

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ABBEVILLE COUNTY  
COURT OF GENERAL SESSIONS

**SC Court of Appeals**

Donald B. Hocker, Circuit Court Judge

Appellate Case No.: 2019-001902

The State of South Carolina.....Respondent,

v.

Kenneth Earle McGill.....Appellant.

RECORD ON APPEAL

VOLUME THREE

Alan Wilson  
Attorney General

William F. Schumacher, IV  
Assistant Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3713

David M. Stumbo  
Solicitor, Greenwood County  
PO Box 516  
Greenwood, SC 29649  
(864) 942-8800

William Norman Epps III, #73158  
Post Office Box 2167  
Anderson, South Carolina 29622  
(864) 224-2111  
(864) 224-3536, fax  
Attorney for Appellant

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(864) 224-3536, fax  
Attorney for Appellant

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1 lawyers your undivided attention.

2 Depending upon how long they go, we'll either  
3 take a break and then go into the Court's final  
4 charge on the law or we may just go straight into  
5 it. We'll just kind of play that by ear. Okay?

6 All right. The State ready?

7 MR. BLACK: Yes, sir, Your Honor.

8 THE COURT: You may proceed.

9 MR. BLACK: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. BLACK: There's an old saying that birds of  
12 a feather flock together. And on August the 21st of  
13 last year, 2018, three birds flocked together at 260  
14 Suttles Landing in Abbeville County.

15 The first bird was Ms. Angela Williams, who was  
16 living at that address.

17 She called the second bird, Stewart Ferguson,  
18 both drug dealers. And yesterday they sat up here  
19 on the stand and told you that last year in August  
20 they were drug dealers.

21 And Mr. Ferguson called the last bird. He  
22 called Kenny McGill, and Mr. McGill flocked to 260  
23 Suttles Landing in Abbeville County. Mr. McGill  
24 brought with him 111, 110 grams of methamphetamine.

25 All three drug dealers. All three showed up to

1       that address with a quantity of methamphetamine  
2       exceeding 10 grams and were charged each with  
3       trafficking in meth.

4               And over the course of this trial, ladies and  
5       gentlemen, we as the State have the burden to prove  
6       the case beyond a reasonable doubt. And we're here.  
7       You guys are here as the finder of facts to  
8       determine whether or not Mr. McGill is a drug  
9       trafficker.

10              So what do we as the State have to prove? We  
11       have to prove this statute right here.

12              I'm going to cut this light off over here and  
13       we're going to go through it.

14              And the judge -- the judge is going to charge  
15       you on the law. And if I say something that's  
16       contrary to what the judge says, obviously you have  
17       to go with what the judge says. And he's going to  
18       read you the jury instructions once we sit down.  
19       And you're actually going to have a copy of this  
20       back there with you so you can consult that, but I  
21       pulled this right off of the -- I pulled this right  
22       out of the code.

23              So according to Section 44-53-375, possession,  
24       manufacture, trafficking in methamphetamine and  
25       cocaine base or any controlled substances, go down

1 to Section C, it deals with what is trafficking  
2 methamphetamine. And I explained to you guys when I  
3 talked yesterday -- or I guess it was Monday  
4 afternoon. I said when you're dealing with  
5 methamphetamine, when you're dealing with cocaine or  
6 crack, there's -- there's three levels.

7 There's a possession level. And I told you  
8 that was basically a gram and under.

9 There's a possession with intent to distribute  
10 level. That's basically over a gram but less than  
11 10 grams.

12 And I told you there's a trafficking level, and  
13 this is what this statute deals with, trafficking in  
14 methamphetamine.

15 And it says a person who knowingly sells,  
16 manufactures, deliverers, purchases, or brings into  
17 this state or who other -- or who provides financial  
18 assistance or otherwise aids, abets, attempts, or  
19 conspires to sell, manufacture, deliver, purchase,  
20 or bring in this state or who is knowingly in actual  
21 or constructive possession or who knowingly attempts  
22 to become in actual or constructive possession of 10  
23 grams or more of methamphetamine or cocaine base as  
24 defined by these laws is guilty of trafficking.

25 And then below that in Subsection C, there's

1 different levels. There's 10 to 28 grams. There's  
2 28 to 100. There's 100 to 200. And, finally,  
3 there's 200 to 400. And the reason why I brought  
4 this up is because you heard from several  
5 codefendants.

6 You heard from Ms. Williams who had about an  
7 ounce. And you heard that was about 28 grams. She  
8 had about 28 grams. She was charged with  
9 trafficking.

10 And then you heard from Mr. Ferguson.  
11 Mr. Ferguson had about 223 grams of methamphetamine,  
12 so that's relevant as well.

13 And then, obviously, Mr. McGill, he showed up  
14 with about 111 grams, so that falls between that 100  
15 and 200 grams of methamphetamine.

16 So let's look at this exactly and see based on  
17 what the evidence you heard, the testimony and the  
18 evidence that was presented, does this match up with  
19 Mr. McGill?

20 A person who knowingly sells, manufactures,  
21 delivers, purchases, or brings into this state. Did  
22 he do this? Did he sell? Absolutely.

23 Did he manufacture? He did. You heard  
24 testimony about washing the meth, and those were in  
25 the text messages that Mr. Ferguson read.

1           Did he deliver? Absolutely. He showed up over  
2           there at 260 Suttles Landing with 111 grams of  
3           methamphetamine.

4           Did he provide financial assistance?  
5           Absolutely. He showed up with almost \$14,000.  
6           13,700 some-odd dollars for Mr. Ferguson to make a  
7           trip to Atlanta the next day to pick up some more  
8           methamphetamine. Absolutely.

9           Did he otherwise aid, abet, attempt, or  
10          conspire to sell, manufacture, deliver, purchase  
11          methamphetamine? Absolutely. He was helping  
12          Mr. Ferguson out, aiding, abetting, attempting.  
13          Yes. Yes. Yes.

14          Or was he in knowingly or in actual -- in  
15          actual or constructive possession? Well, he wasn't  
16          in constructive possession. He was in actual  
17          possession. Because you heard the testimony when he  
18          showed up. Law enforcement was standing there  
19          waiting on him. He had that bag of drugs in his  
20          hand and he dropped it immediately. He actually  
21          possessed those drugs, 10 grams or more.  
22          Absolutely. He's down here, 100 to 200.

23          So that's the statute, folks. That's what we  
24          have to prove, and we have to prove that to you  
25          beyond a reasonable doubt. And I told you on -- on

1 Monday and I told you guys, and the judge is going  
2 to tell you more once he reads this, the jury  
3 instructions, that we have to prove this beyond a  
4 reasonable doubt.

5 And there are few things in this world that we  
6 know with absolute certainty. We don't have to  
7 prove this 100 percent. Mr. Epps has asked a lot of  
8 these officers, did you have it on video camera? Do  
9 you have phones. Did you record it? No. They  
10 didn't do that. Not everything's got to be recorded  
11 for it to have happened, right?

12 We have to prove it beyond a reasonable doubt,  
13 meaning are you firmly convinced that what they said  
14 happened. And what you saw, did that really happen?  
15 That's all that means. Are you firmly convinced  
16 that what we are saying Mr. McGill did, what he did  
17 is what actually happened? And if you're firmly  
18 convinced of the testimony and the evidence, then  
19 you as the jury as the finder of facts have to find  
20 him guilty of trafficking methamphetamine.

21 So let's go through the evidence. Let's --  
22 let's examine what you've heard. Let's talk about  
23 what actually happened.

24 You heard testimony and the first person you  
25 heard it from was Stewart Ferguson. Stewart

1 Ferguson came up here -- or, actually, I'm sorry.

2 The first person you heard from was Angelina  
3 Williams. Angelina Williams lived at 260 Suttles  
4 Landing. It was her house where all this went down.  
5 And she testified that probation showed up to do a  
6 check. She admitted that she was on probation for  
7 PWID methamphetamine. They showed up. A few  
8 minutes later, agents with Abbeville County showed  
9 up. And she was cooperative. She took those agents  
10 to the bathroom and she had about -- she had about  
11 28 grams of methamphetamine.

12 And you heard all the officers say and  
13 Ms. Williams say that she was cooperative and she  
14 showed them exactly where it was. And you'll --  
15 you'll have these pictures. You can go back and  
16 look at all these pictures if you want to, but we're  
17 not really here about -- about Ms. Williams because  
18 Ms. Williams was cooperative.

19 Ms. Williams said, "Hey, I can call a guy."

20 They say, "Alright. Call somebody."

21 So Ms. Williams calls Mr. Ferguson. And  
22 Mr. Ferguson is kind of where things get interesting  
23 because Mr. Ferguson shows up. Law enforcement,  
24 they decide, hey, we're going to operate this  
25 buy-bust at this point. We're going to sit here and

1 we're going to wait. And when he shows up based on  
2 the conversation Ms. Williams had with Mr. Ferguson,  
3 he's going to bring some methamphetamine, and we're  
4 going intercept them. We're going to see what he  
5 has.

6 So at that point, Ms. Williams calls him.  
7 Mr. Ferguson shows up in that black truck. Law  
8 enforcement is in the ready position when he comes  
9 inside the house. You heard his testimony. He was  
10 staring down the barrel of a gun. He spreads out.  
11 He complies. They cuff him. They place him under  
12 arrest.

13 What does he have with him? No denying, he had  
14 about 223 grams of methamphetamine. And you saw the  
15 pictures. He had it in that bookbag. He had a  
16 bunch of meth. And he was upfront with law  
17 enforcement and said, "Yeah, this is my meth." This  
18 isn't looking good.

19 And Mr. Ferguson, like I said, he testified.  
20 after Ms. Williams and he told you exactly what  
21 happened. He said, "I knew that I was in trouble,  
22 so at that point I was trying to help out. I'm  
23 trying to help myself out, looking out for myself."  
24 So what does he do?

25 They say, "Hey, can you call anybody?"

1           Mr. Ferguson says, "Well, let me think about  
2           it." And after about 30 or 45 minutes, he says,  
3           "Hey, I'm going to make a phone call. I can call  
4           Kenny McGill."

5           At that point, you heard the tapes. Those  
6           phone calls were recorded, and the rest is history.

7           A few hours later, Mr. McGill shows up. He is  
8           bringing methamphetamine, and he brings with him  
9           about \$14,000 -- \$13,749.

10          Folks, the facts -- those are the facts of the  
11          case. And, quite frankly, they're undisputed. You  
12          as the jury, you guys get to drug -- to judge the  
13          credibility of the witnesses. And the judge is  
14          going to talk to you about that. And you as the  
15          jury can believe everything a witness says, you can  
16          believe parts of it, or you can believe none of it.  
17          That's your job. That's what you get to do as the  
18          finder of facts here.

19          And so when Mr. Ferguson sat up here on the  
20          stand, you as the jury get to judge him and what  
21          he's saying. Is what he is saying true? Is what he  
22          is saying accurate? Is what he is saying what  
23          actually happened? And I submit to you that what --  
24          what Mr. Ferguson had to say is completely accurate.

25          Because what did he do? He got up here and he

1 spilled his guts. Not only did he spill his guts to  
2 you guys, he spilled his guts to the DEA. Not  
3 Abbeville County Drug Enforcement Unit, but the DEA.  
4 The Feds. He saw that he was in a precarious  
5 position, in a difficult spot, and he -- and it came  
6 out, he's looking at 25 minimum.

7 So he said, "Let me talk." And he came in here  
8 and he talked to you guys. And he told -- he told  
9 you guys, "Yeah, there's this guy named McClure."

10 Well, first of all, his story is that he was  
11 just kind of a regular Joe really. He was in the  
12 military. Twenty-two years in the service. He goes  
13 over to Afghanistan. And he's there for eight  
14 months and his job is to basically look for bombs,  
15 when suicide bombers were rampant. And if you  
16 turned on the news back then, I mean, it seemed like  
17 once a month you were just hearing tragic stories.  
18 And that was his job.

19 And then he comes back here, and he's, you  
20 know, assimilating back into society. And he  
21 doesn't get hooked on meth at that point, but then  
22 his dad passed away. And he told y'all this. And  
23 when his dad died, he said he went off on the deep  
24 end. He starting using methamphetamine, and that  
25 was 2013. And he began using methamphetamine over

1 the course of several years.

2 And then when 2018 rolled around, he got hooked  
3 up with this guy named McClure. And McClure, as you  
4 heard, he's in jail right now. And for whatever  
5 reason, he's like, you know what? This seems like a  
6 good idea. I'm going to go to Atlanta with this  
7 McClure guy who's got pending trafficking charges  
8 and meet some Mexicans and get some meth.

9 Now, to most people in this room, that's a  
10 horrible idea. Right? I mean, that's just a  
11 terrible idea. But for whatever reason,  
12 Mr. Ferguson thought it was a good idea.

13 And so Mr. Ferguson started driving down there  
14 in April. McClure goes to jail in July. He goes  
15 down there for about a month and a half, and he gets  
16 caught. Mr. Ferguson is a horrible drug dealer.  
17 He's -- he's terrible. So he starts his solo trips  
18 in July, gets caught on August the 21st.

19 The guy's got a public disorderly conduct on  
20 his record, and he was in the military for 22 years.  
21 Just being an idiot. It is what it is. He was  
22 being an idiot, and he gets caught. So when he gets  
23 caught, he goes, you know what? He sat there in  
24 that house at 260 Suttles Landing and said, you know  
25 what? I got to do something about it. And what he

1        did about it, is he called the guy that he would go  
2        to Atlanta and he'd get 6 pounds of meth from. He'd  
3        get 6 pounds of meth from some Mexican in Atlanta,  
4        and he'd bring it back and he dropped off his --  
5        under his testimony, 4 pounds at McGill's house.

