 one can waive this right except you.

3 If you decide to testify, you will be subject to the
4 same rules that govern other witnesses in this court, and
5 you may be examined and cross-examined on any relevant
6 issue in this case.

7 In addition, if you any convictions involving
8 dishonesty or false, or false statement, or for crimes
9 punishable by imprisonment of more than one year, and this
10 court determines that the probative value of admitting this
11 evidence outweighs its prejudicial effect to you, the
12 solicitor will be able to introduce your record to attack
13 your credibility.

14 If you decide to testify, this decision on your part
15 must be freely, voluntarily, and intelligently made with
16 knowledge of the protections given to you by the Fifth
17 Amendment to the Constitution, and the consequences of your
18 decision to testify.

19 If you decide not to testify, I will instruct the jury
20 they cannot give the fact that you did not testify any
21 consideration whatsoever, and that there is to be
22 absolutely no prejudice to you because you did not testify.

23 It's left up entirely to you whether or not you
24 testify. You may talk with your attorney, family, friends,
25 or anybody else, but the final decision will be left

1 entirely up to you.

2 Do you understand what I have explained to you?

3 DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions about what I've
5 explained to you?

6 DEFENDANT: No, sir.

7 THE COURT: You do?

8 DEFENDANT: No, sir.

9 THE COURT: Oh, I'm sorry. Okay.

10 Have you discussed with your lawyer whether you should
11 testify or not testify?

12 DEFENDANT: Yes, sir.

13 THE COURT: Do you wish to talk to your lawyer any
14 more at this time?

15 DEFENDANT: No, sir.

16 THE COURT: I'm sorry?

17 DEFENDANT: No, sir.

18 THE COURT: No?

19 DEFENDANT: No, sir.

20 THE COURT: Do you wish to testify?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right. That's fine.

23 All right, let's take about a ten-minute break, in
24 which case we will proceed with the defense.

25 MR. HAWKS: Thank you, Your Honor.

1 (OFF THE RECORD.)

2 THE COURT: All right, Mr. Hawks, you had something
3 you want to put on the record?

4 MR. HAWKS: Yes, Your Honor. At this time, I would
5 like to put on the record that I have advised my client
6 against testifying both because of what it can do at trial,
7 and also because it may affect his issues on appeal. It
8 will affect those issues.

9 I would also like to put on the record the plea
10 negotiations up to this point. The state has offered to
11 reduce the PWID third to PWID second and offer a cap of
12 ten, I believe dismiss the manufacturing, and plead to all
13 possession thirds and the gun charge, which he already did.
14 I think that's it.

15 MS. CAVANAUGH: And just to clarify, Your Honor, that
16 was the offer before ---

17 THE COURT: Before the trial.

18 MS. CAVANAUGH: --- we started trial.

19 THE COURT: Right. All right, just for the record, we
20 had a meeting in chambers to discuss jury charges, and I
21 will put that on the record at the appropriate time, the
22 discussions with regard to jury charges and any other
23 charges that either state or the defendant wish to propose
24 to the court. Be glad to take that up and consider them.

25 Ready for the jury? State ready?

1 MS. CAVANAUGH: Yes, Your Honor.

2 THE COURT: Defense ready for the jury?

3 MR. HAWKS: Yes, Your Honor.

4 THE COURT: All right, bring the jury, please.

5 (THE JURY ENTERS AT 10:56 AM.)

6 THE COURT: Mr. Hawks, you may proceed.

7 THE COURT: The defense calls Fred Jack Sanders.

8 FRED JACK SANDERS, BEING DULY

9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat the witness box. State
11 your name for the record, please.

12 WITNESS: My name is Fred Jack Sanders.

13 DIRECT EXAMINATION BY MR. HAWKS:

14 Q. Jack, I'm going to take you back to the night of the
15 incident that has given rise to this trial. You remember
16 that night?

17 A. Yes, sir.

18 Q. When the search warrant was executed, were you
19 manufacturing methamphetamine?

20 A. No, sir.

21 Q. Did you have in your possession some drugs?

22 A. Yes, sir.

23 Q. Crack cocaine?

24 A. Yes, sir.

25 Q. Heroin?

F. SANDERS - DIRECT EXAMINATION BY MR. HAWKS

375

1 A. Yes, sir.

2 Q. Methamphetamine?

3 A. Yes, sir.

4 Q. Did you intend to distribute those drugs?

5 A. No, sir.

6 Q. Did you intend to use those drugs?

7 A. Yes, sir.

8 Q. Are you addicted to heroin?

9 A. Yes, sir.

10 Q. Are you addicted to methamphetamine?

11 A. Yes, sir.

12 Q. Are you addicted to crack cocaine?

13 A. Yes, sir.

14 Q. Have you ever received treatment for these addictions?

15 A. No, sir.

16 Q. Do you want to receive treatment for these addictions?

17 A. Yes, sir.

18 MR. HAWKS: May I approach the witness, Your Honor?

19 THE COURT: Yes, sir.

20 MR. HAWKS: May I ask him to stand?

21 THE COURT: Certainly.

22 BY MR. HAWKS:

23 Q. I'm going to ask you to lift your sleeve on your right
24 arm.

25 A. (THE WITNESS COMPLIES.)

1 Q. That mark there, is that a track mark?

2 A. Yes, sir.

3 Q. You can sit down. Do you inject heroin?

4 A. Yes, sir.

5 Q. Do you inject methamphetamine?

6 A. Yes, sir.

7 Q. Is that what is those -- that track mark is from?

8 A. Yes, sir.

9 Q. Do you also use other methods to consume heroin and
10 methamphetamine?

11 A. Yes, sir.

12 Q. You told police that on the night you arrested?

13 A. Yes, sir.

14 MR. HAWKS: Beg the court's indulgence.

15 (A PAUSE.)

16 BY MR. HAWKS:

17 Q. I'm just going to ask you one more time. Were you
18 manufacturing method?

19 A. No, sir.

20 Q. Did you intend to distribute the drugs that were
21 found?

22 A. No, sir.

23 MR. HAWKS: Thank you, Your Honor. That's all I have.

24 THE COURT: Cross-examination.

25 MS. CAVANAUGH: Beg the court's indulgence.

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

377

1 (A PAUSE.)

2 CROSS-EXAMINATION BY MS. CAVANAUGH:

3 Q. Good morning, Mr. Sanders.

4 A. Good morning.

5 Q. You just stated to your lawyer that you never received
6 treatment before. Have you not, in fact, been to Charter
7 Rivers and received treatment before?

8 A. I was an adolescent then. I went for alcohol abuse.

9 Q. So, you have received some treatment before for
10 substance abuse?

11 A. Yes, ma'am.

12 Q. So, what you said to your lawyer earlier was
13 inaccurate?

14 A. Well, actually I was an adolescent. I believe I was
15 fifteen years old then, and I didn't go there willingly. I
16 wasn't seeking any help.

17 Q. But you did go for treatment?

18 A. Yes, ma'am, I did.

19 Q. And you've been convicted before. In fact, as
20 recently as 2011 for giving false information to law
21 enforcement, haven't you?

22 A. Yes, ma'am, I have.

23 Q. And you've also been convicted for crimes involving
24 dishonesty as recently as 2009, 2010 for shoplifting ---

25 A. Yes, ma'am.

1 Q. --- right?

2 A. Yes, ma'am.

3 Q. On three different occasions?

4 A. Yes, ma'am.

5 Q. You admitted to several of the investigators that the
6 crack cocaine located was yours. Isn't that correct?

7 A. Yes, ma'am.

8 Q. And there was crack cocaine in between you and Sara
9 and Joshua when the investigators entered the garage.
10 Isn't that correct?

11 A. Yes, ma'am.

12 Q. And that was yours?

13 A. Yes, ma'am.

14 Q. And were y'all intending to use that crack cocaine?

15 A. I was.

16 Q. Were they going to use it?

17 A. I don't know if they were or not.

18 Q. Were you going to allow them to use it?

19 A. I wasn't going to give them any of my drugs.

20 Q. But it was sitting in the middle of all of y'all.

21 A. It was sitting at my feet.

22 Q. So that that -- so, it wasn't in between y'all?

23 A. I was sitting in between both of them.

24 Q. So, while you were going to use the crack cocaine,
25 they were just going to sit there?

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

379

1 A. I don't know what they were going to do.

2 Q. They were at your house?

3 A. They were at my house.

4 Q. Where your drugs were located, right?

5 A. My drugs were in my possession.

6 Q. Well, they went in various locations in your house,
7 but they were yours?

8 A. Yeah.

9 Q. And they weren't going to use any of those?

10 A. No.

11 Q. Okay. Investigators with the Richland County
12 Sheriff's Department came to your home on the evening of
13 April 23, 2013, right?

14 A. Yes, ma'am.

15 Q. And you told your lawyer that you were not
16 manufacturing methamphetamine at that time?

17 A. Yes, ma'am. I, I told him I was or wasn't?

18 Q. You told the -- you told your lawyer that you were
19 not?

20 A. I told my -- yeah, I was not.

21 Q. I'm going to show you a picture of this plastic bottle
22 and the tubing that was located in your trash can in your
23 room. What is that?

24 A. It looks like trash to me.

25 Q. And what did you use it for?

1 A. It's bottled water.

2 Q. What about the tubes that are in the bottle?

3 A. I did, I did not use any of that stuff.

4 Q. No? In your room?

5 A. No, ma'am.

6 Q. In your room that had a padlock on the door?

7 A. No, ma'am.

8 Q. This Coleman, this gallon of Coleman camp fuel that
9 was located in your bedroom, is that yours?

10 A. Yes, ma'am.

11 Q. And why is that in your bedroom?

12 A. It's lighter fluid.

13 Q. You need a gallon of it in your bedroom?

14 A. I have a lamp that I put it in. It's a wick lamp.

15 Q. These AA batteries that all contain lithium and
16 different size batteries also lithium, multiple packs in
17 your bedroom, stripped batteries in your bedroom, what were
18 those for?

19 A. The batteries themselves, the big ones were for a
20 camera. The other batteries were for flashlights.

21 Q. You didn't do this to those?

22 A. Where were those located?

23 Q. In your room.

24 A. I, I have no knowledge of those.

25 Q. Salt that was in your bedroom near where all the other

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

381

1 materials used to manufacture methamphetamine, what -- you
2 keep salt in your bedroom for what purpose?

3 A. I drink alcohol. I drink lemon drops. I drink
4 tequila. I use it for shooting alcohol, taking shots.
5 Bite the lemon.

6 Q. Didn't see any pictures of the shot glass in your room
7 or alcohol.

8 A. There was none. There was none there at the time.

9 Q. But you keep the salt in there?

10 A. Yeah. It doesn't take but a few minutes to go to the
11 liquor store and get a bottle of liquor.

12 Q. The cold packs that were located in your bedroom,
13 aren't those usually kept in the freezer?

14 A. Freezer?

15 Q. The cold pack, an ice pack.

16 MR. HAWKS: Objection, Your Honor. It's in evidence
17 that those are the ones found in the room.

18 THE COURT: Cross-examination. I'll allow it.

19 Overruled.

20 BY MS. CAVANAUGH:

21 Q. Those were located in your bedroom as well, weren't
22 they?

23 A. Yeah.

24 Q. Okay. Not in the freezer?

25 A. No, they weren't in the freezer.

1 Q. And a punctured cold pack also located your bedroom
2 close to all the other materials we just went over, what
3 was that used for?

4 A. I didn't puncture it.

5 Q. Who did?

6 A. I don't know.

7 Q. Don't you just live at that house with your mom?

8 A. I did.

9 Q. Well, if you didn't puncture it, who did?

10 A. I don't know. Wasn't it in the trash?

11 Q. It was in your bedroom.

12 The Sudafed tablets that are that box, not in the
13 Sudafed box, but in that box next to a -- next to the
14 grinder. You can see the grinder next to this?

15 A. Yes, ma'am. Yes, ma'am.

16 Q. What is that for. What were they for?

17 A. Well, I have, I have major sinus problems.

18 Q. Uh-huh.

19 A. And I also use Sudafed at times to get high. If I
20 don't have what I need to get high on, then I will crush it
21 and snort it. I've even tried to inject it.

22 Q. And these syringes that have the Batman Band-aids on
23 them.

24 A. Yes, ma'am.

25 Q. Who put the Batman Band-aids on those?

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

383

1 A. I did.

2 Q. Why did you do that?

3 A. I would load the syringes so that they would be
4 readily available for me to use, and I would put the caps
5 on top of them and put the Batman tape so that it would
6 hold the cap on there so that the plunger wouldn't get
7 plunged down as I was pushing the drawer open and shut so
8 that it wouldn't waste any of the drugs.

9 Q. That you just made with all those materials?

10 A. No, ma'am.

11 Q. But you just said you loaded the syringes.

12 A. I did load the syringes. The drugs that I had, I
13 purchased.

14 Q. This box of large amounts of wax paper.

15 A. Yes, ma'am.

16 Q. That was located next to all these materials.

17 A. Yes, ma'am.

18 Q. What was the purpose of these?

19 A. I'd use heroin, and whenever I -- rather than taking
20 the risk of overdosing on heroin, because heroin is a very
21 lethal drug and it's very dangerous to use, although I was
22 hooked on it -- I couldn't function without using it. So,
23 I would take my heroin, and I would divide it up evenly,
24 and I would put the amount for one use into each one of
25 those bags, and I used it so often that I needed multiple

1 bags. I would use every one of those bags right there
2 within, like, maybe two weeks.

3 Q. Is there a fence in your backyard?

4 A. Yes, ma'am.

5 Q. In this bottle that you can see the lithium batteries
6 in, or the open -- the stripped lithium batteries and then
7 the finished product, that was located in your backyard.
8 Didn't you admit to the investigator that you buried that?

9 A. No, ma'am.

10 Q. You didn't say that to him?

11 A. No, ma'am.

12 Q. So, this was in your backyard?

13 A. That was actually found after I was arrested. I
14 didn't put it there.

15 Q. But it was in your backyard?

16 A. From my knowledge, the investigator came back to the
17 house a couple of days later.

18 Q. Or could have been the next day?

19 A. I don't, I don't know. Maybe the next day. Maybe. I
20 don't know. I thought it was a couple days later. I'm not
21 sure.

22 Q. After your mom called them ---

23 A. They ---

24 Q. --- to tell them it was there?

25 A. They asked me if there was anything like that. That

F. SANDERS - CROSS-EXAMINATION BY MS. CAVANAUGH

385

1 was the first thing they asked me, and I told them no.

2 There's nothing like that here. I didn't understand what
3 they were asking me at first.

4 Q. This green box, you tried to hide this when the
5 investigators entered the garage. Isn't that right?

6 A. I didn't try to hide it.

7 Q. You hid it by the refrigerator. They had to dig
8 behind the refrigerator ---

9 A. It was on a ---

10 Q. --- to find it.

11 A. It was on a shelf. It was on a shelf in a, in a box
12 in the -- beside the -- there's a refrigerator in the
13 garage. There's also a shelf right beside the
14 refrigerator. I just had it sitting down in there.

15 Q. The doesn't look like a shelf. That's where it was
16 located.

17 A. Can, can I see that?

18 (A PAUSE.)

19 A. I don't even recognize where that is in the house. I
20 actually believe that that is the box that was on the shelf
21 itself.

22 Q. But you didn't try to hide it when ---

23 A. No. No, ma'am.

24 Q. --- the investigators entered?

25 A. I just had it sitting in there. It was in there

1 before they busted in the -- busted open the door.

2 Q. So, what you're telling us today is that all of these
3 items, the stripped batteries, you don't know why they're
4 in your bedroom?

5 A. No, ma'am, I don't.

6 Q. You had nothing to do with that?

7 A. No, ma'am, I did not.

8 Q. You have no idea what -- how the Dasani water bottle
9 with the tubing got in your trash can and in your bedroom?

10 A. No, ma'am. They were in the trash. I mean, I'm not
11 -- I don't make it a habit of looking through the trash to
12 see what's in the trash.

13 Q. And you keep a gallon of camp fuel you use ---

14 A. I have a lamp.

15 Q. --- for your lighter?

16 A. I have a wick lamp that I use that for. It's actually
17 a lamp that has three hanging wick lamps.

18 Q. And even though there was no alcohol, no shot glasses,
19 no empty bottles except for ones with tubing in them, the
20 salt was for your tequila shots?

21 A. And lemon drops. I use them in the bottle as well.

22 Q. And the Drano that was located in your room, what was
23 that for because there was no bathroom or no sink in your
24 bedroom.

25 A. There is a bathroom and a sink and a shower in my

1 bedroom.

2 Q. Do you usually keep the Drano outside of the bathroom?

3 A. I keep it under the, under the counter because we did
4 have major problems with backing up sewage, which my mother
5 just had fixed approximately about three weeks ago. They
6 had to come out and redo the whole line, and I was pouring
7 Drano and the other -- I don't, I don't know the name of
8 it. I don't know the -- I went to the hardware store and
9 asked them what's the best stuff to use for clearing out
10 drain, and they gave me this stuff that was called -- I
11 don't remember. It was -- they told it was highly toxic.
12 It was in a plastic bag; it was in a big, red bottle. I
13 asked them did I need to pour the whole bottle, and they
14 said no. They said just pour a little bit down each drain
15 and if it doesn't clear up, try it again. Go through every
16 drain, and I did, and I just had it up under the ---

17 Q. In the bedroom?

18 A. Under the sink in the, in the bathroom in the bedroom,
19 yes, ma'am.

20 Q. So, even though you admitted to Investigator Clarke
21 that all the items, all the illegal substances, all the
22 contraband located in your bedroom were yours and yours
23 alone, you now say that you have no idea how any of these
24 items got into your room?