6                So as he is sitting in that house at 260  
7        Suttles Landing, he's going, goodness. I gotta get  
8        myself out of this. And so when law enforcement is  
9        talking to him and he is admitting what he's done,  
10       he goes, "Yeah, I got a guy. I got a -- I got a guy  
11       that I can call. Let me call Kenny McGill."

12               And law enforcement goes, "Kenny -- Kenny  
13       McGill? I don't know who that is, but sure. Why  
14       not, bud? Give him a call."

15               And so what happens when he calls Kenny McGill?

16               And, of course, when I try to utilize  
17       technology, it does not work for me. It always  
18       happens this way. That's why you got the trust --  
19       trusty projector over here.

20               Well, folks, I'll let you listen to these phone  
21       calls another time. If you want to listen to -- if  
22       you want to see any of the photographs, these  
23       photographs are going to go back to you.

24               (Playing tape.)

25               What's that phone call say? What's going on in

1       that phone call?

2               "Can I get four more?"

3               And what's the significance of that? Because  
4       you heard Ferguson's testimony. And you heard that  
5       he said that he was over at McGill's house when he  
6       got that call from Angelina Williams. Over there  
7       getting meth for somebody else, he gets a call from  
8       Ms. Williams. Ms. Williams is asking for 4 --  
9       4 ounces. So he's over at McGill's house.

10              And he says, "Well, while I'm over here picking  
11       up four for this other person, let me get four for  
12       Ms. Williams." And that's why he shows up with 8 --  
13       8 ounces, 220 grams.

14              And then in this phone call, he calls  
15       Mr. McGill again after he had just left his house  
16       and he says, "Hey, can I get four more?"

17              "Absolutely. You can get four more. No  
18       problem. Let me get a shower. I'm out here  
19       working, but I'll be right over."

20              "Alright then. Sounds good to me."

21              So then a few, maybe an hour, maybe 30,  
22       45 minutes the testimony, the second phone call.

23              (Playing tape.)

24              All right, folks. And, of course, that last  
25       part is about Abbeville County deputies that were

1 just patrolling that area. And then, obviously, law  
2 enforcement doing this buy-bust didn't want to spook  
3 Mr. McGill off. And they told Patrick Thompson,  
4 "Deputy, hey, you need to get your guys out of  
5 here."

6 But what does that phone call say? I mean, the  
7 same thing. "I'm -- I'm heading -- I'm -- I'm out  
8 of the shower. I'm about to head your way. Where  
9 do I go?"

10 Ferguson, you can tell he's nervous as all get  
11 out trying to give directions of these roads that he  
12 travels all the time. He can barely spit it out  
13 because he's setting up this thing -- setting up  
14 this deal.

15 But ultimately what happens? Mr. McGill shows  
16 up. And what does Mr. McGill bring with him? He  
17 shows up in this -- in this white truck. Shows up  
18 in that white truck. Law enforcement, they end up  
19 searching that vehicle with consent to search from  
20 Mr. McGill. And they find this black envelope here,  
21 State's 26, in the glove compartment of the  
22 passenger's side.

23 You heard testimony that it was electrical  
24 tape -- wrapped up electrical tape. And when they  
25 opened it up, the contents that they find was on

1 State's 30, all of this money and rubber bands.

2 And, of course, it was damp to the touch.

3 And they also find these bags of drugs that  
4 field tested positive for methamphetamine. This  
5 meth, State's 46, with the initials of K-6 as they  
6 wrote on the baggy to distinguish who it belonged to  
7 because of all the meth they had recovered. They  
8 wanted to keep everyone straight. Wanted to make  
9 sure they got this all squared away. And that's  
10 what they did.

11 They found all this meth. They found all this  
12 money in Mr. McGill's truck. And you heard what  
13 happened when -- when Mr. McGill came in. He comes  
14 inside the house when Ms. Williams calls out for him  
15 to. He comes inside and he drops the meth and keeps  
16 walking to Investigator Hines who is standing there  
17 at the doorway.

18 They, ultimately, have to take him down.  
19 They -- they take him down. Place him in cuffs.  
20 They arrest him, and they explain the situation to  
21 him. They Mirandized him as you heard.

22 And they said, "Mr. McGill, this is a buy-bust  
23 situation. We know why you're here. We saw you  
24 drop the bags of meth. Are you willing to talk to  
25 us."

1           And at first Mr. McGill said, "I don't know  
2           what you're talking about. I don't know what you're  
3           talking about."

4           But as law enforcement explained to him what  
5           was going on, and Sergeant Monts explained to him,  
6           "Sir, I was standing there when Mr. Ferguson made  
7           that phone call to you. Not only the first one, but  
8           the second one. And you're here, and we observed  
9           you drop that bag of meth out of your right hand and  
10          it's sitting right there. The game is up."

11          And at that point, Mr. McGill said, "Yeah,  
12          that's meth. Yeah, I got the money in the back of  
13          the truck -- or I got the money in the truck. I'm  
14          going to sign this consent to search. You guys can  
15          go -- go get it. It is what it is." And at that  
16          point, he was charged with trafficking in  
17          methamphetamine, 100 to 200 grams.

18          And a lot of what we did afterwards really,  
19          it's just kind of going by the rules of Court,  
20          chain-of-custody stuff. You heard all that. I'm  
21          sure it was very boring. Not really getting into  
22          the facts of the case, but you heard that they had a  
23          lot of paperwork to fill out. They've got incident  
24          reports to write. They've got to bag the evidence  
25          up. Put it in the proper baggy. Send off to SLED

1 so that law enforcement and SLED can conduct their  
2 testing according to the guidelines at SLED and the  
3 Abbeville County Police Department -- the Sheriff's  
4 Department has laid out.

5 So they left after dark. They were there for a  
6 little bit over five hours. Once they got  
7 everything completed and submitted into SLED -- they  
8 submitted into their evidence locker. It was after  
9 midnight once they got all the stuff completed. You  
10 can tell that the date it was sealed in this best  
11 pack, which is what they do for every piece of drug  
12 evidence that any department in the state gets, they  
13 put in this best pack over here and they package it  
14 up and send it off to SLED.

15 Josh Monts signed it. It was after midnight,  
16 so he put it on 8/22. The paperwork when he got the  
17 evidence, when he started to log, of course was on  
18 the 21st. All that is just standard protocol,  
19 chain-of-custody. We have to show to you guys and  
20 that we have shown to you guys over the course of  
21 this trial, but the facts are what the facts are,  
22 folks.

23 Mr. McGill showed up at 260 Suttles Landing  
24 with this methamphetamine. It was charged as a  
25 trafficking methamphetamine. Dropped it out of his

1 hand. Law enforcement observed him do that, and  
2 then he admitted, "Yeah, I got that. That's my  
3 meth. Oh, and by the way, the money's in the car."

4 That's the facts of the case, ladies and  
5 gentlemen. There's really no if, and, or buts about  
6 it. That's the -- those are the facts. They are --  
7 it is what it is. The rest is pretty much history.

8 So the credibility of the witnesses, what  
9 Ferguson said, what Ms. Williams said, obviously as  
10 I explained to you guys, that's your -- that's your  
11 call -- your judgment call. Is what they are saying  
12 happened true and accurate? The phone calls that  
13 Mr. Ferguson made, is that true and accurate? The  
14 facts bear it out.

15 Yes, Mr. Ferguson and Ms. Williams, they cut a  
16 deal. There's no denying that. They pled guilty to  
17 trafficking methamphetamine, a reduction in the  
18 charges from over 2 -- 200 to 400 for Mr. Ferguson,  
19 and I think Ms. Williams was right on the cut line  
20 between 28 and 100 or 10 to 28.

21 They pled for a reduction in their charges.  
22 They're looking at three to ten years of prison.  
23 They pled guilty Monday afternoon, and they will be  
24 sentenced the week of January the 6th. And part of  
25 the agreement was, you got to come to court and

1       you're going to testify as to what happened that day  
2       because they were involved. Absolutely they were  
3       involved.

4               And not only was Mr. Ferguson involved with  
5       setting up Mr. McGill, calling Mr. McGill and  
6       getting him to bring those drugs, he showed up here.  
7       He spilled his guts to you, and he spilled his guts  
8       to the DEA to assist them in something that  
9       Abbeville County had no control over, because these  
10      officers can't go to Anderson County and make  
11      arrests. They can't go to Georgia and make arrests.  
12      They can't go to Atlanta and chase Mexicans. They  
13      can't do that. Their jurisdiction ends in Abbeville  
14      County.

15             And so what they did with Mr. Ferguson is they  
16      said, "Alright, man. You're telling us this  
17      information. Pass you along to the DEA." And so he  
18      told them that information as well.

19             But guess what? Mr. Ferguson, as bad as a drug  
20      dealer he was, as minimal of a record that he had,  
21      public disorderly conduct, and for all the  
22      cooperation he did, he's still going to prison.  
23      Because at the end of the day, you can't show up in  
24      Abbeville County with trafficking -- with  
25      trafficking weight methamphetamine. It's just

1 not -- it's just not going to happen. You can't do  
2 that.

3 As I told you Monday afternoon, you guys have  
4 no friends to reward; you have no enemies to punish.  
5 You're not here to reward me. You're not here to  
6 reward law enforcement. You're not here to reward  
7 Mr. Epps or Mr. McGill. You got no enemies to  
8 punish either. You are an impartial jury, the  
9 finder of the facts to determine what happened on  
10 August the 21st of 2018.

11 As I told you, the judge, his job is to  
12 basically call balls and strikes and rule on legal  
13 arguments. And you heard some objections. The  
14 judge -- Judge Hocker ruled on everything as is.  
15 But at this point, it's in your hands. At this  
16 point in the trial, it is your hand. After you have  
17 heard what the witnesses have said, the evidence  
18 that's been presented, the phone calls, the  
19 pictures, the photographs, SLED analysts that came  
20 down and chemically analyzed that -- that  
21 methamphetamine, it's your job to figure out and to  
22 find what happened.

23 And when you go back there to that jury room,  
24 we're going to ask you to find Mr. McGill guilty of  
25 trafficking in methamphetamine, 100 to 200 grams,

1 because on August 21, 2018, that's what he did.  
2 That's what he was doing. He was trafficking in  
3 methamphetamine.

4 He showed up with money. He was selling. He  
5 was delivering. He was helping purchase and bring  
6 into this state. He was providing financial  
7 assistance. He was aiding Mr. Ferguson and bringing  
8 that in. And he was in actual possession of over 10  
9 grams. He was in actual possession of 111 grams.  
10 He was guilty of trafficking methamphetamine.  
11 Please find him guilty of trafficking in  
12 methamphetamine. Thank you for your time.

13 THE COURT: All right, Solicitor.  
14 Mr. Epps, are you ready, sir?

15 MR. EPPS: Yes, sir, Your Honor. May it please  
16 the Court?

17 THE COURT: Yes, sir.

18 MR. EPPS: Opposing counsel?

19 Ladies and gentlemen of the jury, I want to  
20 thank you for your time for these last few days and  
21 tell you none of this is good. None of this is  
22 good, but the question is: Did Mr. -- the Solicitor  
23 told you birds of a feather flock together. Two  
24 drug dealers, Angela Williams and Stewart Ferguson,  
25 but did Mr. Kenny McGill, the defendant, have the

1 intent, the criminal intent to be a drug trafficker  
2 when he was -- when he went to Angela Williams'  
3 house in Abbeville, South Carolina, on August 21st  
4 of 2018.

5 The fact of the matter is, the only reason he  
6 went -- he came to Abbeville County was because of a  
7 law enforcement operation that got Stewart Ferguson  
8 to call Mr. McGill, the defendant, to come to  
9 Abbeville. Absent that, Mr. McGill never would've  
10 come to Abbeville County ever, and there's no  
11 evidence to say that he would.

12 In fact, the majority of this case is about  
13 Stewart Ferguson and his drug dealing and his  
14 activities. And if the State wants to bank their  
15 case or bank a lot on their witness of Stewart  
16 Ferguson, then God bless them, because that man sat  
17 on that stand with a -- with a motive to lie. A  
18 motive to be biased because -- and he sat there in a  
19 motive to get himself out of a 25-year mandatory  
20 minimum sentence.

21 And he admitted, "I'm going to do what it takes  
22 to help myself. I'm going to do what it takes to  
23 save myself."

24 You know, all this started -- and we can talk  
25 about what happened. All this started because you

1 got Angela Williams, whose on probation for  
2 distribution of methamphetamine when she's got a --  
3 a -- she continued to traffic. And she continued to  
4 use and traffic in methamphetamine with her minor  
5 child in the home. Okay. And there's a warrant for  
6 her arrest in July of 2018, a month before this  
7 happened.

8 So what happens? And I can -- I will submit to  
9 you, even -- even some of the actions of law  
10 enforcement is -- is puzzling and troubling in this  
11 case. So they go -- so Probation Officer Sorrow  
12 decides, hey, I'm going to go make a well-visit to  
13 Angela Williams, knowing they got a -- there's a --  
14 there's a pending trafficking meth --  
15 methamphetamine charge.

16 Abbeville County narcotics unit sits up at a  
17 church prior, knowing they don't have to get a  
18 search warrant to go in because the probation  
19 officer can just go in. So they get the call and  
20 they go in. Then they find -- then they find meth  
21 or she -- Angela Williams takes them to -- takes the  
22 officer to the methamphetamine. It's in her back  
23 bathroom. That's basically in a Betty Boop zip up  
24 bag that's not secured, that's not well hidden. And  
25 come to find out, she's got a 13-year-old minor

1 child living in the home, that comes home during  
2 that afternoon on the school bus.

3 And while they may call her sister to take care  
4 of that child because they're in the middle of an  
5 ongoing operation, they don't call DSS. Nobody  
6 calls the Department of Social Services.

7 And Investigator Hines says, well, and they  
8 didn't even take her to jail that day. They let her  
9 turn herself in a month later because she was in  
10 good standing with probation and she cooperated. I  
11 don't believe good standing with probation would  
12 include being on probation for distribution of meth  
13 for being -- having a pending charge of trafficking  
14 methamphetamine, and then getting another  
15 trafficking charge of methamphetamine on August 21st  
16 of 2018. Just let her -- let her -- let her stay  
17 out. Let her stay out.

18 She didn't know -- she didn't know Mr. McGill  
19 at all. Never heard of him. Never knew -- never  
20 came to his -- her -- her house. No evidence at all  
21 that Mr. McGill had been in Abbeville County before  
22 August 21st of 2018, at all. At all. She didn't  
23 even know him. She -- her dealer -- her drug dealer  
24 was Stewart Ferguson.

25 But Angela Williams had a motive to lie as

1 well. Angela Williams had a motive to be biased  
2 because she was looking at two trafficking charges,  
3 second offense, for the two she had from July 2018  
4 and in August of 2018. So what does she do a few  
5 weeks before this trial? The offer from the State  
6 for her to cooperate was ten years, ten years.  
7 Okay.

8 And then it became right before trial, they  
9 decide to let her plead to one count of trafficking,  
10 10 to 28 grams, for a three to ten-year sentence and  
11 deferred sentencing to July -- I mean, January of  
12 2020. So she's still out walking around. Who knows  
13 if she's got her kid. I'm assuming she's still got  
14 her child, and not a word -- nobody decided they  
15 were going to call DSS. No DSS involvement. That's  
16 troubling. That is absolutely troubling.

17 Now, the worst part is Stewart Ferguson, and  
18 the majority of this trial is about Stewart  
19 Ferguson. Now, I know what happens -- what happened  
20 on -- on -- when Mr. McGill came to the residence,  
21 Angela Williams' residence. But the fact of the  
22 matter is, law enforcement set up a buy-bust. Law  
23 enforcement organized and set up a buy-bust, which  
24 is an operation. And they testified. And they used  
25 Angela Williams' house as a base of operations to

1       where they coordinated. They set up and they set  
2       this whole thing up.

3               And Angela Williams called Stewart Ferguson,  
4       and that was recorded under the watchful eye of law  
5       enforcement, at the behest of law enforcement. She  
6       wouldn't have done it had law enforcement not been  
7       there. She wouldn't have brought Stewart Ferguson's  
8       name up had law enforcement not been there. She  
9       wouldn't have made that phone call. Okay. And --  
10      but the fact of the matter is, Stewart Ferguson made  
11      regular trips to her -- her place -- her -- her  
12      home, because he was one of her -- of his customers.

13             Now, they bring up Kenny McGill and he got  
14      ounces and this and all, but really other than --  
15      other than what's coming out of the mouth of Stewart  
16      Ferguson, there's no evidence that Kenny McGill had  
17      any dealings with -- with -- with anybody else  
18      anywhere.

19             Again, nobody knew -- nobody knew McGill.  
20      Abbeville County Sheriff's Department narcotics unit  
21      said, "We didn't know him. We never heard of him.  
22      We do drug interdiction -- drug -- drug  
23      interdictions with other counties. His name has  
24      never come up. His name has never been a target of  
25      investigation by us or we heard this anywhere else.

1           So did Jarvis Reader, the DEA. Never --  
2           Mr. McGill's name has never come up. He's not been  
3           a target of investigation or any -- or -- or -- or  
4           any -- come across anybody's -- anybody's radar in a  
5           narcotics unit.

6           And, again, Stewart Ferguson had a motive to  
7           lie. I mean, he just plain did. He walked in -- he  
8           walked in. He is the weight man. He walked in that  
9           house with over 200 grams of methamphetamine.  
10          200 grams of methamphetamine, looking at a 25-year  
11          mandatory minimum sentence. And before we get into  
12          all his other stuff going on, he cuts a deal to  
13          plead to trafficking, 10 to 28 grams, with a range  
14          of three to -- three to ten years, a substantial and  
15          majority cut of his 25-year sentence.

16          And, oh, by the way, he's still using. By the  
17          way, he's still using meth. How does that happen?  
18          How does that sit? Continuing to do meth. And then  
19          the State wants to put all -- they want to hold him  
20          up and say he's reliable. He's anything but  
21          reliable. Oh, he was in the military. He was in  
22          Afgan -- I wouldn't want him watching my back. I  
23          was in the military. We talked about Army values.  
24          Using methamphetamine while you're in the Army,  
25          that's some real good values.

1           And then he starts dealing. Now, you don't  
2           hear, even when he's dealing, his name, if any,  
3           until the -- really don't come up, except what he  
4           says when he came here to save his -- when he came  
5           here to save himself. When he came here to save  
6           himself.

7           He talked about Head. Head was his partner,  
8           not Mr. McGill. Head was Stewart Ferguson's  
9           partner. Stewart Ferguson's partner was  
10          incarcerated in the state of Georgia for running a  
11          drug operation from penitentiary that he don't know  
12          their name. And that's -- he sat there and said,  
13          "Well, I don't know what jail this is." Okay. Come  
14          on. This is your partner who you're dividing your  
15          drug proceeds with, a guy named Head -- didn't know  
16          his name -- that's incarcerated in the state of  
17          Georgia.

18          So we got an individual that's in a  
19          penitentiary running a drug organization with  
20          somebody on the outside, and Stewart Ferguson pays  
21          his half of the money to his sister who somehow gets  
22          it to him in the penitentiary. Absolutely unheard  
23          of. Absolutely just -- that is -- that is -- that  
24          is beyond repair, but that's what you heard.

25          Not about Kenny McGill doing whatever with

1 drugs he got for Ferguson. There's no evidence  
2 of what -- you got Ferguson dealing with a whole  
3 bunch of other people. Not only is he dealing with  
4 Head and who's in prison, but Head in prison would  
5 coordinate from prison Stewart Ferguson to meet  
6 Mexicans in Atlanta, Georgia, to get 6 to 10 pounds  
7 of methamphetamine.

8 Now, guess what? He don't know the names of  
9 these Mexicans, but he's in with them well and good  
10 enough to have a rapport and build their trust up  
11 that they're willing to take his money and deal with  
12 him and give him 6 to 10 pounds of methamphetamine,  
13 but he don't know what their names are? Absolutely  
14 unheard of.

15 And so he does that, and that's all coordinated  
16 through Head in a penitentiary in the state of  
17 Georgia. So he doesn't tell -- he doesn't tell  
18 Abbeville County, well, I'm going to call -- look  
19 what I got here. I got some -- I got some --  
20 some -- some -- some Mexicans in Atlanta that I deal  
21 with. I got Head's family, his sister, who I give  
22 the proceeds to her to give to her brother in the  
23 penitentiary. You got Hillbilly and Josh that he  
24 deals with and deals to.

25 No evidence of Mr. McGill deals with Head or

1 Mr. McGill deals with Hillbilly and Josh or Wendy or  
2 Angel. Again, Angela Williams said, "I have -- I  
3 didn't know Kenny McGill -- Kenneth McGill."

4 Vedera. Vedera. Stewart Ferguson's giving  
5 Vedera -- making house calls to give her drugs.

6 Wolf Man. Wolf Man's one of Stewart Ferguson's  
7 customers.

8 David.

9 Austin.

10 And these are just -- and this is just -- and  
11 then he's got a phone that does a phone dump. Then  
12 he's got a phone that gets confiscated.

13 Now mind you, now after this -- after this drug  
14 buy-bust was completed, which is a five-hour  
15 operation completely controlled, completely  
16 organized and completely operated by the Anderson  
17 County Sheriff's Department, completely. Nothing  
18 happened in that house after -- after -- after the  
19 sheriff's department went in that house that wasn't  
20 controlled or monitored by law enforcement. What  
21 happened based on -- on -- on the operation that was  
22 ongoing was set up by law enforcement. Okay.

23 And, again, Stewart -- Stewart Ferguson is  
24 coming to that house. Stewart Ferguson -- Angela  
25 Williams is one of his customers. He's coming to

1       that house. Again, Mr. McGill never been to that  
2       house. And he sat there, thought about it, thought  
3       about, thought about it, thought about it. Didn't  
4       want to give up his good -- his people, his good  
5       guy, you know, his partner, the guys he deals with  
6       down in Atlanta, so he talks -- he says, "Well, I'll  
7       call Kenny McGill."

8               Did he have the intent to be a drug trafficker?  
9       Was he just going and just doing what Ferguson -- or  
10      just coming to meet Ferguson because that's  
11      Ferguson's? Everything you heard dwelt with  
12      Ferguson's organization. Ferguson doing what he was  
13      doing. And nobody mentioned nothing about Kenneth  
14      McGill, that he's some big time drug trafficker or  
15      he's making rides to Atlanta. Ferguson even said  
16      he's never gone to Atlanta.

17             And the fact that Ferguson is a -- is a bad  
18      drug dealer is an understatement. He gets involved  
19      with Brian McClure who's in prison. And then when  
20      he gets involved with Brian McClure, who's a drug  
21      trafficker, he decide -- he knows that Brian McClure  
22      has got a pending trafficking methamphetamine  
23      charge. How smart is that?

24             Then you start making trips. Ferguson, not  
25      McGill, to Atlanta, to -- through Head and -- and

1 the Mexicans in Atlanta to get 6 to 10 pounds of  
2 meth a week. And coming back and they're bringing  
3 it through Abbeville County. They're coming to  
4 Abbeville County, not McGill, until that one day,  
5 not McGill, but Ferguson.

6 Then after -- after McClure -- Brian McClure  
7 goes to jail, then Ferguson somehow has got the  
8 trust of McClure to become his head of operation.  
9 He's the head. He's running McClure's operation.  
10 He's dealing with, again, Head in a Georgia  
11 penitentiary to deal and traffic drugs.

12 And he's sitting there. He's still walking  
13 around, and he goes from a 25-year mandatory minimum  
14 sentence to a 3 to 10 and is still using  
15 methamphetamine. And he's sitting up on that stand  
16 and the State wants you to -- to -- to say he's  
17 reliable, that he can be trusted -- trustworthy?  
18 He's got the biggest motive to lie in this whole  
19 building. And he got a substantial cut -- a -- a  
20 substantial cut.

21 And the fact that what is even more troubling,  
22 is even after this operation on August 21st of 2018,  
23 you know, they confiscated Ferguson's phone, not  
24 Mr. McGill's phone, not his phone. They called  
25 Anderson County to do -- to come up and talk to

1 Mr. McGill because Mr. McGill told him, "Yeah, I got  
2 some -- I got some meth and I got some guns and some  
3 money at my house in Anderson that I live with my  
4 elderly mother and I deal out of my house in  
5 Anderson." Okay.

6 And then Anderson County comes over. Then  
7 Anderson County and Abbeville County both go  
8 together and execute a search warrant on Stewart  
9 Ferguson's home in Anderson County. And, oh, by the  
10 way, Stewart Ferguson's brother who got a contact in  
11 the Anderson County Solicitor's Office decides he's  
12 going to hide the methamphetamine in that house and  
13 put it in a hole out in the woods.

14 They come in. They find the meth. They find  
15 the weapons, three of which are stolen, Brian  
16 McClure's weapons that are stolen and \$5700 in  
17 currency and nothing happens. No arrest. No  
18 nothing. Nothing happens.

19 Stewart Ferguson, his phone is taken by Jarvis  
20 Reader who's a task -- at the DEA task force and  
21 they provide drug interdiction international -- not  
22 international -- well, it can be international or  
23 throughout the United States. The fact of the  
24 matter is -- and then they -- they still don't do  
25 anything. They don't know. Nobody seems to know

1        what happened -- what -- what's -- what -- you know,  
2        they call him to get him to do a proffer and set  
3        somebody up in a Federal drug case and see where his  
4        connections are with Atlanta.

5                None of that was done with Kenneth McGill.  
6        None of it. They gave his truck back. Told him to  
7        cooperate. He signed the money. Gave it to law  
8        enforcement, and they gave his truck back. Nobody  
9        came to look at Kenneth McGill's house or camper.  
10       Sixty-eight years old. Nobody came. Nobody took  
11       his phone. Law enforcement didn't take his phone.  
12       Law enforcement didn't get Anderson County up there  
13       to do a drug -- to do -- get to talk to Mr. McGill  
14       or do a search warrant to search Mr. McGill's  
15       residence. None of that happened.

16               That's Ferguson, Stewart Ferguson, and that's  
17       their reliable witness? That's Ferguson. Put all  
18       their marbles on that guy? Who, again, has got the  
19       biggest motive to lie in this building, as well as  
20       Angela Williams. It's troubling. It is -- it is  
21       troubling.

22               DSS wasn't called. Somebody doesn't get  
23       arrested. People don't seem to care what happens to  
24       anybody in Anderson County or otherwise in the state  
25       of Georgia. Everybody has a -- law enforcement has

1 a -- has a duty to protect and serve. But what I  
2 heard in this courtroom was, "It's not out of my  
3 jurisdiction. My jurisdiction is Abbeville County."  
4 Well, I disagree. I think to protect and serve  
5 applies any and everywhere.

6 Ladies and gentlemen, this is a -- this is --  
7 this is -- this is -- it's beyond bad. This is all  
8 bad. It is bad, but did Kenneth McGill, was he  
9 actually a drug trafficker? Y'all determine the  
10 credibility of the witnesses from the stand. Y'all  
11 determine the credibility of the evidence that's  
12 presented that's sent back to you. Is he a drug  
13 trafficker -- a drug trafficker? Did he have the  
14 intent to be a drug trafficker, or did he come over  
15 there at -- because Stewart Ferguson called him and  
16 said, "Come here. Come here." Otherwise, he would  
17 never have come to Abbeville. Never have been at  
18 Angela Williams' house.