25 A. I didn't say that.

1 Q. So any items, contraband or otherwise, in your
2 bedroom could be yours and yours alone, correct?

3 Yes, sir.

4 A. Didn't I just tell you that everything in there was
5 mine?

6 Q. Except for the stripped lithium, except for the cold
7 packs that you have no idea how they got in there.

8 A. I didn't say that.

9 Q. You just told this jury that you have no idea how the
10 stripped lithium got in your trash can.

11 A. I don't. I don't know how the stripped lithium got in
12 my trash can. As far as the lithium batteries, yes, I do
13 have knowledge of owning those. They tend to last longer
14 than the other batteries.

15 MS. CAVANAUGH: Beg the court's indulgence.

16 BY MS. CAVANAUGH:

17 Q. Why did your room have a strong odor of chemicals
18 coming from it?

19 A. I don't recall a strong odor of chemicals coming from
20 it.

21 Q. So, that was also a lie?

22 A. I didn't say that.

23 Q. But you never noticed any strong chemical smell coming
24 from your room?

25 A. No, ma'am, I did not.

F. SANDERS - REDIRECT EXAMINATION / RECROSS-EXAMINATION 389

1 MS. CAVANAUGH: Thank you, Mr. Sanders.

2 THE COURT: Redirect?

3 MR. HAWKS: Beg the court's indulgence.

4 (A PAUSE.)

5 REDIRECT EXAMINATION BY MR. HAWKS:

6 Q. The prior convictions that the solicitor mentioned,
7 would you say those stem from your drug use?

8 A. Absolutely.

9 MR. HAWKS: I have nothing further.

10 THE COURT: Anything further from the state?

11 MS. CAVANAUGH: Just one follow up.

12 RECROSS-EXAMINATION BY MS. CAVANAUGH:

13 Q. So, giving false information to law enforcement was
14 from your drug use?

15 A. Drug and alcohol, being totally resistant to, yes,
16 ma'am.

17 THE COURT: Is that it?

18 MS. CAVANAUGH: Yes, sir.

19 THE COURT: You may come down, sir. Thank you very
20 much.

21 WITNESS: Thank you.

22 (THE WITNESS EXITS THE STAND.)

23 THE COURT: Next witness.

24 MR. HAWKS: Your Honor, at this time the defense
25 rests.

1 THE COURT: All right, any reply?

2 MS. CAVANAUGH: No, Your Honor.

3 THE COURT: All right.

4 All right, ladies and gentlemen, that's it. That
5 conclude all -- that concludes all the evidence you will
6 hear in this case. The remaining portion of the trial will
7 consist of the final summation or argument of counsel and
8 my instructions to you on the law of the State of South
9 Carolina as it applies to this case.

10 Now, we've ordered lunch for you, but it's not going
11 to be here for about an hour. There are several matters,
12 again several matters I need to take up with the attorneys
13 before we do the final arguments. So, I'm going to ask you
14 to go to your jury room for a few minutes. Well, you've
15 probably learned by now when I say a few minutes, it
16 probably doesn't always mean a few minutes. But I do have
17 to take up some legal matters with them before the case is
18 presented, turned over to the jury.

19 So, if you'll go to your, just go to your jury room,
20 relax. If we can speed that lunch up, I'll do it to try to
21 get it here a little early. Don't discuss the case among
22 yourselves while you're in the jury room, please.

23 (THE JURY EXITS AT 11:22 AM.)

24 THE COURT: All right, any request to charge on behalf
25 of the state?

1 MS. CAVANAUGH: Your Honor, we submitted the two that
2 we ask that you charge, as well as any -- the constructive
3 possession charge, Your Honor, related to the crack cocaine
4 that was located in the garage when investigators entered.

5 THE COURT: What were the other two? What was the
6 other one?

7 MS. CAVANAUGH: The other one was section
8 44-53-375(d), which is the applicable law for manufacturing
9 methamphetamine. We substituted prima facie, the prima
10 facie burden gives rise to permissive inference. And then
11 the other charge was the inference, was from Ralph King
12 Anderson's book as far as the inference weight for the
13 heroin since it was over ten times the inference weight for
14 possession with intent to distribute.

15 THE COURT: Heroin, just the heroin?

16 MS. CAVANAUGH: Just the heroin. That's the only one
17 that was over the inference weight.

18 THE COURT: Right. I think that's right. That's the
19 1.2, 1.25 grams?

20 MS. CAVANAUGH: Yes, sir.

21 THE COURT: From the defense?

22 MR. HAWKS: Your Honor, the first one she's speaking
23 about, possession of equipment and paraphernalia, the
24 statute actually reads that there's a prima facie showing
25 of intent, and this one reads permissive inference of a

1 violation. I would just request that it be changed to
2 gives rise to a permissive inference of an intent to
3 manufacture because I don't want the jury to think having
4 the equipment is a crime.

5 THE COURT: I know what you mean.

6 Any objection to that?

7 MS. CAVANAUGH: No, Your Honor. That's how the
8 statute reads. No objection.

9 THE COURT: Okay.

10 MR. HAWKS: And does Your Honor already have one about
11 attempt?

12 THE COURT: A what?

13 MR. HAWKS: Attempt.

14 THE COURT: Attempt to what?

15 MR. HAWKS: To manufacture.

16 THE COURT: No.

17 MR. HAWKS: We would like to submit this charge. I
18 apologize.

19 THE COURT: Give it to the state.

20 MR. HAWKS: I don't have any copies. I apologize. I
21 just ran them off.

22 THE COURT: They can't -- you have to let them look at
23 it at least so they can object to it.

24 (A PAUSE.)

25 THE COURT: What's the evidence of attempt?

1 MS. CAVANAUGH: I object to this because the statute
2 actually reads that defendant did manufacture or did aid,
3 abet, attempt, or conspire to manufacture. So, the word
4 attempt is included in the manufacturing methamphetamine
5 statute. So, this charge is inappropriate as it relates to
6 manufacturing methamphetamine; it's in direct contradiction
7 to the actual statute.

8 (A PAUSE.)

9 THE COURT: Well, I haven't seen it, so I don't know.

10 MR. HAWKS: I apologize about that, Your Honor.
11 Trying to rush.

12 THE COURT: You want me to define attempt? Is that
13 what you're saying?

14 MR. HAWKS: Yes, Your Honor.

15 (A PAUSE.)

16 THE COURT: Well, let me back up. What's the evidence
17 of an attempt to manufacture? What's the evidence?

18 MR. HAWKS: The equipment.

19 THE COURT: Well, let me find out. What's the state
20 say?

21 MS. CAVANAUGH: Your Honor, the attempt is actually --
22 I mean, I don't -- the attempt that he is handing up I
23 think is -- I mean, a violation of the law that he is
24 indicted under is the attempt, included attempt. So, I
25 don't see how reading ---

1 THE COURT: Well.

2 MS. CAVANAUGH: --- that charge is appropriate in this
3 case, especially not when ---

4 THE COURT: 110 doesn't talk about attempt in any way.

5 MS. CAVANAUGH: 110?

6 THE COURT: 53-110 talks about manufacturing.

7 MS. CAVANAUGH: I'm under 375(b).

8 THE COURT: Under 375(b) it does talk about attempt.

9 MS. CAVANAUGH: As a -- as part of the subsequent
10 offense.

11 THE COURT: Why don't I just read the statute?

12 MS. CAVANAUGH: Yes, sir.

13 THE COURT: Let me parse this. I'm not going to read
14 all of this.

15 (A PAUSE.)

16 THE COURT: Show that to Ms. Cavanaugh.

17 (A PAUSE.)

18 MS. CAVANAUGH: Your Honor, if that's -- the
19 highlighted sections are what you'll read, I'm okay with
20 that.

21 THE COURT: All right, anything else?

22 MR. HAWKS: The intent to distribute charge that they
23 requested, the only thing I would consider adding to that,
24 if Your Honor is so inclined, would be after the sentence
25 gives rise to a permissive inference, a specific sentence

1 saying the jury does not have to accept that inference at
2 all.

3 MS. CAVANAUGH: And this...

4 THE COURT: You want me to tell them something, and
5 then tell them don't pay attention to what I just said?

6 MR. HAWKS: Well, I -- that they don't to pay
7 attention because any amount of burden shifting at all
8 would be unconstitutional.

9 THE COURT: I understand.

10 MS. CAVANAUGH: This charge is taken directly from
11 Judge Anderson's book, and it takes into consideration what
12 the Court of Appeals upheld as far as that charge is
13 concerned, Your Honor. And you say this in this charge,
14 that the jury is free to accept or reject the permissive
15 inference.

16 THE COURT: I think ---

17 MS. CAVANAUGH: I don't think you should have to say
18 it five times.

19 THE COURT: I think I'm going to go with Anderson as
20 much as I'm not a -- I won't say that. I don't live with
21 Judge Anderson's sword.

22 All right, I'm going to try to knock this out right
23 now so you'll have a chance to look at it before you argue.
24 I'm going to give you a jury form, proposed jury. Give us
25 a few minutes.

1 MR. HAWKS: Your Honor, when would you like me to
2 renew everything for the record?

3 THE COURT: Go ahead. Go ahead. Any motions at this
4 time?

5 MR. HAWKS: Your Honor, I would renew all pretrial
6 motions, all objections during the trial, each and every
7 individual mistrial motion I made, the cumulative mistrial
8 motion I made at the end of state's case, all of the
9 directed verdict motions we made at the end of state's
10 case, any other motions or objections I've made throughout
11 this trial.

12 THE COURT: All right. That ought to cover you.

13 MR. HAWKS: I hope so.

14 THE COURT: Respectfully denied, all motions. This
15 case is going to the jury.

16 For the record, how much time does the state need to
17 argue?

18 MS. CAVANAUGH: Thirty minutes.

19 THE COURT: Defense?

20 MR. HAWKS: Around the same time.

21 THE COURT: Can't get it done -- we could, too. Let
22 me find out from the clerk what the status of the lunch for
23 the jury is.

24 State will open and close?

25 MS. CAVANAUGH: We're just going to have one, Your

1 Honor.

2 THE COURT: Oh, I'm sorry. You presented no evidence.
3 I'm sorry, you did. They'll open and close. Oh, what are
4 you doing, waiving the opening?

5 MS. CAVANAUGH: We're, we're waiving first close.

6 THE COURT: Okay, waiving opening?

7 MS. CAVANAUGH: Yes, sir.

8 (A PAUSE.)

9 MR. HAWKS: That, that's fine.

10 THE COURT: Okay, state will waive opening.

11 Here are proposed verdict, form of the verdict if
12 you'd like to look at it.

13 (A PAUSE.)

14 MR. HAWKS: I have no objection.

15 MS. CAVANAUGH: No objection.

16 (A PAUSE.)

17 THE COURT: State, you ready to argue?

18 MS. CAVANAUGH: Whatever you think is best, Your
19 Honor.

20 THE COURT: Well, I'm just trying to accommodate the
21 jury. You ready to argue?

22 MR. HAWKS: I prefer to have a lunch break, but I'm
23 ready.

24 THE COURT: All right. Well, see, I can't -- I hate
25 to keep the jury sitting back there for forty-five minutes

1 with nothing to do. Let's just hold the lunch. All right.

2 MR. HAWKS: Your Honor.

3 THE COURT: Yeah.

4 MR. HAWKS: May I look at that one more time? I just
5 want to make sure that the third is not on there.

6 MS. CAVANAUGH: And, Your Honor, I will need that set
7 up. So, after Mr. Hawks finishes, we need just a small
8 amount of time to set that up.

9 THE COURT: All right.

10 MR. HAWKS: And, Your Honor, I just want to make sure
11 the indictments also do not say third offense, make sure
12 those are redacted.

13 THE COURT: I'm not going to give them the
14 indictments. I do that, I give them the indictments if
15 there are no lesser included. Can't give them an
16 indictment if you've got lesser included.

17 (OFF THE RECORD.)

18 THE COURT: All right, any additions or corrections to
19 the charge from the state?

20 MS. CAVANAUGH: None, Your Honor.

21 THE COURT: From defense?

22 MR. HAWKS: No, Your Honor.

23 THE COURT: All right, good. I've retyped the state's
24 request to charge. I think it was just close to what I
25 had, but I'm going to use as offered by the state.

1 All right, the state ready for the jury?

2 MS. CAVANAUGH: Yes, Your Honor.

3 THE COURT: Defense ready for the jury?

4 MR. HAWKS: Yes, Your Honor.

5 THE COURT: Bring the jury, please.

6 (THE JURY ENTERS AT 11:52 AM.)

7 THE COURT: Ladies and gentlemen, we will now proceed
8 with the final arguments of counsel. Before we do that,
9 let me explain something to you, and this is the reason I
10 put pads and pencils in your chairs, which you are free to
11 use or not use.

12 But in the law, there is something called a
13 lesser-included offense. Now, I'll give you an example.
14 May be a TV example, but sometimes you hear lawyers talk or
15 solicitors, prosecutors talk about murder in the first
16 degree, murder in the second degree, or murder in the third
17 degree. In other words, the second degree and third degree
18 might be -- have different elements, but they're really
19 under the murder charge. Of course we don't have it in
20 exactly that language in South Carolina. We have murder
21 and voluntary manslaughter as a, what we call a
22 lesser-included offense.

23 Now, you're going to hear some, you're going to hear
24 some argument. I'm not sure how it's going to be phrased
25 to you, but that -- with regard to these indictments for

1 possession with intent to distribute, a lesser-included
2 offense of those charges. In other words, there are three
3 of them: possession with intent to distribute
4 methamphetamine, possession with intent to distribute crack
5 cocaine, possession with intent to distribute heroin.
6 Those three charges will have a lesser-included offense,
7 and that is possession.

8 In other words, if you do not find -- as I say, I'm
9 giving you a little preview of what I think you're going to
10 hear from the lawyers. If you do not find that there is an
11 intent to distribute, you can still find the defendant
12 guilty or innocent of possession. So, I wanted to just
13 kind of alert you to the fact that you, I'm pretty sure
14 you're going to hear some discussion about possession as
15 opposed to possession with intent to distribute of those
16 three drugs.

17 Now as to manufacturing, it's either manufacturing or
18 not, and he's only charged with possession of Valium, not
19 possession with intent to distribute Valium.

20 So, with that little preview, Mr. Hawks, you may begin
21 with your final argument.

22 MR. HAWKS: Thank you, Your Honor. May it please the
23 court?

24 Good morning, ladies and gentlemen. I would like to
25 start by apologizing for objecting so much, sending y'all

1 out of the room so much, and disrupting this trial so much,
2 but I assure you every time I did that, it was in order to
3 make sure my client, Jack Sanders, had a fair trial. And
4 that is what you're here for today. What we're all here
5 for today is to make sure that he is proven beyond a
6 reasonable doubt that he is guilty of every element of the
7 charges that are facing him.

8 And I know we haven't had a chance to speak very much.
9 I'm been talking with the judge, talking to my co-counsel,
10 my client, the state. Haven't been able to address you at
11 this point, but I'm very excited to do so, and I am very
12 excited to be here.

13 I'm going to introduce a concept to you. Some of you
14 may already be familiar with it. It's from a very famous
15 book written by George Orwell called *1984*, and that concept
16 is called doublespeak. And if you've read that book or
17 seen the movie, heard about this phrase before, you
18 probably already know what it means, but I'm going to
19 explain it to you in very simple terms here.

20 Perhaps the most used example is this one right here:
21 war equals peace. Now, why is that doublespeak? Well, we
22 know that the word war certainly doesn't mean speak. But
23 doublespeak is when politicians, government officials, they
24 use a word over and over, and they try to change the
25 definition over and over, so much that the people hearing

1 that word and hearing that definition begin to believe that
2 it actually means what they're saying, war equals peace.
3 And there are plenty of examples in this trial of that
4 being done.

5 The first, Mr. Shipman told you about it in his
6 opening: user equals dealer. The state wants you to
7 believe that a drug addict, Jack Sanders -- a junkie if you
8 prefer to call him that -- is a dealer. That because he
9 has certain amounts of drugs or certain quantities of drugs
10 or certain different types of drugs, that he must be a drug
11 dealer. Well, ladies and gentlemen, user does not equal
12 dealer. We know that. We know that war does not equal
13 peace no matter how many times it's said to us, no matter
14 how many times that definition is attempted to be changed.
15 We know that a user is not a dealer, okay?

16 And I'm going to give you a further example of this.
17 Going to break it down a little bit. Some evidence has
18 been shown in this trial so far, one piece of that
19 evidence, syringes. We know that a user of heroin,
20 methamphetamine, especially an intravenous user of those
21 drugs -- which means directly into the vein -- is going to
22 use syringes. Throughout this trial, the state has
23 attempted to tell you that syringes points to this, dealer.
24 So, syringes equal paraphernalia for a dealer. I'm not
25 going to try to spell paraphernalia right now. I'm just

1 going to do P for dealer.

2 Now, there's been some other evidence shown to try to
3 prove that Mr. Sanders is a dealer: straws, jars, grinders,
4 other, other equipment used to consume drugs. But the
5 problem is they have never actually shown that Mr. Sanders
6 is a dealer or that he intended to distribute any of those
7 drugs. So, no matter how many times they tell you that a
8 dealer would have a syringe, that he would load that
9 syringe up for his clients so that they could use them, we
10 know that a user would have a syringe, not a dealer. That
11 the end user of narcotics is going to load that syringe
12 himself or herself.

13 The state would have you believe that Jack Sanders is
14 such a thoughtful and nice dealer that he even cooks the
15 meth and heroin down to spoons, loads it up for his
16 clients. Not only that. He removes the cap that comes on
17 a basic syringe and he replaces it with a pen cap. And the
18 reason he does that, so that it won't come off. He even
19 tapes it, and you saw that some of those pictures.