19 But don't -- don't -- don't they -- they tell  
20 you that, hey, this is -- this is -- they made the  
21 decision to do this. No. They didn't make the  
22 decision to do this. They gave the name and law  
23 enforcement orchestrated the call and made that call  
24 happen. And they're doing their best at the behest  
25 of law enforcement. They're making it happen. It

1       wasn't going to happen any other way. It wasn't  
2       going to happen any other way. So the question --  
3       and that's the credibility. Y'all are the finders  
4       of fact. Y'all are the finders of fact.

5             And I'll submit, you know, you've got some  
6       issues, I believe, with the -- with the actual  
7       chain-of-custody. I mean, you've got -- the  
8       Abbeville chain-of-custody. I mean, it's -- it  
9       was -- the evidence was, I guess, taken from the  
10      residence in -- in a paper bag. The Abbeville  
11      chain-of-custody says it was signed into evidence on  
12      August 21, 2018, but it said it was sealed up in a  
13      bag August 22, 2018.

14            Again, DSS wasn't called and you got a house  
15      full of methamphetamine with a mother that's got on  
16      probation for meth in another charge. Nobody called  
17      DSS.

18            Stewart Ferguson gets investigated for it  
19      fully. Nobody gets arrested. And then they cut a  
20      deal. They cut a deal to save themselves. And  
21      Angela Williams said she's going to do what she's  
22      got to do to -- to -- to save herself, and Stuart  
23      Ferguson did too.

24            It's almost going. And then when he said he  
25      thought about it, when law enforcement asked him,

1 "Who do you want to call?" He thought about it,  
2 thought about it, thought about it. He probably  
3 went through all his people, his partners, his  
4 customers, and said, "Well, I'll just call Kenny  
5 McGill, set him up," and apologized to him.

6 But does that mean that he is a drug trafficker  
7 or a drug dealer? Did he have the intent to traffic  
8 methamphetamine when he showed up at a residence?  
9 Again, he never would have showed up at that  
10 residence but for that phone call, that was, quite  
11 frankly, orchestrated by the Abbeville County  
12 Sheriff's Department.

13 So in closing, ladies and gentlemen of the  
14 jury, in closing, I want y'all to look at that.  
15 It's a -- it is a -- it is -- it is a lot of things,  
16 the majority of things that were testified to and --  
17 and -- and put in this trial is not good. It's  
18 troubling, but that's why we've got you the jury to  
19 be finders of fact.

20 Our country is, you know, it's not perfect, but  
21 everybody gets a shot, a fair trial in front of  
22 their peers on the jury. Just because you're  
23 charged with a crime don't necessarily mean you're  
24 guilty of that crime. In other countries and other  
25 places, you may get, you know, no trial, no jury,

1 and the punishment is severe. That's not what we  
2 got here.

3 So I respectfully, respectfully ask on behalf  
4 of my client and to thoughtfully consider  
5 everything, everything that you heard from the  
6 witness stand, everything, and careful delib -- and  
7 have careful deliberations and think whether or not  
8 there was truly an -- an attempt that Mr. -- that  
9 Mr. McGill or the defendant, Kenneth McGill,  
10 intended to traffic or be a drug dealer trafficking  
11 in methamphetamine. And thank you. Thank you.  
12 Thank you, ladies and gentlemen.

13 I would ask and finally, finally, I would ask  
14 if you do not find intent, I'd ask you to find the  
15 defendant not guilty respectfully.

16 THE COURT: All right. Madam forelady, let's  
17 take a short break and then we'll bring you back out  
18 and I will give you the final charge on the law.  
19 Don't begin your deliberations yet.

20 (At 3:08 p.m., jury left the courtroom.)

21 THE COURT: All right. We'll take a short  
22 break. Let me see the lawyers just a second back  
23 here.

24 (From 3:08 to 3:21 p.m., recess.)

25 THE COURT: I mentioned to the lawyers in

1 chambers just a moment ago that I'm going to add to  
2 the charge. This is all related to if an Allen  
3 charge is needed. I'm going to tell the jury  
4 forelady, if at any time there exists an actual  
5 split or division in your vote, the Court does not  
6 want to receive that information as to what the  
7 split or division actually is. That's not in the  
8 written charge. I'll just give that to them in  
9 addition. Okay?

10 MR. BLACK: Yes, sir.

11 THE COURT: Let's bring the -- bring the jury  
12 out, please.

13 THE BAILIFF: (Complying.)

14 (At 3:22 p.m., jury entered the courtroom.)

15 THE COURT: Let the record reflect the jury is  
16 back in.

17 Madam forelady, members of the jury, I now will  
18 charge you the law that is applicable to this case,  
19 and you must consider the charge as a whole and not  
20 focus on some portions to the exclusion of other  
21 portions.

22 The indictment charges the defendant with  
23 trafficking in methamphetamine, 100 grams or more  
24 but less than 200 grams. I remind you, the fact  
25 that the defendant was arrested, charged, and

1 indicted in this case is not evidence in this case  
2 and cannot be considered by you as evidence of guilt  
3 in this case, nor does it create any presumption or  
4 inference of guilt. This document is simply the  
5 formal written instrument which contains the charge  
6 made against the defendant. It is the formal  
7 document by which this case is brought into this  
8 court.

9 Now, the defendant has pled not guilty to this  
10 indictment, and that plea puts the burden on the  
11 State to prove the defendant guilty. A person  
12 charged with committing a criminal offense in South  
13 Carolina is never required to prove himself  
14 innocent. I charge you that it is an important rule  
15 of the law, a defendant in a criminal trial, no  
16 matter what the seriousness of the charge may be,  
17 will always be presumed to be innocent of the crime  
18 for which the indictment was issued, unless guilt  
19 has been proven by evidence satisfying you of that  
20 guilt beyond a reasonable doubt.

21 This presumption of innocence does not end when  
22 you begin your deliberations, but it accompanies the  
23 defendant throughout the trial, unless you reach a  
24 verdict of guilt based on evidence satisfying you of  
25 that guilt beyond a reasonable doubt.

1           This presumption of innocence is like a robe of  
2           righteousness placed about the shoulders of the  
3           defendant, which remains with the defendant unless  
4           it has been stripped from the defendant by evidence  
5           satisfying you of the defendant's guilt beyond a  
6           reasonable doubt.

7           Now, this presumption of innocence is not mere  
8           legal theory. It's not just a legal phrase. It is  
9           a substantial right to which every defendant is  
10          entitled, unless you the jury are satisfied from the  
11          evidence of the defendant's guilt beyond a  
12          reasonable doubt.

13          Now, concerning reasonable doubt, some of you  
14          may have served previously in civil cases where you  
15          were told by the Court that it is only necessary to  
16          prove that a fact is more likely true than not true,  
17          such as by the greater weight or the preponderance  
18          of the evidence.

19          In criminal cases, the State's proof must be  
20          more powerful than that. It must be beyond a  
21          reasonable doubt. Proof beyond a reasonable doubt  
22          is proof that leaves you firmly convinced of the  
23          defendant's guilt.

24          Now, there are very few things in this world  
25          that we know with absolute certainty. And in

1 criminal cases, the laws does not require proof that  
2 overcomes every possible doubt. If based on your  
3 consideration of evidence you are firmly convinced  
4 that the defendant is guilty of the crime charged,  
5 you must find the defendant guilty.

6 If on the other hand you think there's a real  
7 possibility that the defendant is not guilty, you  
8 must give the defendant the benefit of the doubt and  
9 find him not guilty.

10 Now, ladies and gentlemen, I remind you that  
11 during this trial, you and I have had certain duties  
12 to perform. As the trial judge, it has been my  
13 responsibility to preside over the trial of this  
14 case, and also have had the duty to rule on the  
15 admissibility of the evidence offered during this  
16 trial.

17 You are to consider only the competent evidence  
18 before you. If there was any testimony ordered  
19 stricken from the record in this case during this  
20 trial, I don't believe that there was, but if there  
21 was, you must disregard that testimony. You are to  
22 consider only the testimony which has been presented  
23 from the witness stand, any exhibits which have been  
24 made a part of the record in this case, and any  
25 stipulations of counsel.

1           I have the additional duty to charge you the  
2       law applicable to this case. As the presiding  
3       judge, I'm the sole judge of the law in this case.  
4       And it is your duty as jurors to accept and apply  
5       the law as I now state it to you.

6           If you already had any idea as to what the law  
7       is or what the law ought to be, and it does not  
8       agree with what I now tell you the law is, you must  
9       abandon your idea because you are sworn to accept  
10      the law and apply the law exactly as I state it to  
11      you.

12          In every case tried in this court before a  
13      jury, the jury becomes the sole and exclusive judge  
14      of the facts of the case. A trial judge cannot  
15      intimate, state, comment on, or make any statement  
16      to a trial jury about the facts of the case.

17          Since you the jury are the sole judge of the  
18      facts of this case, you are not to infer from what I  
19      have said during the progress of this trial in  
20      ruling upon the admissibility of the evidence or  
21      otherwise or anything that I say now during the  
22      course of this instruction to you that I have any  
23      opinion about the facts in this case. The law does  
24      not allow me to have an opinion about the facts in  
25      this case. This is a matter solely for you the jury

1 to determine. As jurors, it is your duty to  
2 determine the effect, value, weight of the evidence  
3 presented during this trial.

4 Now, ladies and gentlemen, there are two types  
5 of evidence which are generally presented during a  
6 trial, that being direct evidence and circumstantial  
7 evidence.

8 Direct evidence directly proves the existence  
9 of a fact and does not require deduction.

10 Circumstantial evidence is proof of a chain of  
11 facts and circumstances indicating the existence of  
12 a fact. Crimes may be proven by circumstantial  
13 evidence. The law makes no distinction between the  
14 weight or value to be given to either direct or  
15 circumstantial evidence. However, to the extent the  
16 State relies on circumstantial evidence, all of the  
17 circumstances must be consistent with each other and  
18 when taken together point conclusively to the guilt  
19 of the accused beyond a reasonable doubt. If these  
20 circumstances merely portray the defendant's  
21 behavior as suspicious, the proof has failed.

22 The State, once again, has the burden of  
23 proving the defendant guilty beyond a reasonable  
24 doubt. This burden rests with the State regardless  
25 of whether the State relies on direct evidence,

1 circumstantial evidence, or some combination of the  
2 two.

3 Necessarily, you must determine the credibility  
4 of witnesses who have testified in this case and the  
5 evidence presented. Credibility simply means  
6 believability. If -- it becomes your duty as jurors  
7 to analyze and to evaluate the witnesses and the  
8 evidence and determine the credibility of the  
9 witnesses and the evidence.

10 In determining the credibility of witnesses who  
11 have testified in this case, you may believe one  
12 witness over several witnesses or several witnesses  
13 over one witness. You may believe a part of the  
14 testimony of a witness and reject the remaining part  
15 of the testimony of that same witness. You may  
16 believe the testimony of a witness in its entirety  
17 or reject the testimony of a witness in its  
18 entirety. You may consider whether any witness has  
19 exhibited to you any interest, bias, or prejudice or  
20 other motive in this case. You may also consider  
21 the appearance and manner of a witness while on the  
22 witness stand.

23 Now, a statement of the defendant has alleged  
24 to have been made, and it has been admitted into  
25 evidence in this case. While the Court has

1 determined that the statement is admissible, I  
2 instruct you that you make the ultimate decision  
3 whether or not the defendant made the statement.

4 If the defendant did make the statement, you  
5 must determine whether the statement was made by the  
6 defendant voluntarily and of his own freewill. This  
7 means that the statement was not caused by pressure,  
8 force, fear, threats, coercion, or intimidation, or  
9 by hope or a promise of leniency, or a reward of any  
10 kind.

11 In determining whether the defendant's  
12 statement was voluntary, you should consider both  
13 the characteristics of the defendant and the details  
14 of the questioning. Some of the factors that you  
15 may consider are:

16 Age of the defendant; the defendant's education  
17 or lack of education; the defendant's mental ability  
18 or capacity; the defendant's IQ or intelligence; the  
19 defendant's background and environment; the place  
20 and length of detention; the nature of the  
21 questioning; and the advice or lack thereof to the  
22 defendant of his Constitutional rights including,  
23 but not limited to, the right to remain silent, that  
24 any statement could be used against him in a court  
25 of law, the right to have a lawyer present, that if

1 he could not afford a lawyer, a lawyer would be  
2 appointed to represent him without any cost, and  
3 that he could stop making a statement at any time.

4 You must carefully consider all of the  
5 surrounding circumstances before you give any weight  
6 to an alleged statement. The State has the burden  
7 of proving beyond a reasonable doubt that the  
8 alleged statement was voluntarily made. If you  
9 determine it was, you may give the statement any  
10 further consideration that you deem proper. You  
11 must decide what weight, if any, should be given to  
12 the statement. If you determine the alleged  
13 statement was not the free and voluntary statement  
14 of the defendant, you should not consider the  
15 statement at all.

16 Now, madam forelady and ladies and gentlemen of  
17 the jury, I instruct you and emphasize the fact that  
18 the defendant did not testify is not a factor to be  
19 considered by you in any way in your deliberations  
20 and in your consideration on the question of the  
21 guilt or the innocence of the defendant. It must  
22 not be not considered by you in any manner  
23 whatsoever.

24 A defendant has the Constitutional right to  
25 remain silent, and the assertion of this right must

1 not be considered by you in your deliberations. I  
2 repeat, under your oath, you are to draw no  
3 conclusion whatsoever from the fact that the  
4 defendant in this case did not testify. The fact  
5 that this defendant did not testify should not even  
6 be discussed in the jury room. The burden of proof,  
7 as I have stated to you, is on the State. The  
8 defendant is not required to prove his innocence.  
9 The burden of proof remains on the State to prove  
10 guilt beyond a reasonable doubt.