20 Now, I find it hard to believe that a drug dealer
21 would go through all that time and effort to make sure that
22 a syringe was not accidentally punctured for his clients. I
23 think, however, that a user would absolutely take that time
24 to make sure, as Mr. Sanders told you himself, that none of
25 those drugs which he so desperately needed would come out

1 of that syringe.

2 Not only when he's opening and closing a drawer, which
3 he told you, but also if he takes those syringes anywhere
4 with him because he does that. That's the type of addict
5 Mr. Sanders is. He is so addicted that he cannot go
6 anywhere without having what he needs because he will go
7 through physical withdrawals that will make him physically
8 sick. Can't go to work, can't go anywhere without the
9 drugs that he needs to not become sick.

10 Now, when I first met Jack last summer -- last fall,
11 excuse me -- I inherited this case from another attorney,
12 so I did not meet him when he was initially arrested. But
13 I met him some time later in the fall, and for a while
14 there, there was only one thing that we talked about, and
15 that was getting him treatment. And that's the only thing
16 that he has ever wanted as soon as this whole case began,
17 treatment.

18 And he told you during his testimony that although he
19 did receive some treatment when he was a youth for alcohol
20 abuse, he has never received any treatment for his current
21 addictions, which are many, and they are very serious.

22 What the state wants you to do today is put him in
23 prison, not ---

24 MS. CAVANAUGH: Objection.

25 THE COURT: Can't talk about those things,

1 consequence.

2 That's up to the court, ladies and gentlemen, whatever
3 penalty may be incurred. Just -- that's not relevant final
4 argument.

5 MR. HAWKS: I apologize.

6 Let's move on. The reality here is that Jack Sanders
7 was overcharged. When they executed that warrant, they
8 found a lot of evidence, a lot of evidence of a drug
9 addict, extremely addicted man. A man who doesn't really
10 have a preference for any specific drug. He takes whatever
11 he can get his hands on. That's why they found crack,
12 heroin, methamphetamine, prescription drugs.

13 And the state would have you believe that the fact
14 that there was a smorgasbord, if you will, of narcotics,
15 that he must be a dealer. He provides services to several
16 different kinds of addicts, several different kinds of
17 users. In reality, many dealers do not operate that way.
18 They focus on one drug, and they have large quantities of
19 it.

20 Mr. Sanders didn't have large quantities of any
21 specific drug, and let's talk about quantities here. A lot
22 has been made about the amount of heroin found in this
23 case. There's been talk about inference weight, which the
24 judge is going to instruct you on, and that inference
25 weight simply is an arbitrary number decided by a group of

1 men many years ago in our legislature. It does not take
2 into account the purity of those drugs. It does not take
3 into account the tolerance of the user, the level of the
4 user's addiction. It does not take into account the height
5 and weight of the user. As you can tell, Jack's a pretty
6 big guy. That number -- again, arbitrarily decided by the
7 legislature -- does not take into account the individual
8 user. It certainly did not take into account Jack Sanders.

9 Now, from watching law shows on TV, and I don't know
10 if any of you do, but I'm sure one of you has at least seen
11 one or two law shows in the past, crime shows, cop shows,
12 whatever you want to call them. Those shows make you
13 believe or make you think perhaps that law enforcement
14 agencies are constantly investigating cases that they
15 charge. That they are repeatedly going over the evidence
16 and trying to figure out for sure if they're doing the
17 right thing because the goal of law enforcement should not
18 be to charge as much as possible or to get as many
19 convictions as they possibly can. The goal should be to
20 fight crime, to stop crime, to make sure that they are
21 charging the right people for the right things, and to make
22 sure that they are doing what's right for society in
23 general.

24 In Mr. Foster's opening, the state's opening, he, he
25 asked you to convict Mr. Sanders because it would help get

1 these drugs off the street. Now, you and I know that is
2 not going to happen whether or not you convict Mr. Sanders.
3 And I'm going to argue that Mr. Sanders, the only place he
4 wanted those drugs to go was inside his own body, and he
5 told you that himself.

6 Now this, this case started back in April 2013. It is
7 now March, so we're on about eleven months. During that
8 whole time, Investigator Ricard, Investigator Smith,
9 Investigator Clarke, they have not done any more work on
10 this case besides the original execution of the warrant.

11 And when I was cross-examining Investigator Ricard, I
12 was trying to show you guys that throughout that
13 eleven-month period, that whole time she had the
14 opportunity all the way up until Monday when we started
15 this case to amend her incident report, which she told me
16 is very, very important because when law enforcement gets
17 on a crime scene, they want to get everything as it is
18 accurately as possible. But throughout that period, they
19 can amend their reports. They can add things, especially
20 something as important as the smell.

21 Now, I was not there; I was not at 113 Rockingham Road
22 in April 2013. I don't know what the house smelled like,
23 and I'll never know. But I can tell you that if it was
24 that important at the time, if the smell was that pungent,
25 that strong, that overwhelming, that it should have been in

1 the incident report. Or it should have been added because
2 again, eleven months they've had to amend that incident
3 report.

4 All of these suggestions that you've heard in this
5 case are simply that: suggestions. They are suggesting
6 that he is a drug dealer. They are suggesting that he
7 intended to distribute those drugs, and let's talk about
8 each drug in general -- or specifically. I'm sorry.

9 Let's talk about the crack. You have not heard any
10 direct evidence Jack Sanders actually intended to
11 distribute the crack. In fact, he told you himself that he
12 intended to use it, and that was a very small amount of
13 crack. So, it doesn't even meet that inference weight.
14 So, you don't even have to consider that. But again, the
15 only thing we have to go as far as intent to distribute is
16 the state's suggestions, their conjecture, their
17 speculation. What we do have is Jack Sanders's own
18 testimony. He was going to use that crack for himself.

19 Let's talk about the meth. .08 grams found on four
20 separate spoons. Residue scraped off of a spoon. I'm not
21 sure how he could have intended to distribute resin on a
22 spoon, but that is what the state is suggesting.

23 Now, they also told you that he had some syringes full
24 of liquid methamphetamine that he was intending to
25 distribute. We'll never know if that was actually

1 methamphetamine because it was not tested. But even if it
2 were, we go back to our original discussion. Syringes are
3 for a user, not what the state would have you believe, but
4 paraphernalia for a drug user.

5 Jack told you himself on the stand that he is addicted
6 to meth. You saw his track marks from injecting that drug.
7 He verbally and written -- in a written statement admitted
8 on the scene that he uses those drugs. Those are his. He
9 injects and smokes methamphetamine. Again, no direct
10 evidence that Jack Sanders intended to distribute that
11 methamphetamine to anyone but himself.

12 Let's talk about the heroin. This is the big elephant
13 in the room, I think. It does meet the inference weight,
14 the permissive inference weight, and that's reasonable.
15 The reason I discussed that with you in the beginning
16 because you must understand that you don't have to take
17 that weight to mean anything. It is permissive. So, you
18 can take it or leave it.

19 The state would have you believe that that's all that
20 matters, you have the statutory amount. No way any heroin
21 addict could ever have that much heroin, but of course that
22 ignores simple rules of economics. That ignores the size
23 and weight of the individual. That ignores the purity of
24 the narcotic. But again, to no fault of their own, state
25 admitted that they do not test.

1 Again, Jack Sanders showed you his track marks.
2 They're a little faded because he's been clean for quite
3 some time, and I'm very happy for that, but they're still
4 there.

5 Now, heroin is a very, very, very powerful drug. It
6 can kill you, and tolerance for heroin develops very
7 quickly. And when the user develops a tolerance, they need
8 more and more of the drug. Just like an alcoholic who
9 drinks every day, eventually they're going to need more
10 alcohol. A smoker who smokes cigarettes, they're going to
11 smoke more and more and more. Maybe eventually they come
12 to a resting point at some amount, some average amount, but
13 when that tolerance is building, the user in pretty much --
14 all drugs, not just heroin -- is going to need more and
15 more and more, especially again when you take into account
16 the purity. For all we know, this was very weak heroin.
17 For all we know, it was very strong heroin. The main point
18 is that we don't know the purity of this heroin.

19 The other thing about heroin that's important to keep
20 in mind, and Jack told you this on the stand. You can
21 overdose. It's not one of those drugs where if you take a
22 little too much, it will all be okay. You can die if you
23 take too much, and he knows that, and Jack may be an
24 addict, but he does not want to die. And that is why he
25 explained how he packaged the drugs for himself: so that it

1 would be premeasured to avoid any risk taking too much.

2 Let's talk about some other things to do with user vs.
3 dealer. They found scales. They found pipes, baggies,
4 other implements for taking drugs. Syringes, spoons,
5 straws, we've been over those. Let's talk about what they
6 didn't find. Large amounts of money, any money at all.
7 Cell phones, multiple cell phones, cell phones with text
8 messages about dealing drugs, emails, written letters about
9 dealing drugs. They didn't find any ledgers, and what I
10 mean by ledger is a log: the client, amount, price,
11 quantity, names, numbers, anything of that nature.

12 So, again remember doublespeak. On one hand, we have
13 a lot of evidence that Jack Sanders is a sick man, an
14 addict who needs help, who takes a large amount of drugs on
15 a daily basis, multiple kinds of drugs, daily basis. On
16 the other hand, we have the state's assertion that that
17 makes him a dealer, but remember. User does not equal
18 dealer. War does not equal peace.

19 Just one final point on the PWID charges. In order to
20 find Fred Sanders guilty, Fred Jack Sanders guilty, you
21 must actually find that he intended to distribute those
22 drugs: crack, heroin, methamphetamine. Not that he must
23 have intended to distribute because he had them, but that
24 he actually intended to distribute those drugs.

25 Let's talk about the manufacturing now. I think we

1 know what the state's theory on this is. Although we did
2 get them to admit that it was not an active cook, they're
3 trying to tell you that it was a very recent cook based on
4 the smell that just came up Monday, based on the equipment
5 found. But that equipment was not found in any order and
6 set up in any way that would make it look like a lab. Most
7 of it was found in the garbage. A lot of it was common
8 household items found in the room.

9 State wants you to believe that he's a meth cook, that
10 he had a lab set up in his bedroom. But in reality, all
11 they found was a bunch of garbage, and most of that garbage
12 was destroyed. So, we don't get to look at it here today.
13 We don't get to determine at what stage this alleged meth
14 cook was in, or if it was in any stage at all.

15 Now, I understand that this evidence looks bad.
16 Certainly looks like someone may have been cooking
17 methamphetamine at some point, but we don't know when that
18 was done. We don't know who did it. There was no
19 fingerprints taken, any of these items. No testimony given
20 that directly connects Jack to the items other than the
21 fact they were in his bedroom. No direct evidence linking
22 Jack to the manufacture of again the .08 that was found on
23 four separate spoons.

24 The state wants you to convict Jack because of
25 something that may have happened in the past. My partner

1 and I tried very hard to keep past events out of this
2 trial, but unfortunately they leaked their way in here and
3 there, but I urge you. Listen to the judge's instructions
4 that he's already given you and that he will give you. You
5 are not to consider prior bad acts or any prior acts, bad
6 or good.

7 For all we know and for all the state knows, if there
8 was a cook at some time, could have been weeks ago. Could
9 have been months ago. We're never going to know that, and
10 there was a lot of confusing testimony about how recent the
11 cook was.

12 Investigator Chauncey Smith on the stand admitted he
13 didn't know how old it was, but he said it could have been
14 just a few minutes old. And I specifically asked him if it
15 was a few minutes old, Investigator Smith, how could there
16 possibly be only .08 found on a spoon, four spoons? And he
17 sort of dodged my question a bit, but I think even he would
18 have to admit that those two things just don't add up. If
19 it's a recent cook, where's the product?

20 Well, he would have you believe that Jack Sanders is
21 the fastest drug dealer in the history of the world. As
22 soon as that cook is complete, he's distributed all but
23 .08. That was his explanation for why there was no yield
24 or a very small yield, if there was a yield at all.

25 Ladies and gentlemen, I would argue that the evidence

1 is overwhelming that if there was a cook, it was extremely
2 old. In the garbage. They want to talk about bottles
3 found in the yard days later, one day later. There's some
4 confusing testimony about that as well, but it was not
5 found on that night. And I'm not sure the state has shown
6 any connection between that bottle found days later to the
7 equipment found at the night of the arrest.

8 Now, the other theory I predict Ms. Cavanaugh will
9 submit to you is that even if he didn't cook the meth
10 found, and even if it was not an active cook or a recent
11 cook, that he attempted to cook methamphetamine. The
12 problem with that is simple. There is no evidence
13 whatsoever that at the time this search warrant was
14 executed, this meth lab was operating, active, set up,
15 ready to use, or a meth lab at all. Again garbage. The
16 bag of destroyed batteries, garbage.

17 He had not taken any overt steps to begin that
18 process. He has not stripped new lithium to use in a new
19 cook. He had not set up bottles, tubes. He had not begun
20 any criminal -- or excuse me, any chemical reactions
21 whatsoever. Most of that stuff, again, was either in the
22 trash or common household items that Jack Sanders explained
23 to you he himself had uses for.

24 Now, I have a majority of those things in my house. I
25 even have the tubing, and it even has a little resin in it

1 because I recently tried to do a home-brew kit for beer.
2 Unfortunately, it didn't turn out too well. Didn't taste
3 very good, but I had the tubing, had a large jar. Of
4 course I had a water hose. Who doesn't? I don't have any
5 pseudoephedrine at the moment, but I'm sure at some time my
6 fiancée or I had pseudoephedrine in our home. Who doesn't?
7 I have camp fuel. I have lighter fluid for a Zippo. Of
8 course I have batteries; batteries go in everything. Of
9 course I have salt. Of course I have coffee filters. Make
10 it every day.

11 But that -- those items together, even if I told you
12 here today that I intend to manufacture methamphetamine,
13 those items and my intent do not create an intent. That
14 must come with some overt act. And I can assure you I have
15 never taken an overt act to set those things up as a meth
16 lab even if I had the intent. And I don't believe in this
17 case there was any overt act to set up a meth lab.

18 Garbage, batteries that had already been stripped in
19 the garbage. You can't see in these pictures where the
20 salt and the camp fuel was actually located or the cold
21 packs. State would have you believe they were all set up
22 nice and neat ready to cook. The only testimony we've
23 heard about where those items were actually located is Jack
24 Sanders.

25 Ladies and gentlemen, this was not an active cook.

1 The meth that they found, well, we don't know where that
2 comes from, but I don't believe that it came from any cook.
3 This was not a meth lab set up, turnkey operation. No
4 overt act had have been made to manufacture
5 methamphetamine.

6 And in this country, and hopefully no other countries,
7 do we criminalize thought. You can think about doing
8 whatever you desire. If you think about doing something,
9 you are not a criminal. You may have criminal intent, but
10 that is not enough to be found guilty of a crime.

11 Now, I'm almost through, but I'd like to talk to you a
12 little bit about what I think reasonable doubt is.

13 MS. CAVANAUGH: Objection.

14 THE COURT: Overruled.

15 MR. HAWKS: I really liked Mr. Shipman's description
16 with the football field and what he said about hesitating
17 to act. I just want to break that down a little bit.

18 Anything that makes you hesitate about whether or not
19 Jack Sanders was manufacturing meth at this time,
20 reasonable doubt. Anything that makes you hesitate that he
21 is a drug dealer, that he intended to distribute those
22 drugs is reasonable doubt. And I think there is plenty of
23 reasonable doubt in this case because we know that he is a
24 drug addict. He told you himself. We know what he
25 intended to do with those drugs: use them to feed his own

1 addiction.

2 I think there's more than enough reasonable doubt on
3 all three PWID charges and on the manufacturing, and I
4 would ask you to find not guilty on those charges.

5 Now the possessions, we're not arguing those. Jack
6 told you himself: his drugs, even the crack. The state's
7 trying to tell you that the crack might not be his. Jack's
8 not even saying that. His crack. Nobody else's. His
9 heroin. Nobody else's. His meth. Nobody else's. His
10 Valium. Nobody else's. So, go ahead. Find him guilty of
11 the possessions; we want you to do that. He possessed
12 these drugs. That's it. He did not intend to distribute
13 them, and he was not manufacturing meth. Thank you.

14 THE COURT: Solicitor.

15 MS. CAVANAUGH: Your Honor, I need a few minutes to
16 set up the ---

17 THE COURT: Go ahead.

18 (A PAUSE.)

19 MS. CAVANAUGH: Ladies and gentlemen, if there has
20 been one thing that's been made clear to you during this
21 trial, it's that meth labs are dangerous. They can blow
22 up. They are toxic. Chemicals that come from a meth lab,
23 even the one-pot meth lab that were located in Mr.
24 Sanders's bedroom can be fatal.

25 You've heard from each of the investigators in this

1 case and the chemist in this case and William Lindsey from
2 Phillips Recovery Incorporated about how hazardous these
3 materials are. There is an agency that exists for the sole
4 purpose of removing these materials from the meth labs, no
5 matter how small they are, no matter if they're in
6 someone's bedroom, and the materials that have come into
7 contact have to be shipped to Ohio. That's how dangerous
8 meth labs are. That is why we are here today.

9 William Lindsey testified he had seen -- he sees meth
10 labs every day, and the materials he had to remove from Mr.
11 Sanders's bedroom was two times the amount he's used to
12 seeing. So, ladies and gentlemen, despite what defense
13 counsel stated in their opening, we are not making a
14 mountain out of a molehill. Meth labs are simply
15 dangerous, and that's exactly what was located in Mr.
16 Sanders's bedroom on April 23, 2013.

17 However, what we are not saying, and what we never
18 implied, is that Fred Sanders is the biggest drug deal in
19 Columbia. We are absolutely not saying that .08 plus .18
20 plus .02 grams of crack cocaine demonstrate that he is the
21 biggest dealer of crack cocaine in Columbia. We are not
22 trying to imply that all. We are not trying to imply that
23 he is the biggest heroin dealer in Columbia.

24 But the truth and the reality of the situation is that
25 he had some of the hardest drugs possible in his home that

1 he admitted he had, and yes. He did have wax papers that
2 are commonly seen in the sale of drugs, a few boxes of
3 those that can be used to package crack, heroin, meth. And
4 yes, he did have a scale that is also commonly used to sell
5 and package drugs. But again, we are not trying to say
6 that he is not a user.

7 And I think the more appropriate diagram in this case
8 would be a Venn diagram. He might very well be more of a
9 user than he is a dealer. However, these two intersect,
10 and they often do, and can also be a -- I'm going to say
11 maker, meaning short for manufacturing. We are not trying
12 to say that he is not each of these. However, they
13 intersect.

14 And I'd like to go ahead and apologize if myself or
15 co-counsel or any of the investigators that testified
16 offended you in any way. I realize that some of my
17 questions were very inarticulate, and they might have been
18 confusing. However, as the defense told you and the judge
19 will tell you, we do have the burden in this case, and we
20 have to prove each element of the crime he is charged with
21 beyond a reasonable doubt.

22 And as Mr. Hawks said, this is not a courtroom drama
23 like you see on *Law and Order*. This is not -- Richland
24 County does not have a lab like you see on *CSI*. In fact, I
25 would submit that no lab in reality is like *CSI*. I think

1 everyone knows that.

2 And even though Mr. Hawks tried to instruct you on
3 what he believes is the law in this case as far as it
4 relates to reasonable doubt, the judge will do that at the
5 very end of this case, and that is the law that applies in
6 this case, not what Mr. Hawks says and not what I say.

7 But as a result of what the investigators located in
8 the defendant's home on April 23, 2013, he was charged with
9 several crimes, and the first is manufacturing
10 methamphetamine. I'll come back to this later. However,
11 that section reads, and this is what he's charged under:

12 Person who manufactures, distributes, dispenses,
13 delivers, purchases, or otherwise aids, abets,
14 attempts, or conspires to manufacture,
15 distribute, dispense, deliver, or purchase, or
16 possess with the intent to distribute, dispense,
17 or deliver methamphetamine or cocaine base is in
18 violation of this law.

19 So, evidence of an intent to manufacture is violation
20 of that law.

21 Defense would have you believe that the only time you
22 can ever arrest anyone for manufacturing methamphetamine is
23 that thirty-minute window where investigators just so
24 happen to be lucky enough to execute their search warrants
25 when there's an active cook. So, the only way that you

1 could ever arrest someone for attempting to manufacture
2 methamphetamine or manufacturing methamphetamine is when
3 that active cook is going on, and all of the ingredients
4 that were found in his room are cooking.

5 That's just simply unreasonable, and the legislature
6 has recognized that. And within the law for manufacturing
7 methamphetamine, they added an additional section, and I
8 apologize if you can't see that, but the judge will read
9 this to you as well:

10 Possession of equipment or paraphernalia used in
11 the manufacturing of cocaine, cocaine base, or
12 methamphetamine gives rise to a permissive
13 inference of intent to manufacture.

14 And what does giving rise to a permissive inference
15 mean? That means that there's evidence that will establish
16 a fact or sustain a judgment unless contradictory evidence
17 is produced.

18 MR. HAWKS: Objection, Your Honor. That's burden
19 shifting, the last part.

20 THE COURT: Overruled.

21 MS. CAVANAUGH: And, ladies and gentlemen, I submit
22 the only evidence that you have to contradict that every
23 single item in that room was not used to manufacture
24 methamphetamine is Fred Sanders's own testimony where he
25 said that he has -- he had an excuse for most of those

1 items that just so happened to, all combined together, be
2 able to manufacture methamphetamine in that one-pot method,
3 as you heard several times. But he had no excuse for the
4 things that didn't make sense.

5 He just so happens to have no idea how distressed
6 batteries were in his trash can because he is has no other
7 explanation for that. There is no other explanation for
8 stripping batteries that can potentially burn your fingers
9 other than to manufacture methamphetamine. But yet that
10 seems to be, coincidentally, the one thing that he had no
11 idea about.

12 Also the bottles with the tubing. Sure, you can
13 explain away empty water bottles, but with plastic tubing
14 coming from them? And there weren't just one. There were
15 several located in his bedroom, but yet he doesn't know how
16 those got there.

17 Ladies and gentlemen, Fred Sanders admitted to --
18 himself on the stand that he repackaged the liquid
19 methamphetamine that I submit he'd just made. He admitted
20 himself to a form of manufacturing by repackaging the meth
21 that he had in those syringes. And I submit if he is just
22 an addict, how was he so organized to be able to weigh each
23 of his drugs, to package each of those drugs separately in
24 that box? He is such an addict, and addicts don't usually
25 have impulse control like that. They're not going to take

1 the time to separate it into individual syringes,
2 repackage. And if it's just for his use, why does he need
3 so many syringes? There are some that aren't used, some
4 that are used. There's some that he admitted that he
5 repackaged himself. I don't know.

6 I'll move on to the heroin that was located in several
7 different compartments in that green box Investigator Smith
8 testified the defendant tried to hide upon entering into
9 the garage. The heroin was for personal use. Why is it
10 packaged in different compartments and packaged separately
11 in that box? Why wasn't it in his room where the drugs
12 were located, the methamphetamine was located?

13 And again, the heroin that was located is 1.25 grams,
14 which might not sound a lot, but as you heard, heroin is a
15 very potent drug. And the legislature has included in the
16 laws of our state that prohibit possessing heroin, but also
17 they provide that the possession of more than 2 grains of
18 heroin give rise -- gives rise to a permissive inference of
19 a violation of subsection (a) of this section, and 2 grains
20 equals .13 grams.

21 Fred Sanders in three different compartments packaged
22 separately in those wax papers had 1.25 grams total, which
23 is ten times over the inference weight, simple possession
24 of heroin. So, in addition to the packaging in a different
25 -- in addition to the scales, in addition to the different

1 compartments, you have the weight there to support he had
2 intent to distribute.

3 And I do want to be clear. He's also charged,
4 indicted for possession with intent to distribute
5 methamphetamine, which is separate from the actual
6 manufacturing. The equipment, the tools, the chemicals,
7 the precursor -- precursors that were found in his home,
8 that is the evidence of the manufacturing.

9 The possession with intent to distribute
10 methamphetamine is separate and distinct from that. There
11 was methamphetamine that was tested from his room. You can
12 see it all over the spoon that again, if it's for personal
13 use only -- you will have the pictures -- why is there meth
14 all over the counter on different spoons? And he also had
15 it loaded in syringes. However, we don't know how much
16 meth he actually had in that room. It all -- most of it
17 had to be taken away because of the hazardous nature of
18 meth labs.

19 And he freely admits in his statement and I believe on
20 the stand that the Valium that he had was a controlled
21 substance he did not have a prescription for. I don't
22 think there's any argument as it relates to possession of a
23 controlled substance.

24 Part of your role as the jury is to consider the
25 credibility of the witnesses, and you can do that by

1 determining believability of witnesses who have testified
2 in the case. You may believe one witness over several
3 witnesses, or several witnesses over one witness. You may
4 believe a part of the testimony of a witness and reject the
5 remaining part of the testimony of that same witness. You
6 may believe the testimony of a witness in its entirety or
7 reject the testimony of a witness in its entirety. You may
8 consider whether any witness exhibited to you any interest,
9 bias, prejudice, or other motive in this case. You may
10 also consider the appearance or demeanor of a witness while
11 on the witness stand.

12 Ladies and gentlemen, when you think about credibility
13 of the witnesses -- law enforcement, William Lindsey with
14 Phillips Recovery -- what bias, what motive do they have in
15 this case? Mr. Hawks talked about how their goal is to
16 overcharge, or how they know it should be for protection of
17 the community. That's exactly what they did in this case.
18 They removed a meth lab from a residence in a neighborhood.

19 They have no reason to make up the chemical smell.
20 No. Was it included in her incident report? No, it
21 wasn't. However, it was so distinct that she and each of
22 the other investigators clearly remember a smell coming
23 from his room and from his trash can, which is indicative
24 of a recent meth cook.

25 Who might have a motive to lie or a bias in this case?

1 Mr. Sanders, because he knows manufacturing methamphetamine
2 is a serious crime. He hide -- he admits that the items,
3 you know, the camp fuel, usually isn't located in the
4 bedroom. The cold packs, yeah, they were in his bedroom.
5 The open cold pack, though, he has no idea about that.
6 That is up to you to determine his credibility. The things
7 that don't make sense, he has no excuse for because he
8 knows there is no other excuse for.

9 Ladies and gentlemen, I also want you to use your
10 common sense. Mr. Hawks wanted to break everything down
11 very technically, but I want to go through each of these
12 photos. All -- not all of them, but all of these items are
13 located in his bedroom. Think about the typical bedroom.
14 There is a bed. There is a dresser. There is clothes.
15 There might be some lotion. There might be some batteries
16 somewhere in the bedroom, but I want you to think about and
17 use your common sense about what was located in Mr.
18 Sanders's bedroom, and compare that with what is typically
19 found in a bedroom. Use your common sense. Remember the
20 evidence in this case, but also use your common sense.

21 The first thing that's used in the one-pot method:
22 cold pack. Now, cold packs by themselves might not raise
23 an eyebrow. However, they're supposed to be in a freezer,
24 not in the bedroom. They're certainly not supposed to be
25 opened or punctured in any way. In fact, and you can see

1 this when you go back there, on the warning label it says:
2 Induce vomiting if accidentally swallowed. Not supposed to
3 be opened and usually found in a freezer, not in a bedroom.

4 The salt, he had an explanation for that. He used the
5 salt when he takes shots of tequila or vodka in his
6 bedroom. However, you have pictures of everything that was
7 located in his bedroom. There was no liquor bottles; there
8 is no empty liquor bottles. There was no shot glasses.
9 There were jars with meth residue. There were spoons with
10 meth residue. There are no shot glasses because it doesn't
11 make sense to have salt in the bedroom, but that's his
12 reason for it.

13 The camp fuel, the 64-gallon bottle of camp fuel,
14 that's for his lights that I'm not sure we have a picture
15 of, but I'll take his word that there is a light in his
16 bedroom somewhere that he uses that 64-gallon bottle of
17 fuel for.

18 The next product that's used to manufacture
19 methamphetamine in the one-pot method is batteries. Okay,
20 batteries by themselves aren't necessarily unusual in a
21 bedroom. Maybe not in a bedroom, but there are multiple --
22 twenty, at least twenty batteries, all different sizes that
23 were located in his bedroom close to the other materials
24 used to manufacture meth. And again, by themselves not
25 necessarily usual. However, stripped? Very unusual. I

1 submit there's no other reason to strip batteries unless
2 you're manufacturing methamphetamine.

3 There's testimony of the finished product in the other
4 bottle that was located in the backyard. You see the black
5 lithium stripped from those batteries located in his
6 bedroom in that bottle.

7 Sudafed by itself, I mean, other than the fact that
8 it's not in a box that's, you know, labeled Sudafed but
9 it's separate from the box and it's by the grinder. Other
10 than those two factors -- oh, yeah, located by the liquid
11 syringes full of that, and by the jars of residue. Sudafed
12 by itself, not necessarily unusual. However, when it's
13 found with all those other things, very usual.

14 And again, he can't get around the plastic water
15 bottles with the tubing clearly coming from the bottles.
16 He says he has no idea how that got there because, again,
17 it can't be explained in any other way other than
18 manufacturing meth.

19 Ladies and gentlemen, I realize that this trial was
20 tedious and not what you probably expected when you came to
21 the courthouse Monday morning. However, what it's not been
22 about is the state making a mountain out of a molehill.
23 What is has been about is removing a meth lab from a
24 residence that was in the neighborhood that Mr. Sanders was
25 responsible for on April 23, 2013.

1 And again we are not saying that he is the biggest
2 drug dealer in Columbia. However, we are saying that there
3 is plenty of evidence in his home, in his room to indicate
4 that he had attempted to distribute some of his drugs.
5 We're not saying he's not a user. I certainly believe that
6 he is a user. That doesn't mean that he's also not a
7 dealer; that doesn't mean that he also didn't manufacture
8 methamphetamine.

9 Methamphetamine are dangerous. They are toxic; they
10 can be potentially fatal. Please hold Mr. Sanders
11 responsible for having that meth lab in his bedroom on
12 April 23, 2013. Please hold him responsible for having
13 serious drugs -- heroin and crack cocaine -- and intending
14 to distribute those to others. Whether it was one person
15 or the whole neighborhood, we don't know, but there is
16 evidence of more than just a user in this case. Please
17 hold him accountable and find him guilty of all five of
18 these charges. Thank you.

19 THE COURT: All right, ladies and gentlemen, your
20 lunch is here. I'm going to ask you to go ahead and eat
21 your lunch. I'm going to -- we will reconvene at 2:00.

22 After you eat your lunch, if you wish to take a walk
23 around the courthouse or something, just to get a little
24 exercise and to look out the window, see if it's finally
25 sunny, ask the bailiffs, and I'm sure they'll be glad to

1 come to accompany you if you want to walk around.

2 You can't, you can't disperse now that the case is
3 going to be handed over to you. So, just relax, eat your
4 lunch, and if you wish to take a little walk, then talk to
5 the bailiffs about it. If you got any problems, let me
6 know.

7 Don't start, don't start, don't start discussing the
8 case until after I have a chance to talk to you about the
9 law in South Carolina as it applies to this case. Thank
10 you very much. Please retire to the jury room.

11 (THE JURY EXITS AT 1:04 PM.)

12 THE COURT: All right, stand at ease until 2:00.

13 (A PAUSE.)

14 THE COURT: Renew all you want.

15 MR. HAWKS: At this time, I would renew any and all
16 prior objections and motions. I'd also move for a mistrial
17 again for burden shifting, improper statement of the law in
18 the close.

19 Also, the solicitor mentioned that taking the meth
20 into the syringes was part of the manufacturing statute.
21 However, there's an exception that says that that is done
22 in the interest of personal use, but that does not make
23 it ---

24 THE COURT: I'll give the law.

25 MR. HAWKS: Thank you, Judge.

1 THE COURT: Overruled. Thank you very much. 2:00.

2 (OFF THE RECORD)

3 (ATTORNEYS REVIEW EVIDENCE WITH COURT REPORTER.)

4 THE COURT: All right, that state ready for the jury?

5 MS. CAVANAUGH: Yes, Your Honor.

6 THE COURT: Defense ready for the jury?

7 MR. HAWKS: Yes, Your Honor. We just want to make
8 sure that there will be some explanation about use,
9 personal use, that part that she mentioned.

10 THE COURT: Tell me what, tell me what you're talking
11 about.

12 MR. HAWKS: In her close, she mentioned that the
13 actual cooking and putting into the syringe could be
14 manufacture. I thought that's what she said.

15 THE COURT: Well, I'm not going to parse your argument
16 or hers. They know it's just argument. I'm going give
17 them the law as I understand it, and that's all I can do.

18 MR. HAWKS: Thank you.

19 THE COURT: Bring in the jury.

20 (THE JURY ENTERS AT 2:06 PM.)

21 THE COURT: All right, ladies and gentlemen, I hope
22 you enjoyed your lunch.

23 JURY CHARGE

24 THE COURT: We now come to what are called the final
25 instructions by the court. I want to just say again with

1 -- although I know I'm going to go through these
2 instructions I hope slowly enough that you can follow me,
3 and in some states, the judge is allowed to hand these
4 instructions over to the jury at the end of the
5 instructions to take back to the jury room, but that's not
6 the practice in South Carolina. So, I'm going to ask you
7 to hopefully pay close attention so we won't have to go
8 through it again, but if we have to, we have to.

9 All right, now, as you know, the indictments in this
10 case allege several different offenses against the
11 defendant. The charges are manufacturing methamphetamine,
12 possession with intent to distribute methamphetamine,
13 possession with intent to distribute crack cocaine,
14 possession with intent to distribute heroin, and possession
15 of a controlled substance -- in this case identified as
16 Valium -- without a prescription.

17 Now, each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on the
19 evidence and the law applicable to it uninfluenced by your
20 decision as to any other indictment. The defendant may be
21 convicted or acquitted on any or all of the offenses
22 charged. You'll be asked to write a separate verdict of
23 guilty or not guilty on each indictment.

24 And as I told you earlier today, you will also have
25 the option of -- on the three possession with intent cases

1 to find, in your judgment, a lesser-included offense of
2 possession and not the intent to distribute, but that's up
3 to you.

4 Now, the defendant has pled not guilty to these
5 indictments, and that plea puts the burden on the state to
6 prove the defendant guilty. A person charged with
7 committing a crime in South Carolina is never required to
8 prove himself or herself innocent. I charge you that that
9 is an important rule of law: that the defendant in a
10 criminal case, no matter what the seriousness of the charge
11 may be, will always be presumed to be innocent of the
12 charges or crimes for the indictments were issued unless
13 guilt has been proved to you beyond evidence satisfying you
14 of that guilt beyond a reasonable doubt.

15 This presumption of innocence does not end when you
16 begin your deliberations, but it accompanies the defendant
17 throughout the trial and until you reach a verdict of guilt
18 based on evidence satisfying you of that guilt beyond a
19 reasonable doubt. In other words, the presumption of
20 innocence is like a robe of righteousness placed about the
21 shoulders of the defendant, which remains with the
22 defendant until that has been stripped from the defendant
23 by evidence satisfying you of the defendant's guilt beyond
24 a reasonable doubt.

25 The presumption of innocence, as I told you earlier,

1 is not a mere legal theory; it's not just a legal phrase.
2 It's a substantial right to which every defendant is
3 entitled unless you, the jury, are satisfied from the
4 evidence of the defendant's guilt beyond a reasonable
5 doubt.