11 Now, in order to establish criminal liability,  
12 criminal intent is required. For example, the  
13 mental state required to be proven by the State for  
14 a particular crime might be purpose, intent,  
15 knowledge, recklessness, or criminal negligence.  
16 Criminal intent must be proven by the State beyond a  
17 reasonable doubt. Criminal intent is always a  
18 matter that must be determined by the jury from the  
19 circumstances surrounding the situation.

20 Now, there's no way to prove intent to a  
21 mathematical certainty. There's no way medical  
22 science can dissect a person's brain and determine  
23 what the person had in mind. So the law says that  
24 criminal intent may be inferred from the  
25 circumstances shown to have existed. This is how

1       you make a determination of whether or not the  
2       element requiring intent was present. It's not  
3       necessary to establish intent by direct and positive  
4       evidence, but intent may be established by inference  
5       in the same way as any other fact by taking into  
6       consideration the acts of the parties and all the  
7       facts and circumstances of the case.

8       Criminal intent is a mental state, a conscious  
9       wrongdoing. It's up to you to determine what the  
10      defendant intended to do based on the circumstances  
11      shown to have existed.

12      Now, let me explain to you this charge. The  
13      defendant is charged with trafficking in  
14      methamphetamine, 100 grams or more but less than 200  
15      grams. The State must prove beyond -- prove beyond  
16      a reasonable doubt the defendant knowingly sold,  
17      manufactured, delivered, purchased, brought into the  
18      State, provided financial assistance or otherwise  
19      aided, abetted, attempted, or conspired to sell,  
20      manufacture, deliver, purchase, or bring into this  
21      state, or was knowingly in actual or constructive  
22      possession, or knowingly attempted to become in  
23      actual or constructive possession of  
24      methamphetamine. The State must also prove beyond a  
25      reasonable doubt that the amount of methamphetamine

1 was 100 grams or -- 100 grams or more but less than  
2 200 grams.

3 Now, madam forelady, there are two -- ladies  
4 and gentlemen of the jury, there are two possible  
5 verdicts in this case, either guilty or not guilty.  
6 There's no significance in me saying guilty first  
7 and then not guilty. No significance in that, nor  
8 is there any significance how the order of those two  
9 on the verdict form, which I'm going to show you in  
10 just a minute.

11 Ladies and gentlemen, your verdict in this case  
12 must be unanimous as to this one charge, unanimous  
13 among the 12 of you. Madam forelady, in addition,  
14 if at any time there exists an actual split or  
15 division in your vote, the Court does not want to  
16 receive that information as to what the split or  
17 division actually is.

18 Now, what I'm going to do, I'm going to come  
19 down and I think maybe one of the lawyers already  
20 mentioned this. I give a copy of this jury charge  
21 to the jury. You can use it in whatever manner, if  
22 any, that you feel like is necessary. I realize  
23 that that was a lot that I just read to you, so  
24 that's why I provide a copy of the jury charge.

25 I'm going to come down and show you, madam

1 forelady, the verdict form. It's very easy to  
2 complete.

3 This is just the name of the case, *State of*  
4 *South Carolina v. Kenneth Earl McGill*. It has the  
5 indictment number. And the one question you're to  
6 answer as to Indictment No. 19-GS-01-0549, which  
7 charged the defendant with trafficking in  
8 methamphetamine, 100 grams or more but less than  
9 200 grams.

10 We the jury find the defendant, and you will  
11 put your initials on what your verdict is, either  
12 guilty or not guilty. Once again, there's no  
13 significance in the order that those are listed.  
14 You will sign it and date it.

15 Now, what I want you to do is, I want all 14 of  
16 you to go back to the jury room. Do not begin your  
17 deliberations. I just need to talk with the lawyers  
18 one last time to make sure that I don't need to make  
19 any additions or changes to the jury charge. I  
20 don't anticipate that happening, but I need to make  
21 sure.

22 So when the exhibits, verdict form, and the  
23 charge is brought into the jury room, that's your  
24 cue for two things to happen. I'll need the two  
25 alternates to exit the jury room, come back into the

1 courtroom. And then the second thing, you can begin  
2 your deliberations. Once you have reached a  
3 unanimous verdict, you'll just knock on the door and  
4 let the bailiff know that you have and we'll receive  
5 your verdict.

6 Okay. Don't start deliberations yet. All 14  
7 of you go back to the jury room.

8 (At 3:36 p.m., jury left the courtroom.)

9 THE COURT: Other than what has been noted on  
10 the record previously, does the State have any  
11 exceptions or objections to the Court's charge?

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

13 THE COURT: And the defense?

14 MR. EPPS: No, sir, Your Honor. Just  
15 affirming -- just reaffirming my objections based on  
16 the duplicitous indictment in the trafficking  
17 charge.

18 THE COURT: So noted. Okay. We're going off  
19 the record. Just make sure we got all the exhibits.

20 Oh the -- I need to tell them I'm not going to  
21 let the drugs go back in, but if they want to see  
22 the package, they can come back into the courtroom.  
23 So I need to -- I need to bring them back.

24 MR. BLACK: Judge, I would ask that the drugs  
25 go back. I've never -- in my experience, the drugs

1 have always gone back. We've never had a problem.  
2 I think if you let them know, hey, you can't get  
3 into these drugs, I think that takes care of it.

4 THE COURT: Okay.

5 MR. BLACK: I -- I -- I think they should be  
6 able to examine the evidence.

7 THE COURT: I'm not -- I'm not preventing them  
8 from examining the evidence.

9 MR. BLACK: Right.

10 THE COURT: If they want to examine it without  
11 opening it up, they can certainly come back in the  
12 courtroom and do that.

13 What -- what's the defense want? Does the  
14 defense have any problems? I typically don't let  
15 drugs go back, but if -- if all three of you agree  
16 for them to go back with a proper instruction, I'll  
17 do that.

18 MR. EPPS: My position, they would not go back  
19 to the ---

20 THE COURT: Okay. All right.

21 MR. BLACK: I think if you -- and just -- I  
22 think if you put -- give them the proper  
23 instruction. The only concern I have is, if you  
24 bring them out here and they want to look at the  
25 drugs, we're going to be under the -- we're going to

1 be looking at them doing this, and I think that  
2 sends the wrong message. I think they should be  
3 allowed to look at the evidence whatever way they  
4 see fit, how often they want to look at it.

5 MR. BROWN: And it is sealed up.

6 THE COURT: Well ---

7 MR. EPPS: There's lots of ways if they wanted  
8 to look at it. I mean, certainly, maybe an officer  
9 go back in while they're looking at the evidence.

10 MR. BROWN: I don't think an officer needs to  
11 go back in there to the jury. I think seeing it and  
12 feeling it sends the jury -- gives them a good idea  
13 of what we're dealing with.

14 THE COURT: All right. I'll allow it go back,  
15 and I'm going to give them an instruction. Let's --  
16 let's make sure we've got all the exhibits together.

17 MR. BLACK: Yes, sir. I'm trying to get that  
18 right now.

19 THE COURT: All right. We're off the record.

20 (From 3:39 to 3:43, recess.)

21 THE COURT: All right. Let's -- let's bring  
22 all 14 back -- back in.

23 THE BAILIFF: (Complying.)

24 (At 3:44 p.m., jury entered the courtroom.)

25 THE COURT: Let the record reflect the jury is

1 back in.

2 Madam forelady, ladies and gentlemen of the  
3 jury, I failed to explain about two pieces of the  
4 evidence. If for any reason you would like to  
5 listen during your deliberations to Exhibit 16, you  
6 will have to come back out here because we don't  
7 have any kind of device back in the jury room just  
8 for that.

9 And -- and, please, take this in the correct  
10 way. Not that I'm assuming that you would do  
11 anything improper, but this package cannot for any  
12 reason be opened. It's got to remain in this  
13 condition. Okay. Again, I'm not suggesting that  
14 you would do anything improper, but it cannot be  
15 opened in any fashion. Okay?

16 With that said, madam forelady, you'll go back  
17 and begin your deliberations, and I need the two  
18 alternates to remain seated.

19 (From 3:45 to 4:18 p.m., jury deliberated.)

20 THE COURT: Gentlemen, I have been informed  
21 that the jury has reached a verdict. I'm going to  
22 have the jury come in so we can proceed. Bring the  
23 jury out, please.

24 THE BAILIFF: (Complying.)

25 (At 4:19 p.m., jury entered the courtroom.)

1 THE COURT: All right. Let the record reflect  
2 the jury is back in.

3 Madam forelady, without telling me what the  
4 verdict is, it's my understanding that you have  
5 reached a verdict in this case.

6 THE FORELADY: That is true.

7 THE COURT: Okay. And is the verdict that  
8 you've reached unanimous among the 12 of you?

9 THE FORELADY: It is, sir.

10 THE COURT: Okay. And, madam forelady, if  
11 you will -- I mean, madam clerk, if you would  
12 publish the -- the verdict, please.

13 Mr. McGill, would you please stand.

14 THE DEFENDANT: (Complying.)

15 THE CLERK: The County of Abbeville, *State of*  
16 *South Carolina v. Kenneth Earl McGill*, as to  
17 Indictment No. 19-GS-01-549, which charges the  
18 defendant with trafficking in methamphetamine, 100  
19 grams or more but less than 200 grams, we the jury  
20 find the defendant guilty. Carol Ashley, Forelady.

21 Madam forelady, ladies and gentlemen of the  
22 jury, is this your verdict so say you all? Please  
23 signify by raising your right hand.

24 THE JURORS: (Complying.)

25 THE COURT: Let the record reflect that all 12

1 hands were raised. Does the defense request  
2 individual polling?

3 MR. EPPS: Yes, sir, Your Honor.

4 THE COURT: Okay. All right. Madam clerk.

5 THE CLERK: William Grier, is this your verdict  
6 and is it still your verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Willi Johnk, is this your verdict  
9 and is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Areither Mills, is this your  
12 verdict and is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Rhonda Saxon, is this your verdict  
15 and is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Dorothy Harp, is this your verdict  
18 and is it still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Kenya Wright, is this your verdict  
21 and is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Carol Ashley, is this your verdict  
24 and is it still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Francis Wardlaw, is this your  
2 verdict and is it still your verdict?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: Nakia Evans, is this your verdict  
5 and is it still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Floyd Tate, is this your verdict  
8 and is it still your verdict?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Christopher Haynes, is this your  
11 verdict and is it still your verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Christopher Oxendine, is this your  
14 verdict and is it still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE COURT: Okay. Ladies and gentlemen of the  
17 jury, the verdict that you have reached in this case  
18 has no significance to the Court. What the Court is  
19 concerned with is that a jury performs its duties  
20 conscientiously, diligently, efficiently, and you  
21 have done that in this case.

22 One of the jobs of a -- of a judge is to keep  
23 their eye on the jury and to make sure that you are  
24 paying attention. And for the exception of one day  
25 for a little while, all of you were paying close

1 attention and that's -- that's so important. And so  
2 I want to thank you for your jury service, and I  
3 hope that you found this experience to be a good one  
4 or at least educational one. Maybe you've learned  
5 some things, you've experienced some things that you  
6 have not known or experienced before.

7 And I also hope that some time in the future,  
8 you'll have an opportunity to serve on a jury again,  
9 either in the criminal arena, where we are, or in  
10 the civil arena. Your services are not needed for  
11 the rest of the week, so you'll be mailed a check  
12 within the next week or two. Unfortunately, State  
13 law does not allow for adequate compensation for  
14 jurors, but you'll be mailed a check.

15 And if you -- if you need an excuse for work,  
16 then, okay, we've got them right -- the clerk has  
17 them right there. She can -- she can give you one  
18 if you -- if you need that.

19 Since you have found Mr. McGill guilty of the  
20 crime charged, there will be a sentencing proceeding  
21 in just a few minutes. If you would like to stay  
22 for that sentencing proceeding, you're more than  
23 welcome to. You don't have to, but you're more than  
24 welcome to. If you decide to stay, just go out in  
25 the -- in the audience and you can -- you can

1 observe that -- that -- that proceeding. But if you  
2 need to go, then certainly you can go as -- as well.

3 Now, madam forelady, you need to sign the back  
4 of the indictment and you can just take care of  
5 that, but I'm going to come down and shake your  
6 hands. I like to shake the hands of my jury.

7 (At 4:25 p.m., jury was excused.)

8 THE COURT: Okay. Sheriff, if you'd place  
9 handcuffs on Mr. McGill, please.

10 THE DEPUTY: (Complying.)

11 THE COURT: Okay. This is the sentencing phase  
12 in the case of Kenneth Earl McGill. I don't know  
13 really what we can put on the record. I'll give the  
14 State and the defense to put on the record whatever  
15 they feel like is necessary. We have a mandatory  
16 minimum -- a mandatory sentence rather of 25 years  
17 and a \$50,000 fine.

18 The State have anything they want to put on the  
19 record?

20 MR. BLACK: Judge, just the -- I mean, you  
21 heard the facts. We spent the last three days going  
22 over the facts. I'm not going to rehash that. I --  
23 I will put on the record his record.

24 1991, he got an unlawful games and betting  
25 offense where that's handled in magistrate court.

1 He got a fine.

2 1997, he had a failure to stop for blue light.  
3 Looks like he got a year of probation on that  
4 charge.

5 1998, he had a domestic violence. That -- that  
6 was also handled in lower court. Looks like that  
7 was for a fine.

8 And then, Judge, his first drug offense was in  
9 2008. It looks like he pled -- it looks like he  
10 pled to distribution, PWID, or a manufacture of  
11 methamphetamine. It kind of -- it's hard to tell if  
12 he was -- I think he did plead on manufacture.  
13 He -- looks like he got 3 years suspended to 14 days  
14 and 5 years probation.