6 The state has the burden of proving the defendant
7 guilty beyond a reasonable doubt. Some of you may have
8 served as jurors in civil cases where you were told that
9 it's only necessary to prove that a fact is more likely
10 true than not, or such by -- such as by the greater weight
11 or preponderance of the evidence. In criminal cases,
12 however, the state's proof must be more powerful than that.
13 It must be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that leaves
15 you firmly convinced of the defendant's guilt. There are
16 very few things in this world that we knew with absolute
17 certainty, and in criminal cases the law does not require
18 proof that overcomes every possible doubt.

19 If, based on your consideration of the evidence, you
20 are firmly convinced that the defendant is guilty of the
21 crime charged, you must find the defendant guilty. If, on
22 the other hand, you find -- if, on the other hand, you
23 think there's a real possibility that the defendant is not
24 guilty, you must give the defendant the benefit of the
25 doubt and find him not guilty.

1 Well, what is reasonable doubt at law? A reasonable
2 doubt is the kind of doubt that would cause an ordinary
3 person, a reasonable person to hesitate to act or to
4 hesitate to do something. Let me repeat that. A
5 reasonable doubt is the kind of doubt that would give an
6 individual, a reasonable person cause to hesitate to act in
7 some circumstance or another.

8 Now, I remind you that during this trial, you and I
9 have certain duties to perform. As the trial judge, it's
10 my responsibility to preside over the trial of the case. I
11 also had the duty to rule on the admissibility of evidence
12 offered during the trial. You are to consider only the
13 competent evidence that's before you. If there was any
14 testimony that I ordered stricken from the record, you must
15 disregard the testimony. You are to consider only the
16 testimony which has been presented from the witness stand,
17 any exhibits which may have been made a part of the record,
18 and any stipulations of counsel. I don't think we had any
19 of those.

20 I have the additional duty to charge you the law
21 applicable to this case. As the presiding judge, I am the
22 sole judge of the law of this case. It's your duty to
23 accept and apply the law as I now state it to you. If you
24 have any -- already have any idea as to what the law is or
25 what the law ought to be and it does not agree with what I

1 now tell you the law is, you must abandon this idea because
2 you were sworn to accept the law and apply the law exactly
3 as I state it to you.

4 As I told you in my opening, in every case tried
5 before this court, before a jury, the jury becomes the sole
6 and exclusive judge of the facts in the case. I cannot
7 intimate, state, comment on, or make any statement to a
8 trial jury about the facts in the case. Since you, the
9 jury, are the sole judges of the facts, you are not to
10 infer from anything that I may have said or done during the
11 progress of this trial in ruling on the admissibility of
12 the evidence, or anything else that I may have done, or
13 anything that I say now in the course of this instruction
14 that I have any opinion about the facts in this case. The
15 law does not allow me to have an opinion about the facts in
16 this case. That's solely a matter for you, the jury, to
17 determine. As jurors, it's your duty to determine the
18 effect, value, weight, truth of the evidence presented
19 during the trial.

20 Now, ladies and gentlemen, there are two types of
21 evidence which are generally presented during a trial:
22 direct evidence and circumstantial evidence. Direct
23 evidence directly proves the existence of a fact and does
24 not require deduction.

25 Circumstance, deduction. Circumstantial evidence is

1 proof, proof of a chain of facts or a series of facts and
2 circumstances indicating the existence of some fact.

3 Crimes may be proven by circumstantial evidence.

4 The law makes no distinction between the weight or
5 value to be given to either direct or circumstantial
6 evidence. However, to the extent the state relies on
7 circumstantial evidence, all the circumstances must be
8 consistent with each other and when taken together, point
9 conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely portray
11 the defendant's behavior, behavior as suspicious, the proof
12 has failed.

13 The state has the burden of proving the defendant
14 guilty beyond a reasonable doubt, and this burden rests
15 with the state regardless of whether the state relies on
16 direct evidence, circumstantial evidence, or a combination
17 of the two.

18 Now, necessarily you must determine the credibility of
19 witnesses who've testified in this case. Credibility
20 simply means believability. It becomes your duty as jurors
21 to analyze and evaluate the evidence and determine which
22 evidence convinces you of its truth, determining the
23 believability of witnesses who've testify in this case.
24 You may believe one witness over several, or several over
25 one. You may believe a part of the testimony of a witness,

1 and reject the remaining part of the testimony of the same
2 witness. You may believe the testimony of a witness in its
3 entirety, or reject the testimony of a witness in its
4 entirety.

5 You may consider whether any witness has exhibited to
6 you any interest, bias, prejudice, or other motive in this
7 case. And you may also consider the appearance and manner
8 of a witness while on the stand.

9 Now in any case, to establish criminal liability,
10 criminal intent is required. For example, the mental state
11 required to be proven by the state for a particular crime
12 might be some purpose or knowledge or recklessness or
13 criminal negligence. Criminal intent must be proven by the
14 state beyond a reasonable doubt.

15 Criminal intent is always a matter that must be
16 determined by the jury from the circumstances surrounding
17 the situation. There's no way to prove intent to a
18 mathematical certainty. That's no way medical science can
19 dissect a person's brain and determine what the person had
20 in mind. So, the law says criminal intent may be inferred
21 from the circumstances shown to have existed at the time
22 and place of the crime.

23 This is how you make a determination of whether or not
24 the element requiring intent was present. It's not
25 necessary to establish intent by direct and positive

1 evidence, but intent may be established by inference in the
2 same way as any other factor: by taking into consideration
3 the acts of the parties and all the facts and circumstances
4 of the case.

5 Criminal intent is a mental state, a conscious
6 wrongdoing. It's up to you to determine what the defendant
7 intended to do based on the circumstances shown to have
8 existed in this case.

9 Criminal intent can arise from some action or even a
10 failure to act. It may arise from negligence or
11 recklessness or indifference to duty or consequence that is
12 considered by the law to be the equivalent of criminal
13 intent.

14 Now let's get into the specific charges. The
15 defendant is charged that he did manufacture, aid, abet,
16 attempt, or conspire to manufacture a quantity of
17 methamphetamine. Manufacture means to produce or prepare
18 or process or to plant, cultivate a drug naturally or
19 chemically. Attempt means an act done in part execution of
20 a design to commit a crime. There must be intent that the
21 act shall be committed and an act done, not in full
22 execution but in pursuance of the intent.

23 In order to constitute an attempt to commit a crime,
24 it is essential that, coupled with the intent to commit the
25 offense, there must be some sort of overt act beyond mere

1 preparation in furtherance of the attempt. And there must
2 be an actual or a present ability to complete the crime.

3 Manufacturing includes any packaging or repackaging of
4 the drug or labeling or relabeling of drugs contained.

5 Now, our law provides under section 44-53-375(d) that
6 possession of equipment or paraphernalia used in
7 manufacture of methamphetamine gives rise to what is called
8 a permissive inference of a violation of manufacturing
9 methamphetamine.

10 Now, possession with intent to distribute, intent to
11 distribute methamphetamine is a separate indictment in this
12 case. Defendant is also charged with possession with
13 intent to distribute methamphetamine. The state must prove
14 beyond a reasonable doubt that the defendant possessed
15 methamphetamine with the intent to distribute it. To prove
16 possession, the state must prove beyond a reasonable doubt
17 the defendant had both the power and intent to control the
18 disposition or use of the methamphetamine.

19 Possession may be either active -- actual or
20 constructive. Actual possession means that the
21 methamphetamine was in the actual physical custody of the
22 defendant. Constructive possession means that the
23 defendant had what's called dominion and control or the
24 right to exercise dominion or control over either the
25 methamphetamine itself or the property on which the

1 methamphetamine was found.

2 Mere presence at the scene where drugs are found is
3 not enough to prove possession. The defendant's knowledge
4 and possession may be inferred when a substance is found on
5 the property under the defendant's control. However, this
6 inference is simply an evidentiary fact to be taken into
7 consideration by you, along with other evidence in the
8 case, and to be given the weight you decide it should have.

9 The state must also prove beyond a reasonable doubt
10 that the defendant intended to distribute the
11 methamphetamine. Distribute means to deliver other than by
12 administering or dispensing a drug. Intent may be shown by
13 acts and conduct of the defendant and other circumstances
14 from which you may naturally and reasonably infer intent,
15 intent.

16 In determining whether the defendant had the intent to
17 distribute the methamphetamine, you may consider the
18 circumstances surrounding defendant's alleged possession.
19 You may consider the amount of the substance alleged to
20 have been possessed, the manner in which it was actually
21 possessed, the place where it was allegedly possessed, and
22 other factors you would consider to be important. You must
23 find the defendant did not intend to have the
24 methamphetamine solely for his own use.

25 As I told you, a lesser-included offense of possession

1 with intent distribute methamphetamine would be the
2 possession, possession of methamphetamine. If you find the
3 state has failed to prove beyond a reasonable doubt the
4 defendant is guilty of possession with the intent to
5 distribute methamphetamine, you may consider whether the
6 state has proved beyond a reasonable doubt that the
7 defendant is guilty of simple possession of
8 methamphetamine.

9 Possession does not require intent to distribute the
10 drug. To prove possession, the state must prove beyond a
11 reasonable doubt the defendant had both the power and
12 intent to control the disposition or use of the
13 methamphetamine. Possession may be actual or constructive,
14 as I just instructed you with regard to possession with the
15 intent to distribute.

16 Actual possession means the drug was in the actual
17 physical custody of the defendant. Constructive possession
18 means the defendant had dominion and control or the right
19 to exercise dominion or control over either the
20 methamphetamine itself or the property on which the
21 methamphetamine was found.

22 Mere presence at the scene where the drugs are found
23 is not enough to prove possession. The defendant's
24 knowledge of possession may be inferred when a substance is
25 found on the property under the defendant's control.

1 However, this inference is simply an evidentiary fact to be
2 taken into consideration by you, along with the other
3 evidence in the case, and to be given the weight you decide
4 it should have.

5 Knowingly means with knowledge and consciously, not
6 accidentally. Intentionally means willfully, intending the
7 result which actually occurs, not accidentally or
8 involuntarily. Intent may be shown by acts and conduct of
9 the defendant and any other circumstances from which you
10 may naturally and reasonably infer intent.

11 Next indictment is possession with intent to
12 distribute crack cocaine, and as you will see, the
13 possession with intent statute is very similar.
14 Defendant's charged with possession with the intent to
15 distribute crack cocaine, and the state must prove beyond a
16 reasonable doubt the defendant possessed crack cocaine with
17 the intent to distribute it.

18 To prove possession, the state must prove beyond a
19 reasonable doubt defendant had both the power and intent to
20 control the disposition or use of the crack cocaine.
21 Possession maybe either actual or constructive. Actual
22 possession means the crack cocaine was in the actual
23 physical custody of the defendant, or constructive
24 possession means the defendant had dominion and control or
25 the right to exercise dominion or control over either the

1 crack cocaine itself or the property on which the drug was
2 found.

3 Mere presence at the scene where the drugs were found
4 is not enough to prove possession. Defendant's knowledge
5 and possession may be inferred when a substance is found on
6 property under the defendant's control. However, this --
7 however, this inference is simply an evidentiary fact to be
8 taken into consideration by you, along with the other
9 evidence in the case, and to be given the weight you decide
10 it should have.

11 The state must also prove beyond a reasonable doubt
12 that the defendant intended to distribute the crack
13 cocaine. Distribute means to deliver other than by
14 administering or dispensing a drug. Intent may be shown by
15 acts and conduct of the defendant and other circumstances
16 from which you may naturally and reasonably infer intent.

17 In determining whether the defendant had intent to
18 distribute the crack cocaine, you may consider the
19 circumstances surrounding the defendant's alleged
20 possession. You may consider the amount of the substance
21 alleged to have been possessed, the manner in which it was
22 allegedly possessed, the place where it was allegedly
23 possessed, and other factors which you consider to be
24 important. You must find that the defendant did not intend
25 and have the crack cocaine solely for his own use.

1 And again, the lesser-included possession of crack
2 cocaine, if you find the defendant -- failed to prove
3 beyond a reasonable doubt that the defendant is guilty of
4 possession with intent to distribute crack cocaine, you may
5 consider whether the state has proven beyond a reasonable
6 doubt the defendant is guilty of possession of crack
7 cocaine. Possession not require an intent to distribute
8 the drug.

9 To prove possession, the state must prove beyond a
10 reasonable doubt the defendant had both the power and
11 intent to control the disposition or use of the crack
12 cocaine. Possession may be either actual or constructive.
13 Actual possession means the drug was in the actual physical
14 custody of the defendant. Constructive possession means
15 the defendant had dominion and control or the right to
16 exercise dominion or control over either the crack cocaine
17 itself or the property on which the crack cocaine was
18 found.

19 Mere presence at the scene where the drugs were found
20 is not enough to prove possession. The defendant's
21 knowledge and possession may be inferred when a substance
22 is found on the property under the defendant's control.
23 However, this inference is simply an evidentiary fact to be
24 taken into consideration by you, along with the other
25 evidence in the case, and to be given the weight you decide

1 it should have. And again, knowingly means with knowledge,
2 consciously and not accidentally.

3 And the next indictment, possession with intent to
4 distribute heroin, the defendant is further charged with
5 possession for the intent to distribute heroin. The state
6 must prove beyond a reasonable doubt that the defendant
7 possessed heroin with the intent to distribute it. To
8 prove possession, again the state must prove beyond a
9 reasonable doubt the defendant had both the power and the
10 intent to control the disposition or use of the heroin.

11 Possession may be either actual or constructive.
12 Actual means that the heroin was in the actual physical
13 custody of the defendant, and constructive possession means
14 the defendant had the dominion and control or the right to
15 exercise dominion or control over either the heroin itself
16 or the property on which the drug was found.

17 Mere presence at the scene where drugs are found is
18 not enough to prove possession. Defendant's knowledge and
19 possession may be inferred when the substance is found on
20 the property under the defendant's control. However, this
21 inference is simply again an evidentiary fact to be taken
22 into consideration by you, along with the other evidence in
23 the case, and to be given the weight you decide it should
24 have.

25 The state must also prove beyond a reasonable doubt

1 the defendant intended to distribute the heroin. Again,
2 distribute means to deliver other than by administering or
3 dispensing a drug. Intent may be shown by facts -- acts
4 and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent.

6 In determining whether the defendant, the defendant
7 had the intent to distribute heroin, you may consider the
8 circumstances surrounding the defendant's alleged
9 possession. You may consider the amount of the substance
10 alleged to have been possessed, the manner in which it was
11 allegedly possessed, place where it was allegedly
12 possessed, and other factors which you consider to be
13 important. You must find that the defendant did not intend
14 to have the heroin solely for his own use.

15 Now, there's a provision in our law with regard to
16 possession with intent to distribute heroin. Again,
17 although it's a different section, 44-53-375(b), the South
18 Carolina Code of Laws creates what's called again a
19 permissive inference that possession of 2 grains or .13
20 grams of heroin constitute, constitutes possession with
21 intent to distribute. This section provides that
22 possession of 2 grams or 1.3 -- 2 grains or .13 grams or
23 more of heroin gives rise to this permissive inference of a
24 violation of the statute. The inference of a violation of
25 the law by possession of 2 grams or more of heroin may be

1 drawn from proof of the quantity of the drug.

2 The resulting implication only permits rather than
3 requires the jury to infer a violation of the law. This is
4 another piece of evidence for you to consider and evaluate.
5 This permissive inference does not relieve the state from
6 actually proving beyond a reasonable doubt the element of
7 intent to distribute.

8 This permissive inference is of an evidentiary nature,
9 and the permissive inference does not require the jury to
10 infer a violation of the law for possession of this
11 quantity of heroin. But it is simply an evidentiary fact
12 to be taken into consideration by you, the jury, along with
13 the other evidence in the case, and to be given such weight
14 as the jury determines it should have. You are free to
15 accept or reject the permissive inference depending on your
16 view of the evidence.

17 And once again we have the lesser-included offense,
18 simple -- or rather possession of heroin. If you find the
19 state has failed beyond a reasonable doubt that the
20 defendant was guilty of possession with intent to
21 distribute heroin, you may consider whether the state has
22 proved beyond a reasonable doubt the defendant is guilty of
23 simple possession of heroin.

24 Possession does not require an intent to distribute
25 the drug. To prove possession, the state must prove beyond

1 a reasonable doubt the defendant had both the power and
2 intent to control the disposition or use of the heroin.
3 Possession again may be either actual or constructive.
4 Actual possession means the drug was in the actual physical
5 custody of defendant. Constructive possession means the
6 defendant had dominion and control or the right to exercise
7 dominion or control over either the heroin itself or the
8 property on which the heroin was found.

9 Again, mere presence at the scene where the drugs were
10 found is not enough to prove possession, but defendant's
11 knowledge and possession may be inferred when a substance
12 is found on the property under the defendant's control.
13 However, this inference is, again, is simply an evidentiary
14 fact to be taken into consideration by you, along with the
15 other evidence in the case to be given the weight you
16 decide it should have. Again, knowingly means with
17 knowledge and conscientiously, not accidentally.

18 And finally, the defendant is charged with possession
19 of what's called a schedule IV controlled substance.
20 Substance in this case, that substance is diazepam, more
21 commonly known as Valium. To prove possession, the state
22 must prove beyond a reasonable doubt defendant had both the
23 power and the intent to control the disposition or use of
24 the Valium.

25 Possession may be either actual or constructive.

1 Actual possession means the drugs were in the actual -- was
2 in the actual physical custody of the defendant.

3 Constructive possession means the defendant had dominion
4 and control or the right to exercise dominion or control
5 over either the Valium itself or the property on which it
6 was found.

7 Mere presence at the scene where the drugs were is not
8 enough to prove possession. The defendant's knowledge of
9 possession may be inferred when a substance is found on the
10 property under the defendant's control. However, again,
11 this inference is simply an evidentiary fact to be taken in
12 consideration by you, along with the other evidence in the
13 case, and be given weight you decide it should have. And
14 again, knowingly means with knowledge, consciously and not
15 accidentally.

16 All right, ladies and gentlemen, there are two
17 possible verdicts for each indictment which you may find in
18 this case: not guilty or guilty. There's no significance
19 whatsoever in the order in which I state these possible
20 verdicts. It's just that one has to be stated first.

21 Ladies and gentlemen, your verdict must be a unanimous
22 one. During your deliberations, you may only discuss the
23 case in the jury room with your fellow jurors because they
24 have heard and seen the same evidence that you have.
25 However, you must not discuss the case with anyone else

1 until you return a verdict and the case has been ended.

2 Mr. Foreperson, when the jury agrees on the verdict,
3 you will write the verdict on this verdict form that I'm
4 going to hand to you. Sign your name as foreperson, and
5 then knock on the jury room, inform the bailiff that you
6 have reached a verdict. At this -- at that time, we will
7 receive your verdict in the courtroom.

8 Again, I must emphasize to you that your verdict on
9 each one of these charges must be unanimous. In other
10 words, every juror must agree for a, for a guilty verdict
11 to be found on any one of the indictments.

12 Mr. Foreman, the verdict form, I think, is fairly
13 simple. I hope fairly simple. With respect to the
14 indictment on manufacturing methamphetamine, we find,
15 unanimously find the defendant not guilty or guilty on
16 manufacturing. On possession with intent to distribute,
17 you have the option of finding possession with intent to
18 distribute or simple possession or merely possession, and
19 the same is true with crack cocaine and heroin, and finally
20 the controlled substance, not guilty or guilty. If you
21 have any questions, please let the bailiff know, and I'll
22 try to answer your questions.

23 In the meantime, I'm going to ask you now return to
24 the jury room. Do not begin your deliberations until you
25 have the actual verdict form and the evidence. They'll

1 bring the evidence to you, and once you see all the
2 evidence ---

3 Are the drugs here?

4 MS. CAVANAUGH: Yes, Your Honor.

5 THE COURT: They going in?

6 MS. CAVANAUGH: Yes, Your Honor.

7 THE COURT: Be careful. All right. When you get the
8 evidence, when you get the verdict form, you can begin your
9 deliberations. All right, you may now return to the jury
10 room. Thank you very much.

11 (THE JURY EXITS AT 2:35 PM.)

12 THE COURT: Any exceptions for the charge from the
13 state?

14 MS. CAVANAUGH: None for the state, Your Honor.

15 THE COURT: From the defense?

16 MR. HAWKS: Yes, Your Honor. You still read the part
17 about inference of the violation of the law instead of
18 inference of intent, and then you read the part about the
19 repackaging, but not the exception for the personal use.

20 MS. CAVANAUGH: I don't, I don't believe that we
21 agreed to the second part of it.

22 (A PAUSE.)

23 THE COURT: I read on each drug charge you must find
24 the defendant did not have, did not have -- you must find
25 -- well, that one's -- you must find the defendant did not

1 intend to have the drug solely for his own use on each
2 drug.

3 MR. HAWKS: Yeah. It was on the manufacturing, the
4 part about the equipment giving rise to a permissive
5 inference of the violation. We had agreed to make that
6 giving rise to a permissive inference of intent, and then
7 you read the part about the manufacturing statute defining
8 as repackaging, and -- but you didn't read the exception
9 for personal use.

10 THE COURT: What exception? What are you talking
11 about?

12 MR. HAWKS: There is an exception. I don't have the
13 statute.

14 MR. SHIPMAN: Your Honor, it's a 44-53.10 in the
15 definition section.

16 THE COURT: Oh.

17 MR. SHIPMAN: In the manufacturing it says -- it, it
18 goes through language about packaging or repackaging, and
19 then it says: With the exception of compounding or
20 preparing for personal use.

21 THE COURT: All right. Just let me read it.

22 (A PAUSE.)

23 THE COURT: Solicitor, do you understand?

24 MR. SHIPMAN: Excuse me?

25 THE COURT: I asked the solicitor.

1 MS. CAVANAUGH: I do understand their objection. I'll
2 just state that they were given the jury charges an hour
3 ago and didn't have any objections at that time.

4 And as far as the second argument that they have that
5 -- are far as the manufacturing definition is concerned,
6 you addressed that in each of the simple possession or each
7 of the charges about personal use.

8 THE COURT: I did. I did that.

9 MS. CAVANAUGH: Right. So, I don't have any -- I
10 mean, other than the fact that they had -- I don't have any
11 objection to the first issue regarding reading the law.

12 THE COURT: I'll read the manufacturing statute.

13 MR. HAWKS: Thank you, Your Honor.

14 THE COURT: I'll read the definition.

15 MR. HAWKS: Thank you.

16 MR. SHIPMAN: Thank you, Your Honor.

17 THE COURT: All right, bring, bring the jury back.

18 Let me just read this statute to them.

19 (THE JURY ENTERS AT 2:40 PM.)

20 THE COURT: Thank you, ladies and gentlemen. Let me,
21 let me repeat something or clarify it. One of the
22 attorneys said I left out part of the statute when I read
23 it. I'm going to read you the statute as it -- exactly as
24 it says, and this is with regard to the manufacturing of
25 methamphetamine.

1 To manufacture means the production, preparation,
2 propagation, compounding, conversion, or processing of a
3 controlled substance either directly or indirectly by
4 extraction of substance -- substances of natural origin or
5 independently by means of chemical synthesis, or by a
6 combination of extraction and chemical synthesis, and
7 includes any packaging or repackaging of the substance or
8 labeling or relabeling of its container except that this
9 term does not include the preparation or compounding of a
10 controlled substance by an individual for his own use, or
11 the preparation, compounding, packaging, or labeling of a
12 controlled substance.

13 That's it. Thank you very much.

14 (THE JURY EXITS AT 2:42 PM.)

15 THE COURT: Anything further?

16 MS. CAVANAUGH: Your Honor, I would just object to
17 that statute, the definition of manufacturing being read
18 separate from the actual statute of 375(b) because (b)
19 doesn't include -- it's still a violation of the law to
20 manufacture methamphetamine regardless of whether you do it
21 for your own personal use or for others. And reading the
22 definition of manufacturing by itself takes it out of the
23 context of section (b) because the -- for personal use is
24 referred to only as a repackaging or dispensing.

25 THE COURT: Well, they got it now.

1 MS. CAVANAUGH: I would just ask that it be reread in
2 conjunction with section (b) under 375.

3 THE COURT: What are you asking now?

4 MS. CAVANAUGH: It's -- I would just -- it's --
5 reading the definition of manufacturing by itself makes it
6 sound as though as long as you manufacture methamphetamine
7 for your own personal use, it's not illegal when, in
8 actuality, the for your own personal use is talking about
9 the repackaging of material. So, I think by reading that
10 definition outside the context of subsection (b), it makes
11 it sound like as long as you manufacture meth for yourself,
12 you're okay. That's not accurate.

13 So, I would ask that it be -- ask for you to reread
14 that manufacturing definition. That you read it in
15 conjunction with 375(b).

16 THE COURT: All right, you ask me to reread it? Is
17 that what you said?

18 MS. CAVANAUGH: Yes, sir.

19 THE COURT: All right. That will be fine. I'll be
20 glad to. Anything further?

21 MR. MATHEWS: Yes, sir. There's still the matter of
22 -- I don't know if it's intentional or not, but the, the
23 370(d) language involved possession of the equipment and
24 permissive inference of intent to violate. I believe you
25 stated permissive inference of a violation of the statute

1 rather than of an intent to commit manufacturing.

2 (A PAUSE.)

3 THE COURT: Well, I'm going to leave it like it is.

4 Thank you very much.

5 All right, give them the evidence and verdict form.

6 Any objection to dismissing the alternate?

7 MS. CAVANAUGH: None, Your Honor.

8 THE COURT: Any objection?

9 MR. HAWKS: No.

10 THE COURT: Come check the evidence, please.

11 MR. HAWKS: We did.

12 MS. CAVANAUGH: We already did, Your Honor.

13 THE COURT: All right. Good.

14 (JURY DELIBERATIONS BEGIN AT 2:47 PM.)

15 THE COURT: Stand at ease until we hear from the jury.

16 (OFF THE RECORD. ALTERNATE JUROR DISMISSED BY THE
17 COURT.)

18 THE COURT: All right, the bailiff informs the court
19 the jury has reached a verdict. You ready to receive the
20 verdict?

21 MS. CAVANAUGH: Yes, Your Honor.

22 THE COURT: Defense ready?

23 MR. HAWKS: Yes, Your Honor.

24 THE COURT: Bring the jury.

25 (THE JURY ENTERS AT 4:26 PM.)

1 THE COURT: Mr. Foreman, has the jury reached a
2 verdict?

3 FOREPERSON: We have.

4 THE COURT: All right. Will you hand it to the
5 bailiff, please?

6 (A PAUSE.)

7 THE COURT: All right, Madame Clerk, read the verdict.

8 VERDICT

9 CLERK OF COURT: The State of South Carolina, County
10 of Richland, vs. Fred Jack Sanders, with respect to
11 indictment number 2013-GS-40-5845 for manufacturing
12 methamphetamine, we, the jury, unanimously find the
13 defendant guilty.

14 With respect to indictment number 2013-GS-40-5846 for
15 possession of methamphetamine with intent to distribute,
16 we, the jury, unanimously find the defendant not guilty.
17 With respect to possession of methamphetamine, guilty.

18 With respect to indictment 2013-GS-40-5848 for
19 possession of crack cocaine with intent to distribute, we,
20 the jury, unanimously find the defendant not guilty. We,
21 the jury, find the defendant with respect to possession of
22 crack cocaine guilty.

23 With respect to indictment number 2013-GS-40-5851 for
24 possession of heroin, heroin with intent to distribute, we,
25 the jury, find the defendant guilty.

1 With respect to indictment number 2013-GS-40-5850 for
2 possession of a controlled substance, we, the jury, find
3 the defendant guilty, signed by the foreperson on March 19,
4 2014.

5 Are these the verdicts of the entire jury?

6 FOREPERSON: Yes.

7 THE COURT: Any desire to poll the jury?

8 MR. HAWKS: Yes, Your Honor.

9 THE COURT: Please poll the jury.

10 CLERK OF COURT: Ladies and gentlemen of the jury, I'm
11 going to ask -- going to call your number and ask you two
12 questions. Answer yes or no to each question.

13 Number 154, was this your verdict?

14 JUROR: Yes.

15 CLERK OF COURT: Is it still your verdict?

16 JUROR: Yes.

17 CLERK OF COURT: Number 278, was this your verdict?

18 JUROR: Yes.

19 CLERK OF COURT: Is it still your verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Number 80, was this your verdict?

22 JUROR: Yes.

23 CLERK OF COURT: Is it still your verdict?

24 JUROR: Yes.

25 CLERK OF COURT: Number 21, was this your verdict?

1 JUROR: Yes.

2 CLERK OF COURT: Is it still your verdict?

3 JUROR: Yes.

4 CLERK OF COURT: Number 40, was this your verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Is it still your verdict?

7 JUROR: Yes.

8 CLERK OF COURT: Number 54, was this your verdict?

9 JUROR: Yes.

10 CLERK OF COURT: Is it still your verdict?

11 JUROR: Yes.

12 CLERK OF COURT: 31, was this your verdict?

13 JUROR: Yes.

14 CLERK OF COURT: Is it still your verdict?

15 JUROR: Yes.

16 CLERK OF COURT: Number 268, was this your verdict?

17 JUROR: Yes.

18 CLERK OF COURT: Is it still your verdict?

19 JUROR: Yes.

20 CLERK OF COURT: 157, was this your verdict?

21 JUROR: Yes.

22 CLERK OF COURT: Is it still your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: 202, was this your verdict?

25 JUROR: Yes.

1 CLERK OF COURT: Is it still your verdict?

2 JUROR: Yes.

3 CLERK OF COURT: 194, was this your verdict?

4 JUROR: Yes.

5 CLERK OF COURT: Is it still your verdict?

6 JUROR: Yes.

7 CLERK OF COURT: 43, was this your verdict?

8 JUROR: Yes.

9 CLERK OF COURT: Is it still your verdict?

10 JUROR: Yes.

11 CLERK OF COURT: Jury has been polled, Your Honor.

12 THE COURT: All right. All right, ladies and
13 gentlemen, thank you very much. That will complete your
14 service for this week, and as I told you at the beginning
15 of the week, it also gave you an exception for the next two
16 years for jury service.

17 I do want to thank you on behalf of myself, the
18 litigants, court staff, and everybody connected with the
19 trial of this case and, frankly, the operation of this
20 courthouse. I've probably told you before; I'll tell you
21 again. This system doesn't work without you as jurors.
22 The system can do without me, it can do without these
23 attorneys, but it can't do without citizens who are willing
24 to come and sit, listen to these matters, consider these
25 matters, and come to a resolution one way or the other.

1 This is a unique part of our democracy in this
2 country, and it's a system that, as I've said before,
3 people have died to preserve, and you help preserve it.

4 So, I will tell you now that the remaining portion of
5 this matter will consist of the sentencing of the
6 defendant. Now, we're not like *Law and Order*. We just
7 don't have time to come back a month from now and sentence
8 somebody. We have to do it immediately because we've got
9 another case waiting right behind this one. So, the
10 sentencing will take place in about ten minutes. There's
11 some paperwork that has to be done before the, before the
12 sentencing can take place.

13 It's a process that you may wish to see. You may wish
14 to sort of see, you know, some closure on this case and how
15 it turned out. The bailiff will discuss with you how to
16 come and sit in the courtroom and witness the sentencing if
17 you wish to do, but you don't have to stay. You're going
18 to be free to go as soon as I release you, and Ms. Toal
19 will supply you some instructions about where your check
20 is. Anyway, so that will be the end of this matter and
21 you, as I say, you are welcome to stay and witness that.

22 Now, if anybody wishes to talk to you about this case,
23 of course you can talk to them now. The case is over. If
24 you don't feel like talking to anybody -- not that anybody
25 -- I don't know if everybody is going to ask you anything

1 about it, approach you about it one way or the other, but
2 if you don't feel like talking to anybody, you don't have
3 to talk to anybody about it. If anybody were to be
4 persistent, you just let the bailiff know, and they'll let
5 me know or let law enforcement know. We'll make sure that
6 doesn't happen. If you need an escort to your cars or
7 anything -- I don't know where you're parked. It may be
8 across the street. We'll give you an escort to your car if
9 you'd like that, too.

10 So, with that in mind, thank you very much for your
11 service. You've done good work this week, and good luck to
12 all of you. Thank you very much.

13 (THE JURY EXITS AT 4:33 PM.)

14 THE COURT: All right, any motions?

15 MS. CAVANAUGH: None from the state, Your Honor.

16 MR. HAWKS: Yes, Your Honor. May it please the court?
17 At this time, I would renew all my pretrial motions and all
18 of my objections during trial, specifically my motion to
19 suppress the introduction of the pseudoephedrine, all of
20 the evidence that was destroyed, specifically the
21 pseudoephedrine because it was never tested.

22 I would renew all my prior mistrial motions, motions,
23 specifically the mention of a search warrant in the
24 opening, which violated both your ruling not to mention it
25 and your ruling not to mention prior bad acts.

1 Specifically also my mistrial motion referring to
2 Investigator Chauncey Smith's testimony regarding prior bad
3 acts, Sara Brassell's testimony regarding prior bad acts,
4 and the discovery violations associated with that witness.

5 I would renew my cumulative mistrial motions which I
6 made at the end of the state's case, review my mistrial
7 motion made after our case and after the closings when the
8 solicitor misstated the law and burden shifted,
9 specifically that there is a presumption that evidence to
10 rebut has been made by defense.

11 I would now make a new motion again for a new trial
12 based on cumulative mistrial motions and all the discovery
13 violations in this case, case. And I also renew my
14 objection to the misstatement of the law during the jury
15 charges and would ask for a mis -- new trial based on that.
16 And I would also like to supplement this with a written
17 motion within the allotted ten days.

18 THE COURT: All right. I'll let you supplement. I'll
19 let you do that in ten days.

20 MR. HAWKS: Thank you.

21 THE COURT: Sure. All right, we will proceed to
22 sentencing in about ten minutes.

23 MS. CAVANAUGH: I will get those sentencing sheets
24 prepared.

25 (OFF THE RECORD.)

1 THE COURT: I want to try to get straight what his
2 record consists of, Solicitor.

3 MS. CAVANAUGH: Yes, Your Honor.

4 THE COURT: So, what are we dealing with?

5 MS. CAVANAUGH: We're dealing -- they're all third
6 offenses. Do you want to ---

7 THE COURT: What do you mean all third defenses? All
8 what? All six indictments?

9 MS. CAVANAUGH: Well, except for the firearm charge,
10 Your Honor. I don't understand the question.

11 THE COURT: Well, explain yourself.

12 MS. CAVANAUGH: Okay. Well, he has -- do you want me
13 to read his entire record to you or just the prior drug
14 convictions?

15 THE COURT: Yes, the prior drug convictions and what
16 he's facing now with these convictions. You say these are
17 thirds?