15 In 2009, he received another drug conviction --  
16 distribution, manufacture of cocaine or  
17 methamphetamine -- a cocaine base or  
18 methamphetamine. He received a 35-month sentence.  
19 I would assume at that point that that was wrapped  
20 up in a probation violation as well.

21 And then, Judge, fast forward to 2010. He  
22 received -- he had two drug convictions. He  
23 received a manufacture -- or he had a manufacturing  
24 of methamphetamine or cocaine base where he received  
25 a 13-year sentence, a possession of meth or a

1 possession of cocaine base. It was also run  
2 concurrent with that. Three years concurrent on  
3 those two sentences.

4 THE COURT: Okay. All right. Thank you,  
5 Solicitor.

6 Mr. Epps, anything you want to put on the  
7 record?

8 MR. EPPS: Your Honor, respectfully, Mr. McGill  
9 is 68 years old. Again, since he was -- been out,  
10 he's on electronic monitoring since this happened.  
11 He's been compliant. No -- no disruptions in any  
12 way, shape, or form.

13 Again, Your Honor, we understand it's a  
14 mandatory minimum 25-year sentence. His prior  
15 record really doesn't matter. I mean, we're dealing  
16 with a mandatory minimum sentence. With his age,  
17 Your Honor, this is effectively a death sentence.

18 So, you know, respectfully, we just ask for ten  
19 days to file any -- obviously, he's got a right to  
20 appeal within ten days, but ten days to include any  
21 post-trial motions.

22 THE COURT: Okay. Pursuant to Section  
23 16-23-500, since this is designated as a violent  
24 offense, that would prohibit any future ownership or  
25 possession of firearms if he were to be released

1 from incarceration.

2 Mr. McGill, the sentence of the Court is, you'd  
3 be committed to the State Department of Corrections  
4 for a period of 25 years, pay a fine of \$50,000.  
5 Credit for two days. Good luck to you, sir.

6 MR. BLACK: Thank you, Your Honor.

7 (At 4:34 p.m., proceedings concluded.)

8 \* \* \* \* \*

## C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Abbeville County, South Carolina, on the 6th day of April, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

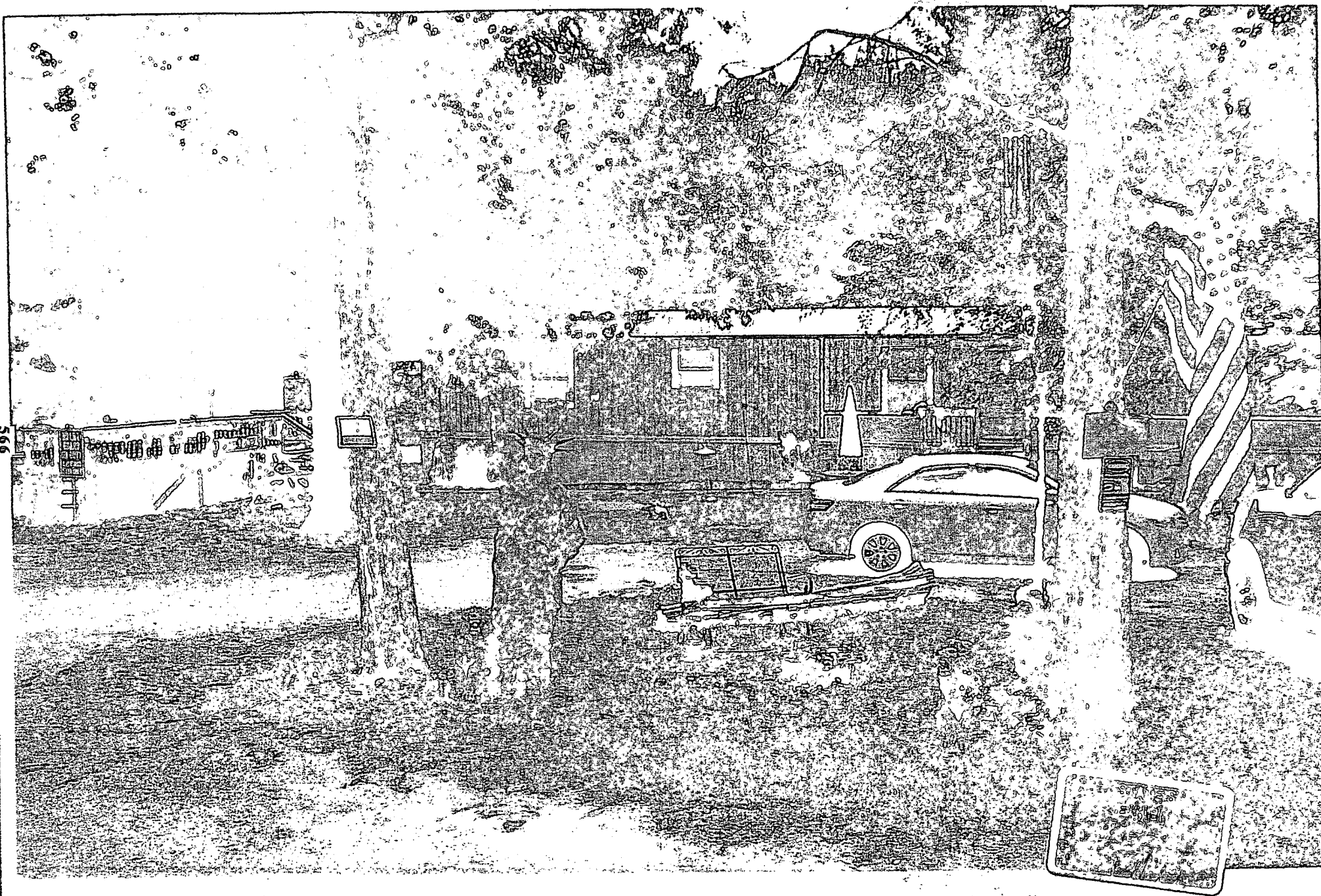
April 8, 2020

/s/Lisa Scott

*Lisa Scott*  
*Circuit Court Reporter*

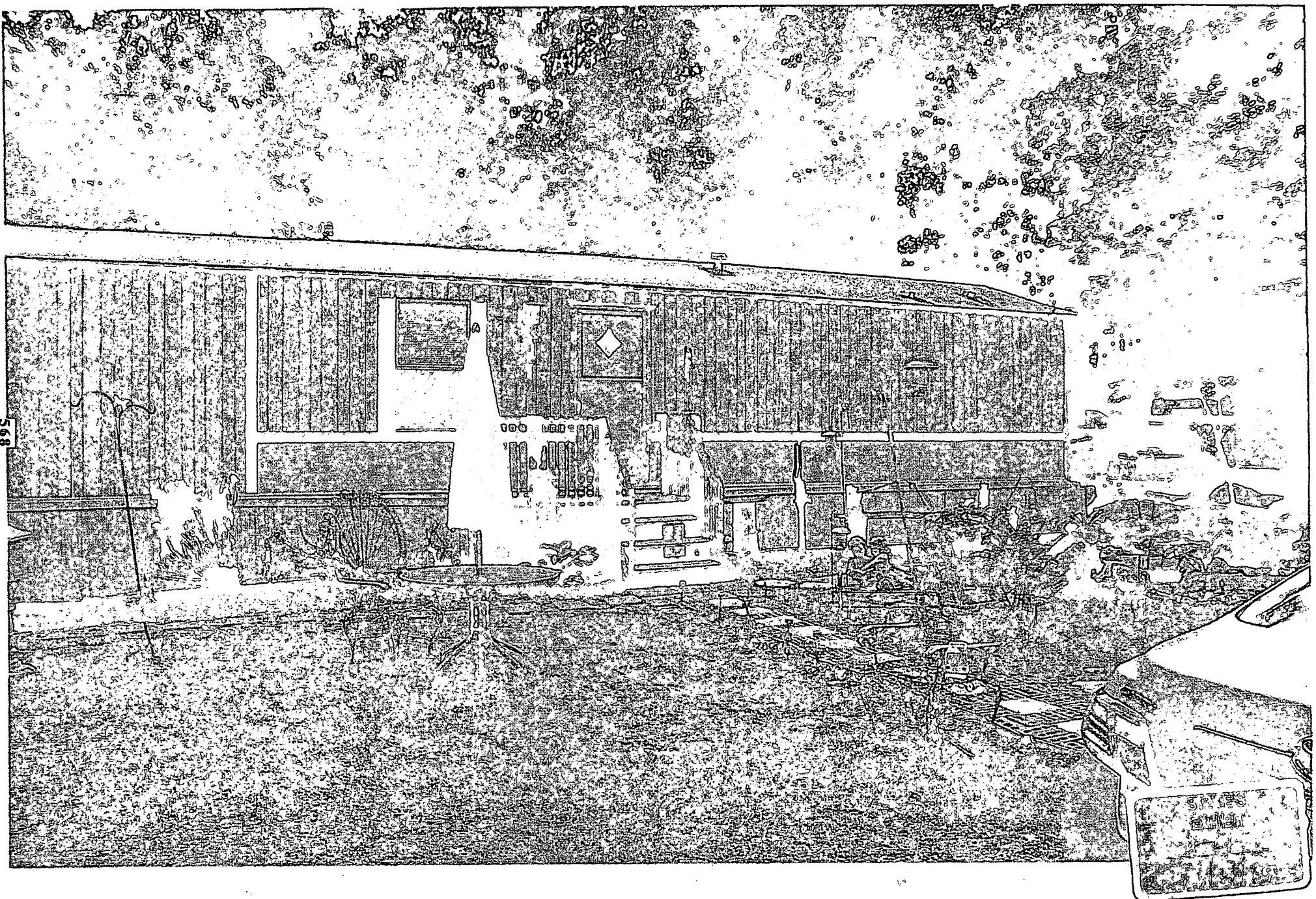
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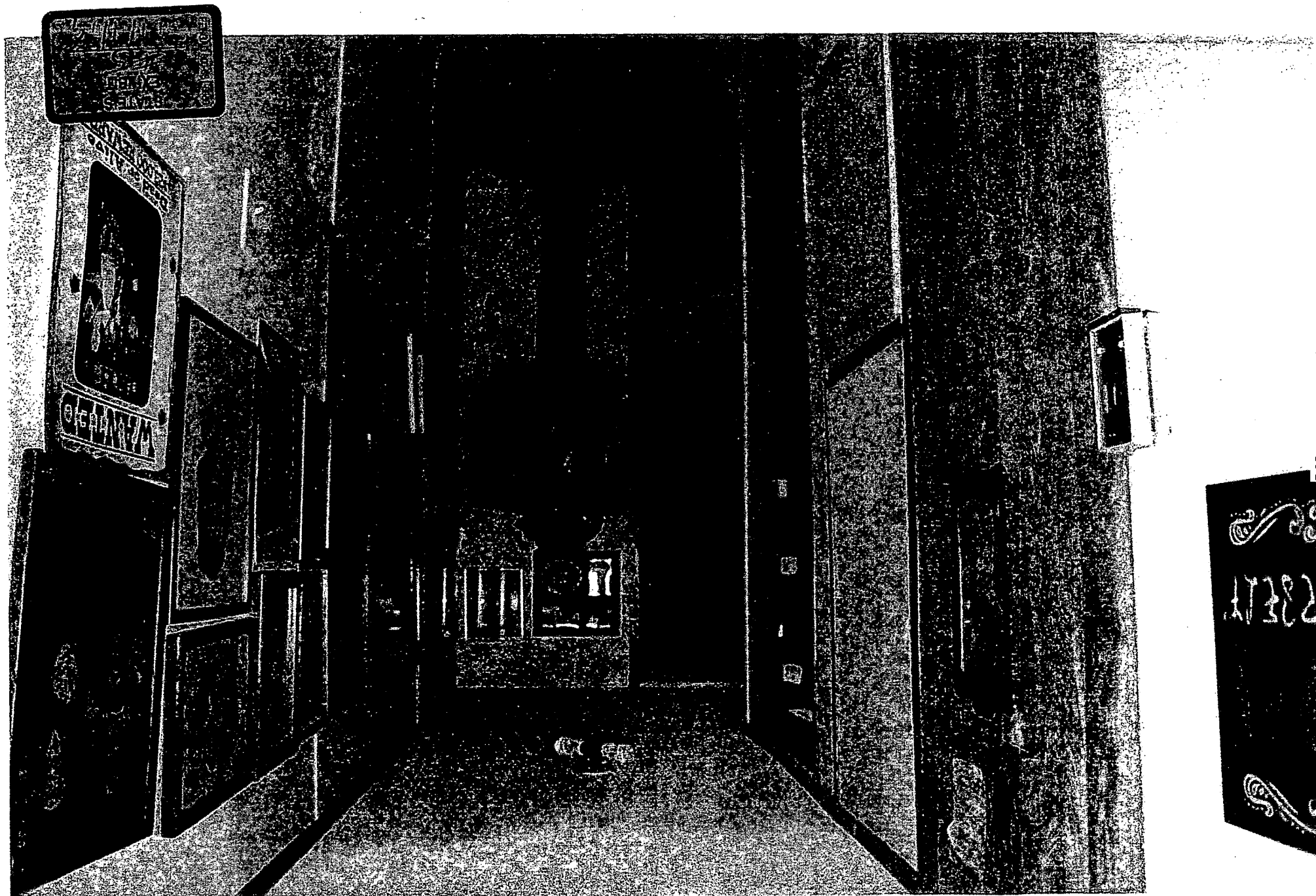


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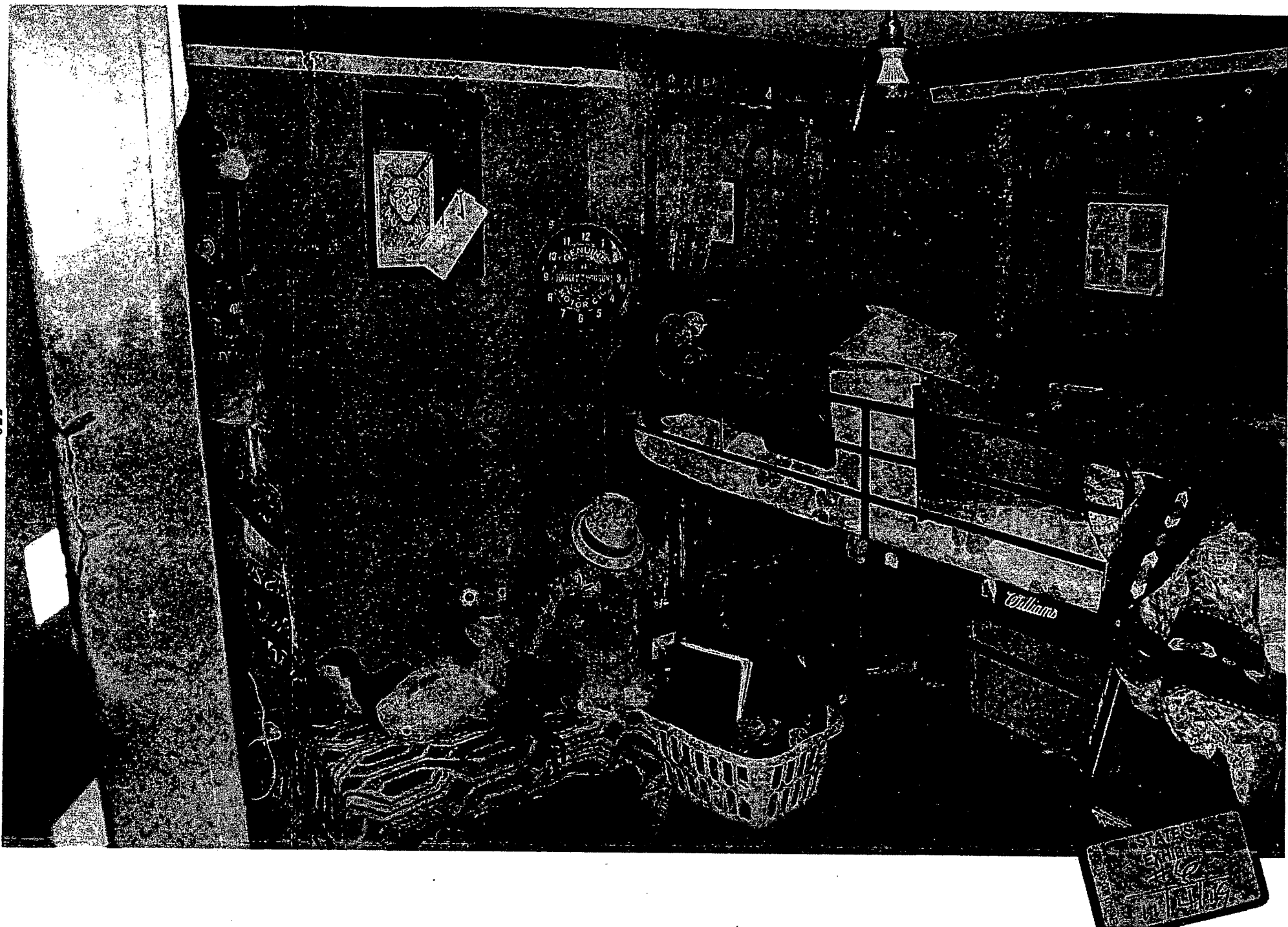


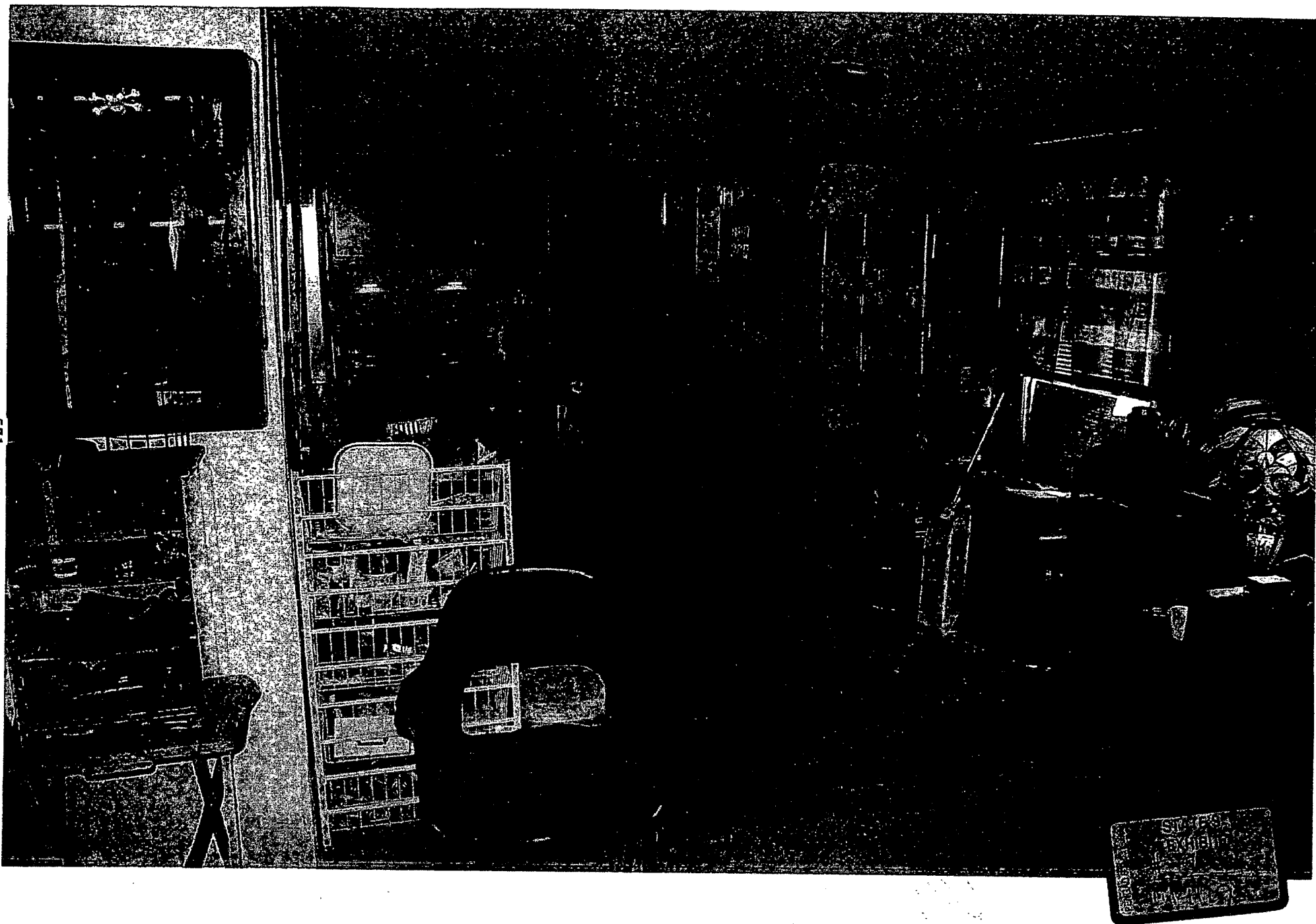
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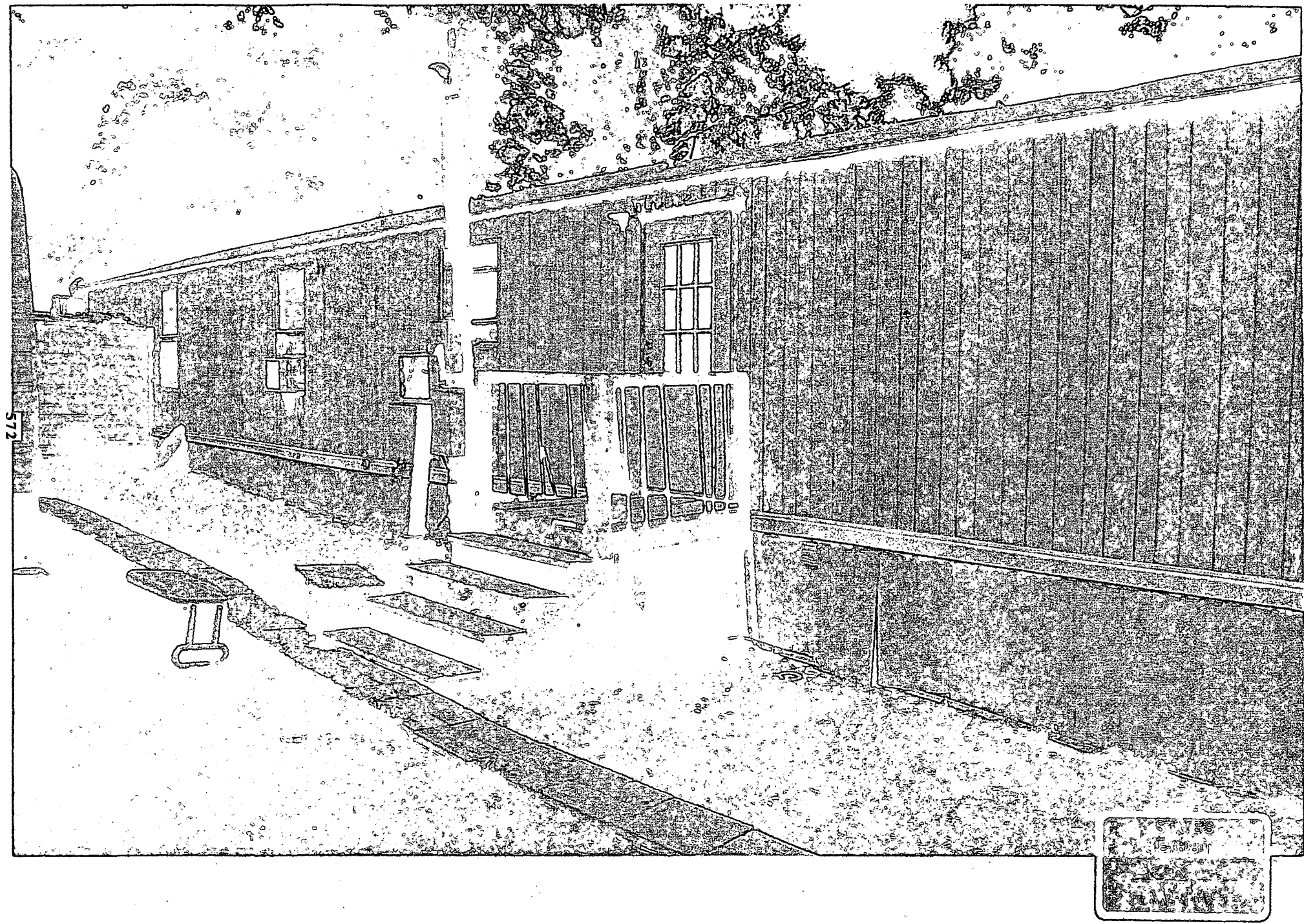
STATE OF  
NEW YORK  
COUNTY OF  
SARATOGA