18 MS. CAVANAUGH: Yes, Your Honor, they are.

19 THE COURT: So, manufacturing third?

20 MS. CAVANAUGH: Yes, Your Honor.

21 THE COURT: And possession third?

22 MS. CAVANAUGH: Yes, Your Honor.

23 THE COURT: And that's possession methamphetamine
24 third?

25 MS. CAVANAUGH: Yes, Your Honor.

1 THE COURT: Possession of crack third?

2 MS. CAVANAUGH: Yes, Your Honor.

3 THE COURT: And PWID heroin third?

4 MS. CAVANAUGH: Yes, Your Honor.

5 THE COURT: And possession of?

6 MS. CAVANAUGH: Controlled substance. Just -- I don't
7 believe that's an enhanced crime. It's just...

8 THE COURT: Just what it is?

9 MS. CAVANAUGH: Just what it is.

10 THE COURT: All right, Mr. Hawks, you disagree with
11 that?

12 MR. HAWKS: No, Your Honor.

13 THE COURT: Okay.

14 (A PAUSE.)

15 THE COURT: All right, I think I'm ready. Bring your,
16 bring your client.

17 All right, solicitor, you may proceed.

18 MS. CAVANAUGH: Thank you, Your Honor. As far as the
19 facts are concerned in this case, you heard the trial. I'm
20 not going to repeat any of the facts.

21 His prior record is fairly lengthy. Begins in 1990,
22 malicious injury to personal property. 1991, burglary
23 second and grand larceny. 1992, simple assault. 1992,
24 grand larceny and assault and battery of a high and
25 aggravated nature. Looks like in 1994 he had a Youthful

1 when he was -- looks like he was sentenced under the
2 Youthful Offender Act for the ABHAN and was revoked under
3 his YOA sentence. 1998, false information to police.
4 2000, driving under suspension times two convictions for
5 driving under suspension, reckless driving, failure to stop
6 for a blue light. 2001, driving under the influence.
7 2002, driving without a license and open container. 2002,
8 another DUI. 2002, a probation revocation. 2004, another
9 failure to stop for a blue light, two counts of possession
10 of crack cocaine, an open container, and driving under
11 suspensions, two convictions. 2005, another conviction for
12 possession of crack cocaine. 2005, he actually had another
13 trial and was convicted for trafficking of crack cocaine
14 over 10 grams, less than 28. He received a minimum three
15 years on that sentence, Your Honor. 2008, driving under
16 suspension, reckless driving, public disorderly, and open
17 container. Looks like he also had a probation revocation
18 in 2008. 2008, failure to stop for a blue light second
19 offense. 2009, open container, public disorderly conduct,
20 false information to police. 2010, shoplifting, reckless
21 driving, open container. 2010, shoplifting third or
22 subsequent. And 2011, driving under suspension.

23 THE COURT: All right. Who's going to speak for Mr.
24 Sanders?

25 MR. HAWKS: Just me, Your Honor.

1 THE COURT: All right.

2 MR. HAWKS: And his sister as well -- stay back here
3 -- when I'm done.

4 THE COURT: Okay.

5 MR. HAWKS: And I believe he would like to address the
6 court as well.

7 THE COURT: Sure. Be glad to hear from you.

8 MR. HAWKS: Thank you, Your Honor. I'd like to start
9 by reading some passages from his mental health evaluation.
10 I believe you have a copy of it. He was born in Columbia.
11 He's lived here his whole life.

12 His father was a veteran of the Vietnam War. When he
13 was four years old, he witnessed his father pull a pistol
14 on his mother. His parents were then separated when he was
15 about six. When he was seven, his father died from a
16 self-inflicted gunshot wound; he killed himself.

17 He eventually went on to get married himself.
18 Marriage lasted about six years. He had one daughter, who
19 lives in Mississippi with his ex-wife.

20 As came out in the trial, he's currently been living
21 with his mother, which he's lived on and off for many
22 periods of his life at 113 Rockingham Road.

23 When he was in high school, he was enrolled in several
24 advanced courses, wherein he quit high school in the
25 eleventh grade basically because he was already an addict

1 at that point. He eventually did get his GED at Broad
2 River Correctional in 1991. He also completed a welding
3 course at that time.

4 Throughout his life he's worked in HVAC, heating and
5 air. He's done that on and off since he was seventeen.
6 He's also worked in landscaping and done some welding.

7 At the time of this arrest, he had -- he was working
8 two jobs. During the day he was doing HVAC; at night he
9 was a line cook. Just did general work at Fatz Café. I
10 believe every single dollar he earned from those two jobs
11 was probably going into his drug habit. He has never
12 received any sort of welfare of any kind to my knowledge.

13 He has a severe history of substance abuse, himself
14 and his family. He started using marijuana at age nine.
15 Started drinking alcohol regularly at age eleven. By
16 eighth grade, he was drinking every single day. Tried LSD
17 when he was twelve and cocaine around that time. Used to
18 inhale butane when he was in high school.

19 He actually quit drinking 2012, and that's when he was
20 introduced to morphine, and since 2012 he went to heroin.
21 He's been using that and methamphetamine ever since.

22 This also came out in trial, but he has had some
23 treatment as an adolescent. When he was sixteen he went to
24 Charter Rivers, and he also, I think, did a detox program
25 at Richland Springs for a few days. He has had some mental

1 health treatment. He did some outpatient program in '98,
2 '99. Was diagnosed with anxiety that stemmed from use of
3 these drugs. He was prescribed an antidepressant and an
4 antianxiety treatment at that time.

5 He was again diagnosed with a polysubstance dependence
6 disorder, which I believe simply means he's dependant upon
7 many substances. That was diagnosed, I believe, when he
8 was arrested after this charge. And again when he went for
9 this mental evaluation, she had the same thing to say, that
10 he was polysubstance dependant.

11 Your Honor, he's forty-one years old. As has become
12 clear in this trial, he suffers from extreme addiction
13 issues that have, as far as I can tell, been going on since
14 he was nine years old. I think the lengthy record that the
15 solicitor just read, either he was on drugs when he
16 committed those crimes, or he committed those crimes in
17 order to obtain drugs. By no means is that an excuse, but
18 I do believe it went into those decisions.

19 Your Honor, if he was, in fact, cooking meth, I
20 believe he was doing it for his own use, and all the drugs,
21 even though he was found guilty of one of the PWIDs, I
22 still believe firmly that those drugs were for his own use.

23 He has been incarcerated up to this point, I believe,
24 254 days.

25 THE COURT: He was arrested on the date of the

1 warrants?

2 MR. HAWKS: April 13th, yes and he spent ---

3 MS. CAVANAUGH: But he bonded out fairly soon after
4 that.

5 MR. HAWKS: Yeah. I think he did thirty-four days
6 originally. Then he was rearrested. Was it August?

7 MS. CAVANAUGH: I have September the 4th Judge Barber
8 revoked his bond.

9 MR. HAWKS: He was in jail a little bit prior before
10 that, and he's been in jail since that September 4th date,
11 Your Honor.

12 THE COURT: You think it -- you disagree with 254?

13 MR. HAWKS: I think it's at least 254.

14 THE COURT: Go ahead.

15 MR. HAWKS: Your Honor, I believe at this time his
16 sister would like to address the court.

17 THE COURT: Yes, ma'am, and your name, please.

18 MS. SANDERS-HOLLIS: My name is Kathy Sanders-Hollis.

19 THE COURT: Ms. Hollis, I'll be glad to hear from you.

20 MS. SANDERS-HOLLIS: My brother is my whole world.

21 He, he has been since, since that, that he, he was born.

22 It's always just really been the two of us. My mom worked
23 really hard. It all started at a young age. We've both
24 gone through a lot of trials and tribulations.

25 And Jackie is not a bad person. He's not a drug

1 dealer; he's not a menace to society. He means no harm on
2 anybody, anybody. We just -- so often it's, it's me who
3 veered off on the wrong course and got caught up in, in
4 things that we shouldn't have and have to suffer the
5 repercussions for that.

6 But I would ask that you please have mercy because my
7 mom is elderly now, and she and I both need him at home.
8 Just please, please, please, I need to signify what person
9 he is. He's a strong man, solid man. He's not a drug
10 dealer. He's his own worst enemy and he just, he needs
11 help.

12 MR. HAWKS: Thank you.

13 THE COURT: All right. Thank you, ma'am.

14 MR. HAWKS: I believe Jack would also like to address
15 the court.

16 THE COURT: Yes, sir.

17 DEFENDANT: Yes, I would.

18 THE COURT: You've been down a long road.

19 DEFENDANT: Yes, sir, I have.

20 THE COURT: Mr. Sanders.

21 DEFENDANT: Ultimately, Your Honor, everybody I know
22 in some form or fashion are drug addicts or alcoholics:
23 mother, father, my sister has problems with drugs and
24 alcohol. We all have. That's not an excuse.

25 Ultimately, I found God years ago, and this is all,

1 this is a ripple effect of my disobedience to God because I
2 have an anointing that is far greater than the average
3 person. I, I hear God when he speaks to me.

4 When I was in prison last time, I was sent to work
5 release, and because I was obedient, I didn't want to hear
6 the radio. I didn't want to watch television. I didn't
7 want my mind poisoned by anything. I wanted to get on the
8 right track and do the right thing. So, all I did was
9 study the Bible. I wrote a ministry, and they sent me a
10 study Bible.

11 I started going in depth, and they sent me to Campbell
12 workplace, and they gave me a job there, Fatz Café. And
13 the first thing I did when I was assigned a job was I went
14 to a quiet place, and I thanked God for giving me that
15 avenue for, as far as doing time, giving me the privilege
16 of being able to make some money at a regular job and work
17 on the streets while I'm doing time.

18 I thanked God for that privilege, and I heard him tell
19 me go down there and tell that lady you don't want that
20 job. He spoke directly to my heart, and I didn't
21 understand why, but he specifically -- I heard him. He
22 said go down there and tell the lady you don't want the job
23 at Fatz Café. I didn't understand why. I should have
24 listened, but now I know why. It's because God knew that I
25 wasn't, I wasn't stable enough yet to handle money, okay?

1 I was, I, I was, I was totally -- a week before I got
2 out, I had a flashback of smoking crack and a feeling came
3 over me that was so terrible that I asked God. I said
4 please don't let me fall back in that rut. Even though I
5 was disobedient and I didn't go down there and tell that
6 lady that I didn't want that job at Fatz, I asked him to
7 let me prosper and everyone around me prosper, and everyone
8 did.

9 After I was working at Fatz two months, I mastered my
10 job. The owner opened up the door to let us in at 7:00 in
11 the morning. He said I don't know what it is, but we've
12 never had a week like we had last week. Our profits were
13 through the roof. Whatever y'all are doing, keep on doing
14 it, and I knew what it was. That was God's anointed
15 working through me just as I asked him to help me prosper
16 and everyone around me, okay? Even though I was
17 disobedient, and I didn't go down there and tell that lady
18 I didn't want that job, he was still working with me,
19 letting the blessings flow through me.

20 And I got out of prison with all that money, and I
21 took my eyes off of God, and I felt like I had conquered.
22 I had gone -- I had achieved so much because that, that --
23 Fatz Café was, like, whatever, whatever -- they helped me
24 find a place over there near them because they wanted to
25 make sure I stayed there with them, working with them when

1 I got out of prison because I did such a great job, you
2 know. Not, I'm not trying to pat myself on the back. I'm
3 just stating facts.

4 And I took my eyes off of God and I got, I got a
5 little overly confident. I guess I let pride get the best
6 of me, and I wasn't drinking alcohol. I was not smoking
7 crack. Just like I told you, I had that flashback about a
8 week before I got out. That was the worst feeling I've
9 ever felt. I did not want to go back down this road
10 because I knew what was going to happen if I did.

11 And I relapsed. I relapsed. I relapsed during
12 Christmas. It lasted -- it didn't even last 120 days.
13 Well, January, February, March. I mean, it didn't, and,
14 and I couldn't do anything. I didn't know what to do. I,
15 I couldn't believe that I had fallen back into that rut,
16 and I was injecting drugs, and I was, like, what happened,
17 you know. I mean, and I couldn't -- I was so far down the
18 road at that point that I couldn't, I couldn't shake, okay?

19 Ultimately, Richland County Sheriff's Department
20 busted into the house and taking me to jail, they saved my
21 life. I strongly believe that because I was, I was so
22 stripped because I slipped back into that old life, same
23 one that killed my father. Same one that everyone I love,
24 everybody's suffering.

25 Your Honor, I hold the key, I hold the key to their

1 direction, and I don't deny that. I know that things
2 around me have not changed because I didn't change. I did.
3 I changed but I backslid, okay? I don't deny that.
4 Regardless of what doorways I have to walk through from
5 this point forward, I will not take my eyes off of God, and
6 if it's prison that I've got to go to, then evidently
7 somebody in there needs God, and I will deliver that to
8 them.

9 When I started this trial Monday, the guy that's my
10 roommate at Richland County detention center, Alvin S.
11 Glenn, I told him. I said I don't understand what's going
12 on, but I'm really not stressing. I'm not, I'm not
13 stressing, you know, the outcome of this trial because I
14 didn't, I mean, I didn't, I didn't understand what it --
15 you know, I mean, I said I, I'm just not stressing it, and
16 it wasn't that I don't care. And I opened up my daily
17 devotional at about 12:30 for the -- as soon as it struck
18 midnight because I was only going to get a couple hours
19 sleep before I was headed down this way. I opened it up,
20 and it spoke directly to me. It said regardless of the
21 trials and sorrows that you are going through, take heart.
22 Jesus take me was -- that was the message Jesus spoke.
23 Take heart. I have overcome the world.

24 And I will be back in these courtrooms. I will be
25 back in these courtrooms. Not for criminal charges. I, I

1 strongly -- there's no doubt about it. I'm going to use my
2 past, the road of destruction that I've left behind me.
3 I'm going to use that to help other people that are
4 suffering the same way that I have and my sister has, my
5 entire family. I'm going to do everything that I can to
6 try to help others.

7 And eventually I -- my goal is to become a drug
8 counselor, and I will be back in these courtrooms to work
9 with the judges and solicitors to help in whatever way that
10 I can to keep people from harming themselves and the ones
11 that they love and other innocent bystanders for their drug
12 use because drug abuse is, is -- drugs in America, they're
13 -- it's not just America. It's all over the world. It's
14 an epidemic. It's an epidemic.

15 And, Your Honor, I mean, I'm, I'm not, I'm a bad
16 person. Now, from my record, yeah, I've, I've wreaked a
17 lot to havoc in my life. But if I saw you or her or him
18 out in the streets and you needed -- I mean, I'm not trying
19 to pat myself on there again. If you needed anything that
20 I had and it was in my grasp, you'd have it. And I didn't
21 have it, I would go get it for you if, if I could help you,
22 you know. If I was going to hurt you, I wouldn't, I
23 wouldn't help you at all. I mean, I wouldn't help you hurt
24 yourself.

25 Ultimately, I do want to say I do apologize for the --

1 I apologize for, for the time that, that Richland County
2 Sheriff's Department has had to spend. I apologize for the
3 time that you, y'all have had to spend. I thank y'all. I
4 thank all of y'all for the opportunity to have a fair
5 trial.

6 And I just ask that -- God knows my heart. He knows
7 each and every one of our hearts; we can't hide from that.
8 We're all going to be held accountable one of these days,
9 and each of them, every one of you will see me again. If
10 it's not in this lifetime, it will be when we walk through
11 the gates of heaven, and that's all I have to say.

12 THE COURT: All right, sir.

13 Anything further?

14 MR. HAWKS: I don't think so, Your Honor. I'd ask
15 that you'd consider the minimum, and anything over the
16 minimum, I'd ask that you consider suspending perhaps to
17 give this man some inpatient-drug treatment. And I would
18 ask that you recommend ATU while he is in prison. That's
19 all I have to say.

20 MS. CAVANAUGH: Your Honor, I would just like to put
21 on the record that his original offer was zero to ten
22 years, a cap of ten, and he rejected that. And while I
23 empathize with what he's been through and his wife, it is a
24 misstatement that he has not put others in danger. He has
25 numerous reckless driving offenses, numerous failure to

1 stop for a blue lights, which could put other people in
2 danger. The manufacturing of methamphetamine could have
3 put multiple people in danger.

4 He has had an opportunity in 2005 when he went to
5 trial on a crack cocaine trafficking charge. He received
6 the minimum sentence on that. We have been in court for
7 three days because he turned down a very reasonable offer.
8 So, I would just like to point those things out, and it's
9 not in disrespect to what he's been through or his
10 addictions.

11 MR. HAWKS: Your Honor, he does want to add one more
12 thing.

13 THE COURT: All right.

14 DEFENDANT: Excuse me. On two different occasions, it
15 was in 2008 and also in 2009, I ended up in jail two
16 different times, and I wrote Frank Graham at Morris Village
17 on two different occasions. I asked him if he could help
18 me with my drug problem because I know -- I mean, I know, I
19 mean, I know that it's so expensive that -- I mean,
20 ultimately, I mean, I guess I knew -- I never went to
21 Narcotics Anonymous because I always said those people
22 needed God and I knew God. And ultimately what it was that
23 I really did need was a twelve-step program, and I needed
24 to get into some sort of -- what's the name of that, Morris
25 Village or something like that? And I never got a response

1 back from him.

2 I mean, I'm not saying -- I'm just, I'm just saying I
3 did reach out for some help, and I'm -- and, I mean, I've
4 said all I, I've said all I need to say.

5 THE COURT: Well, you realize that the minimum on
6 these two drug charges is ten years. You realize that,
7 don't you?

8 Mr. Sanders, you seem like a bright fellow. How far
9 did you go in school?

10 DEFENDANT: I made it to the, I made it to the twelfth
11 grade, but I got into some trouble because of alcohol, and
12 I was sitting at Broad River Correctional Institution when
13 my senior class walked the stage.

14 THE COURT: Well, you're well spoken. You sound like
15 an intelligent -- I know you're intelligent. It's sad what
16 either drugs have done to you, or you have let drugs do to
17 you.

18 DEFENDANT: I did, I, I -- drugs used me, used me.

19 THE COURT: But you've had so many chances to take a
20 different fork in the road. Unfortunately, you've not
21 either wanted to do that or been able to do that. I don't
22 know which it is because I don't walk in your shoes. But
23 you're going to have a while to ponder this whole situation
24 and hopefully get your life to a point where you can live
25 outside in the community, community at large without living

1 the life you've been living, and that's about all I can
2 tell you.

3 Let me do a little of this paperwork now.

4 (A PAUSE.)

5 SENTENCE OF THE COURT

6 THE COURT: Mr. Sanders, on your possession of
7 controlled substance charge, the sentence is you be
8 committed to the State Department of Corrections for a
9 period of six months. On your possession of pistol by a
10 person convicted of a violent crime, sentence of the court
11 is you be committed to the State Department of Corrections
12 for a period of five years. On your possession of crack
13 third offenses, sentence of the court is you be committed
14 to the State Department of Corrections for a period of five
15 years. On your possession of methamphetamine third
16 offense, sentence of the court is you be committed to the
17 State Department of Corrections for a period of five years.
18 On your manufacturing of methamphetamine third offense and
19 on your possession with intent to distribute heroin third
20 offense, the sentence of the court is that you be committed
21 to the State Department of Corrections for a period of
22 twenty years on each, all sentences to run concurrent.
23 Give him credit for time served 254 days. Good luck to
24 you, sir.

25 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 17TH, 18TH, AND 19TH DAYS OF MARCH, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/Elizabeth B. Harris, CVR-M

COLUMBIA, SOUTH CAROLINA

DECEMBER 6TH, 2014

State of South Carolina

Court of General Sessions

County of Richland

2013-GS-40-05845

2013-GS-40-05851

The State of South Carolina

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

Fred Jack Sanders

:

June 9, 2014

Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge.

A P P E A R A N C E S:

Kathryn Cavanaugh, Esquire

Attorney for the State

Lucas Hawks, Esquire

Attorney for the Defendant

Daphne D. Helms

Circuit Court Reporter

1 **The Court:** Be seated, please. Thank you. Bring your
2 client around. Just a minute. All right, Mr. Hawks.

3 **Mr. Hawks:** Thank you, Your Honor. May it please the
4 Court?

5 **The Court:** Yes.

6 **Mr. Hawks:** Judge, I debated on how I was going to go
7 about this. Immediately after the sentence was imposed, I
8 actually got called into Fielding's office and we had a
9 little discussion - her, Doug and my second seat - about
10 having you reconsider the sentence that you did impose. I
11 then went to see Mr. Sanders at Alvin S. Glenn before he was
12 transported just to make sure that he himself wanted to do
13 it, and he was onboard.

14 At first I thought, you know, maybe I can get his mother
15 in here, the rest of his family, and we can kind of do the
16 whole pony show and sob story and sort of beg for mercy, but
17 then I thought perhaps the better way would just be to have
18 an educated discussion about how the nation and this state is
19 sentencing nonviolent drug offenders. And before I get into
20 that, I would like to correct a couple of things that I think
21 were misstated when we originally did mitigation, and
22 actually Jack brought this to my attention.

23 I think Ms. Cavanaugh, by mistake, stated that there was
24 an offer of zero to ten at some point, and I just wanted to
25 make clear that he never actually had that offer. His best

1 offer was possession with intent to distribute second which
2 would be five to twenty or five to thirty, excuse me. And,
3 yes, that five is suspendible, but I don't think that's
4 really zero to ten. And a cap of ten was actually what she
5 meant there.

6 I also wanted to clear up -- you know, I think perhaps
7 part of your sentence had to do with the fact that it was a
8 trial that dragged out three days and that it wasn't a
9 complicated case as far as the facts go. In fact, we didn't
10 really dispute any of the facts, but Jack's whole thing this
11 whole time was: I'm not a dealer; I'm an addict. And all he
12 wanted to do by going to trial was to attempt to prove to 12
13 people in that box that he was just a user.

14 And besides the statutory weights and besides the fact
15 that it was a manufacturing third which carries a lot of
16 time, I don't really think there was any testimony or any
17 evidence presented that showed Jack was a drug dealer. There
18 was nothing to show that he's involved in any gangs or
19 organized crime, nothing to show that he was making large
20 amounts of money, untaxed dollars. He was actually working
21 two jobs at the time that this happened.

22 If -- you know, worst-case scenario, if he was dealing
23 or manufacturing, I believe that it was to -- solely to feed
24 his own addiction which is clear. I mean, there is no doubt.
25 You can look at him here today. Just less than three months

1 he's been incarcerated, and look at how different he looks
2 from being cleaned up. His eyes are not sunken any longer.
3 The color has returned to his face. He just looks like an
4 incredibly different man. Part of that may have to do with
5 his haircut and shaving his beard, but, still, I think it's
6 clear that he looks much, much better and healthier.

7 And I'd like to talk a little bit about what your
8 sentence means for him as far as his life in the department
9 of corrections. Because it's so lengthy, he has been housed
10 in one of the worst prisons in the state: McCormick. He
11 tells me that over half the population of his dorm have been
12 convicted of murder. Both of his roommates have murder
13 convictions. So those are the type of people that he is
14 currently being housed with.

15 And I can attest to that myself, Your Honor. I've only
16 been doing this about a year and a half, but I clerked here
17 for a couple of years, and I've seen murder pleas where they
18 get 20 years or less, and that's with someone losing their
19 life.

20 One of the other things Fielding and I talked about when
21 we first sat down was the Department of Justice and how it
22 has even published its own literature about the drug war and
23 about sentencing reform, and I just want to pull a couple of
24 things that I've found really interesting from that, and I've
25 shown this to Ms. Cavanaugh.

1 Since the drug war has began, the state -- the cost of
2 housing inmates at the state level has tripled, and it is the
3 second largest expense for state governments other than
4 Medicaid, and I think that is extremely telling. The
5 literature goes on to talk about how we as a society need to
6 separate violent drug offenders, and I'm not really sure
7 exactly what that means, but I think it's referring to gangs,
8 cartels, you know, people that are running around selling
9 drugs on the streets with guns.

10 Although there was a gun in this case, it was a hunting
11 rifle. He was not out on the streets carrying that gun or
12 selling on the streets. And one of the main themes of that
13 literature is that the sentence should be as equal as
14 possible to the crime that was committed. And, again, I
15 think worst-case scenario here, he -- let's say he was
16 manufacturing that meth and he was found guilty of it and he
17 was selling heroin. I don't think that those two things,
18 especially considering the extremely small amount of drugs
19 that was found, rise to the level of 20 years in prison.

20 I know that Your Honor's hands are tied based on the
21 ten-year minimum and he had to get ten years, but he
22 certainly did not have to get 20. And I think when we put
23 people in prison for drug offenses, the goal should be -- if
24 we're going to do that at all, the goal should be to
25 rehabilitate. We're not punishing him. Well, maybe we are a

1 little, but the goal should be to rehabilitate these people.
2 And look how much three months has already done for this man,
3 being clean for three months.

4 And at the end of ten years, Your Honor, I'm not sure
5 how much more he would be rehabilitated by another five years
6 or another ten years. I think at that point he's going to be
7 as rehabilitated as possible as far as his drug addiction
8 goes. And I wanted to point out -- I asked him before we got
9 started today---

10 **The Court:** Do you think rehabilitation is the only goal
11 of incarceration?

12 **Mr. Hawks:** Well, no. I understand that certainly
13 punishment is part of it, but I'm referring only to drug
14 offenses. I asked Jack before we got started: What is the
15 lengthiest prison sentence he had ever received before yours,
16 and it was three years at 85 percent. So even the minimum,
17 if he would have gotten the minimum, that would be seven
18 years longer than his longest prison sentence and your
19 sentence 17 years longer.

20 Just a couple more things. I want to make sure I get
21 everything out that I wanted. So I guess the real question
22 is: What do we do in these types of situations because this
23 is not the first time he's been in trouble with drugs,
24 certainly not. And I spoke with another solicitor this
25 morning on my way in to work about this case, and his thought

1 was: You know, how do we get these people to understand that
2 they just can't do this anymore and maybe that's why he
3 received such a lengthy sentence. And I understand that, but
4 the ten-year minimum would be again seven years longer than
5 the longest he's ever been in, and I think -- you know, he
6 poured his heart out when we mitigated the first time at
7 trial, and I personally was moved.

8 I think this man -- everything that he's gone through is
9 related to drugs, and I just don't see how ten more years or
10 five more years over that ten years that you're tied to is
11 going to benefit society, is going to benefit him or is going
12 to benefit the justice system. I just don't see it.

13 **The Court:** I'm certain that your experiences, as
14 limited as they may be, you're certainly aware of just the
15 consequences of manufacturing meth and the methamphetamine
16 epidemic that has hit this state. You tell me he wasn't
17 selling or if he was selling, he was selling it to somebody
18 else who gets addicted to support his own habit. Sounds like
19 a selfish thing to do, but I will tell you: I have no
20 tolerance for meth cases. If he'd been up here on a crack
21 cocaine case or a big pile of marijuana or something, I
22 have -- I have strong feelings about methamphetamine.

23 I gave a fellow, two months before your client, 20 years
24 in Lexington County for manufacturing methamphetamine, his
25 first time. No, I'm sorry. It was the second time. Second

1 time. And your client is up here on the third. So when I
2 see your client -- you see him in a lot more personal terms
3 than I do, and I'm concerned about everything that you say,
4 much of which can only be addressed by the legislature, not
5 by the courts. They pass the law. We're charged with
6 following the terms of that.

7 Why do you think they set such high penalties on these
8 serious drug offenses? Because they want them. If they
9 can't stop it one way, they provide the means to stop it
10 another way, and I'm pretty well sure that your client is not
11 going to be making methamphetamine for 85 percent of 20
12 years.

13 I'm sorry he got caught up in it. I'm sorry he's been
14 addicted, if I recall, to crack cocaine, cocaine, heroin, and
15 methamphetamine. I was surprised he was walking, living with
16 as much drug abuse or drug ingestion that he told me he had.
17 So I'll consider your motion, but I -- I guess I better hear
18 from the State.

19 **Ms. Cavanaugh:** Your Honor, I just---

20 **The Court:** Ms. Cavanaugh?

21 **Ms. Cavanaugh:** Thank you, Your Honor. Kathryn
22 Cavanaugh for the State. I would just like to point out a
23 few things. While Mr. Hawks does state that his client was a
24 mere addict and not a dealer, the basis of the search warrant
25 of the defendant's home in this case was the result of a

1 controlled buy. So he was selling at least to some degree,
2 Your Honor.

3 And as you just stated, you know, this is not just, you
4 know, an average drug case. This is someone who is cooking
5 methamphetamine which involved, as we heard from several
6 witnesses, extremely hazardous material in a -- in a
7 residential area. There are homes all around him, and he was
8 also in his mother's own home. According to the investigator
9 and this wasn't, you know, admissible testimony in the
10 record, but his mom couldn't do anything about him cooking
11 meth in her home.

12 I did offer a cap of ten. He did deny -- refuse that
13 offer, and perhaps it's because the trial he went to for
14 trafficking crack cocaine back in I believe it was 2004 he
15 got the minimum which was three years. And, you know, he's
16 been in and out of prison or jail since 1990. His record is
17 one of the longest that I've ever seen. And he's had plenty
18 of chances to be rehabilitated while he's been incarcerated,
19 and he just hasn't taken advantage of any of those
20 opportunities.

21 I also -- and I showed Mr. Hawks this when I was pulling
22 up his case from the Richland County database, because ours
23 has been archived. His history during that three-year prison
24 stint, he was convicted three different times in-house for
25 striking an employee without a weapon, fighting without a

1 weapon, and being under the influence of alcohol or some
2 other substance while incarcerated. So, you know, he's had
3 -- he's just shown time after time that he is not going to
4 change his ways regardless of how many times he has brushes
5 with the law, and again I would just emphasize the fact that
6 manufacturing methamphetamine is a very dangerous activity
7 and it was in a residential neighborhood.

8 I think that 20 years was an appropriate sentence. He
9 could have gotten 30, Your Honor, and he refused what I would
10 consider a very reasonable offer.

11 **The Court:** Was I made aware - I just don't remember -
12 of his rap sheet, his criminal record, at sentencing?

13 **Ms. Cavanaugh:** No. Oh, yes, yes, yes. At sentencing,
14 yes, his -- I mean, he has---

15 **The Court:** Let me look at it.

16 **Ms. Cavanaugh:** Sure.

17 **The Court:** I just wondered what one of the most lengthy
18 records Kathryn Cavanaugh has ever seen looked like. (The
19 Court looks at documents.) How old is your client?

20 **Mr. Hawks:** Forty-one.

21 **The Court:** There's a lot of this 1990 stuff. How old
22 were you then, '92, '93?

23 **Mr. Sanders:** I was -- '92 I was -- I believe I was 19.

24 **The Court:** A lot of pistol charges. Do you remember if
25 any of these were violent, Ms. Cavanaugh, just off the top of

1 your head?

2 **Ms. Cavanaugh:** The trafficking crack cocaine conviction
3 from 2004 is the violent conviction. Most of them---

4 **The Court:** Driving, blue light, D.U.I. What type of
5 work did you -- you said he was holding down two jobs, which
6 I find hard to...

7 **Mr. Hawks:** He was working at Fatz Cafe and I believe
8 also doing some heating and air.

9 **The Court:** Heating and air?

10 **Mr. Sanders:** H.V.A.C.

11 **Ms. Cavanaugh:** I thought -- I'm sorry. I remember from
12 the mitigation that he had left his job at Fatz Cafe, but I
13 could be mistaken about that, at the time of the trial or
14 when he---

15 **Mr. Hawks:** When he was in jail---

16 **Ms. Cavanaugh:** ---when he was incarcerated. I thought
17 he had left before that.

18 **The Court:** He had a pretty good bit of pretrial time,
19 as I recall. Almost a year.

20 **Ms. Cavanaugh:** This happened in May, Your Honor, and I
21 think he's been incarcerated since August of 2013.

22 **Mr. Hawks:** Since August of 2013.

23 **The Court:** Any luck getting into A.T.U.? Do they even
24 have an A.T.U.?

25 **Mr. Sanders:** There is an A.T.U., but I believe they

1 only offer it to -- at the end of your sentence.

2 **The Court:** Oh, okay.

3 **Mr. Sanders:** I have been -- I've been actively going to
4 A.A., and they offer that twice a week. And I go to every
5 church service that they offer, but there's really nothing --
6 there's not a whole lot there. It's actually a very dark
7 place. It's -- there's a lot of hopeless individuals, you
8 know.

9 This sentence has definitely been an eye opener and, you
10 know, the truth be known, I personally wasn't the
11 manufacturer. All I was doing was -- and I am -- I am wrong
12 about it, putting my mother's home in jeopardy, but I was
13 just providing a place for it to be done, you know, and I
14 mean -- and it was due to my heroin addiction. The heroin --
15 I've been through -- you can see my record. I've been
16 through all the drugs.

17 Heroin was the largest one I've ever tried to battle and
18 I was at the end of -- I was actually at the end of the road
19 there and, I mean, I stand good on my word what I said
20 whenever you sentenced me. I will be a drug counselor. I
21 mean, I thought about it when I was in the Reception and
22 Evaluation Center. I got a hold of an A.A. book and I
23 started reading it, and it -- I was mesmerized by what I saw
24 in there, you know.

25 I started as basically a drunk and that's what I was was

1 an alcoholic, and I started tapering off of the alcohol and
2 that's whenever my drugs started. I was basically just
3 substituting, and I didn't realize that was what I was doing,
4 you know, because the drugs themselves had me clouded in my
5 mind.

6 And, you know, I do apologize once again for, you know,
7 my disruptive behavior, but I do believe that I have matured
8 a lot here lately, you know. I've put away my childish acts
9 and my childish thinking, and even though I am living amongst
10 a dark place and dark, hopeless individuals, I refuse to
11 allow that to break my spirit and who I am and who I am going
12 to be.

13 **The Court:** Okay. Anything further?

14 **Ms. Cavanaugh:** No, Your Honor.

15 **The Court:** Let me think about it. I'll let you know.

16 **Mr. Hawks:** Thank you, Your Honor.

17 **The Court:** Good luck to you, sir.

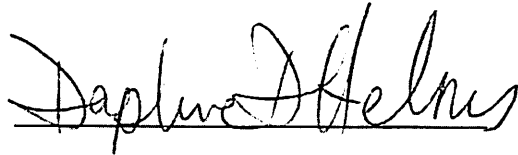
18 **Mr. Sanders:** Thank you, sir.

19 (Whereupon, the proceedings were concluded. There were
20 no exhibits introduced.)
21
22
23
24
25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 9th of June, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 18, 2014

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

FORM 5

2017CP4604517

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Fred Jack Sanders, #300135)

Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010
2. Name and location of Court which imposed sentence Richland County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-40-5845: Manufacturing of Meth.; 2013-GS-40-5846: Poss. of Meth.
 - (b) 2013-GS-40-5848: Poss. of Meth. 2013-GS-40-5849: Poss. of Firearm
 - (c) 2013-GS-40-5850: Poss. of Controlled Substance; 2013-GS-40-5851: PWID

Heroin

5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 19, 2014: 15 years, 5 years concurrent
 - (b) March 19, 2014: 5 years, 5 years concurrent
 - (c) March 19, 2014: 6 months, 15 years concurrent
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Denied.
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 14, 2016
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpub. Op. No. 2016-UP-514
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective assistance of trial counsel.
 - (b) Ineffective assistance of appellate counsel.
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) Failure to convey the complete terms of plea offer(s) to Applicant.
 - (b) Failure to address the search warrant and lack of notice from the State (witness Sara Brassell) via pre-trial motion.
 - (c) Failure to raise all meritorious issues on appeal.
12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.