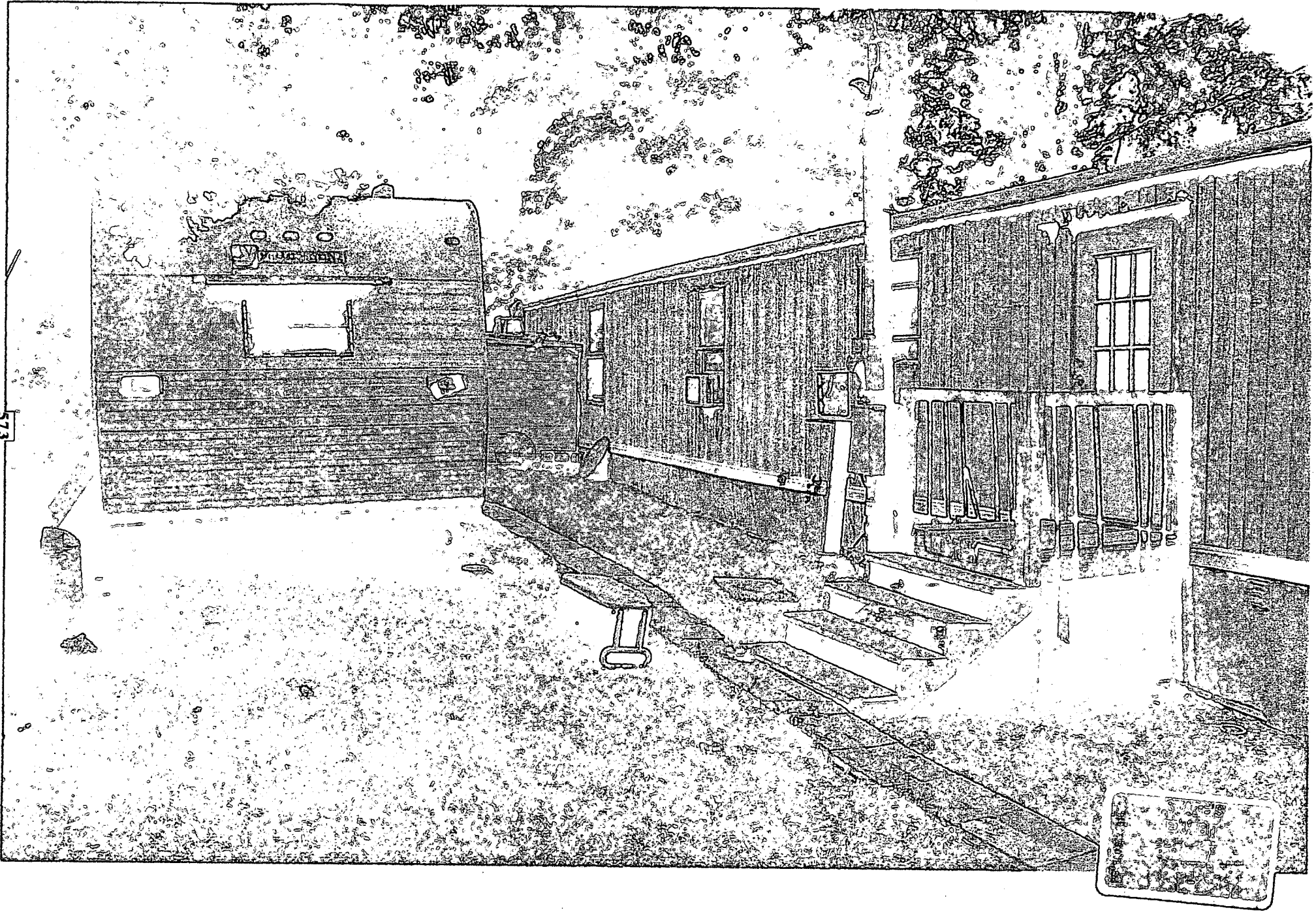
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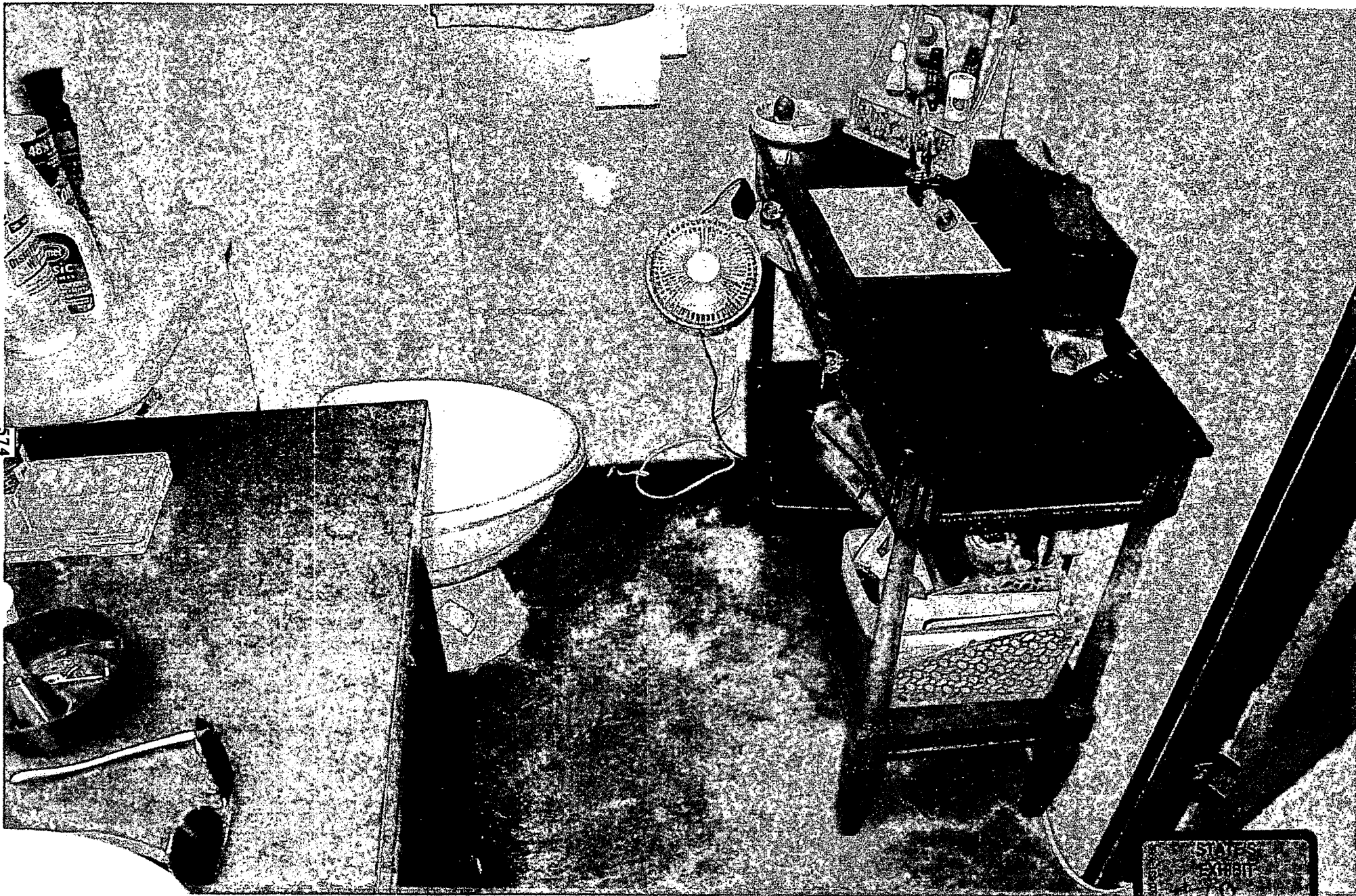






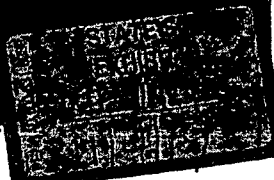
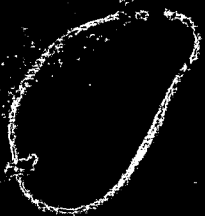
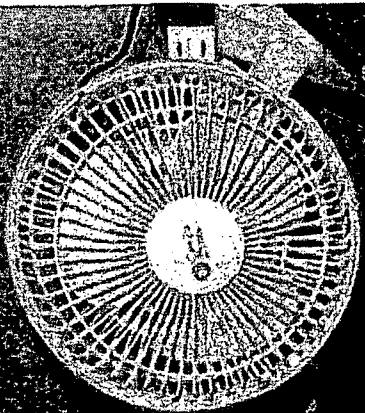
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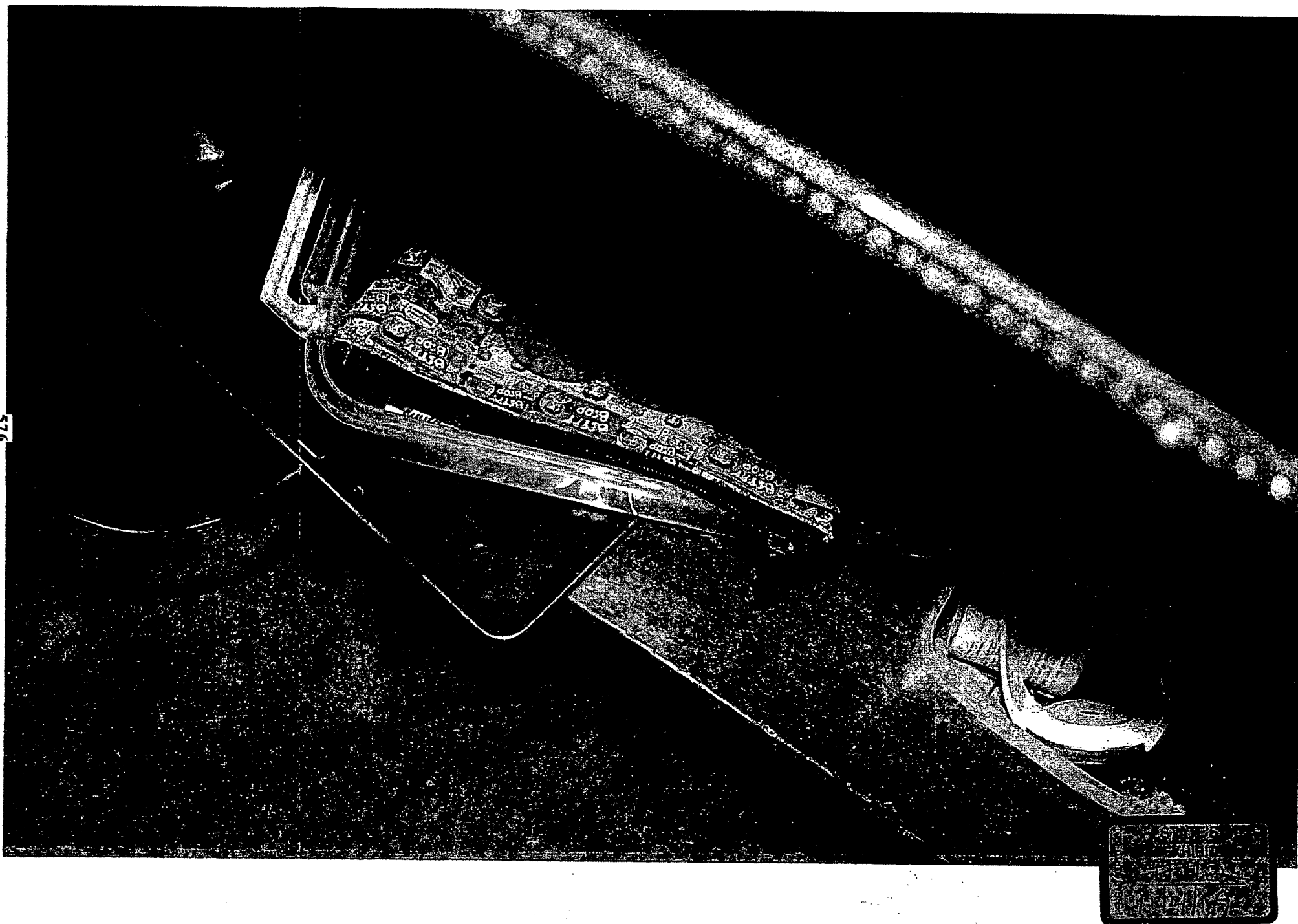


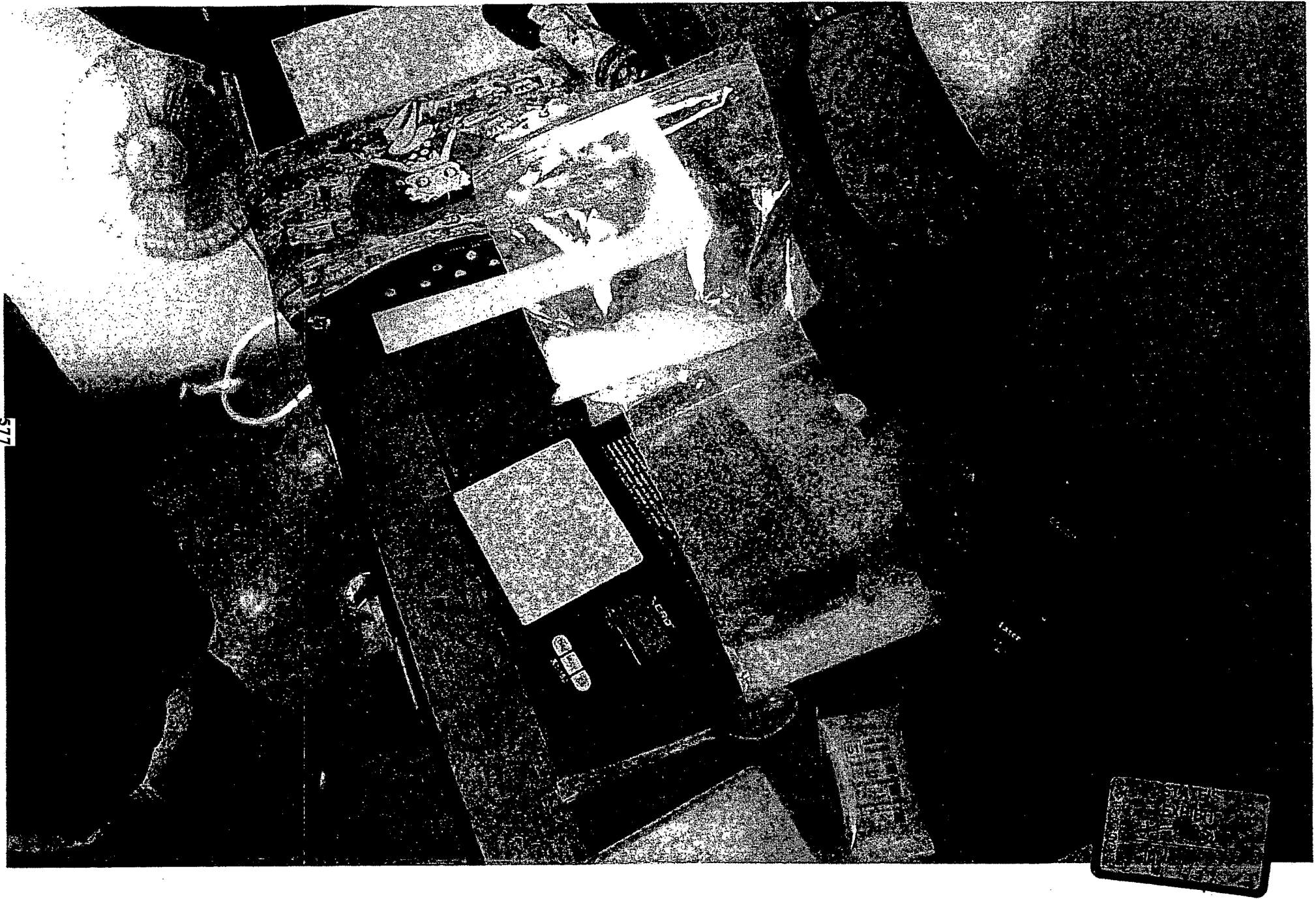


STAYES  
EXHIBIT  
11/2/89

574







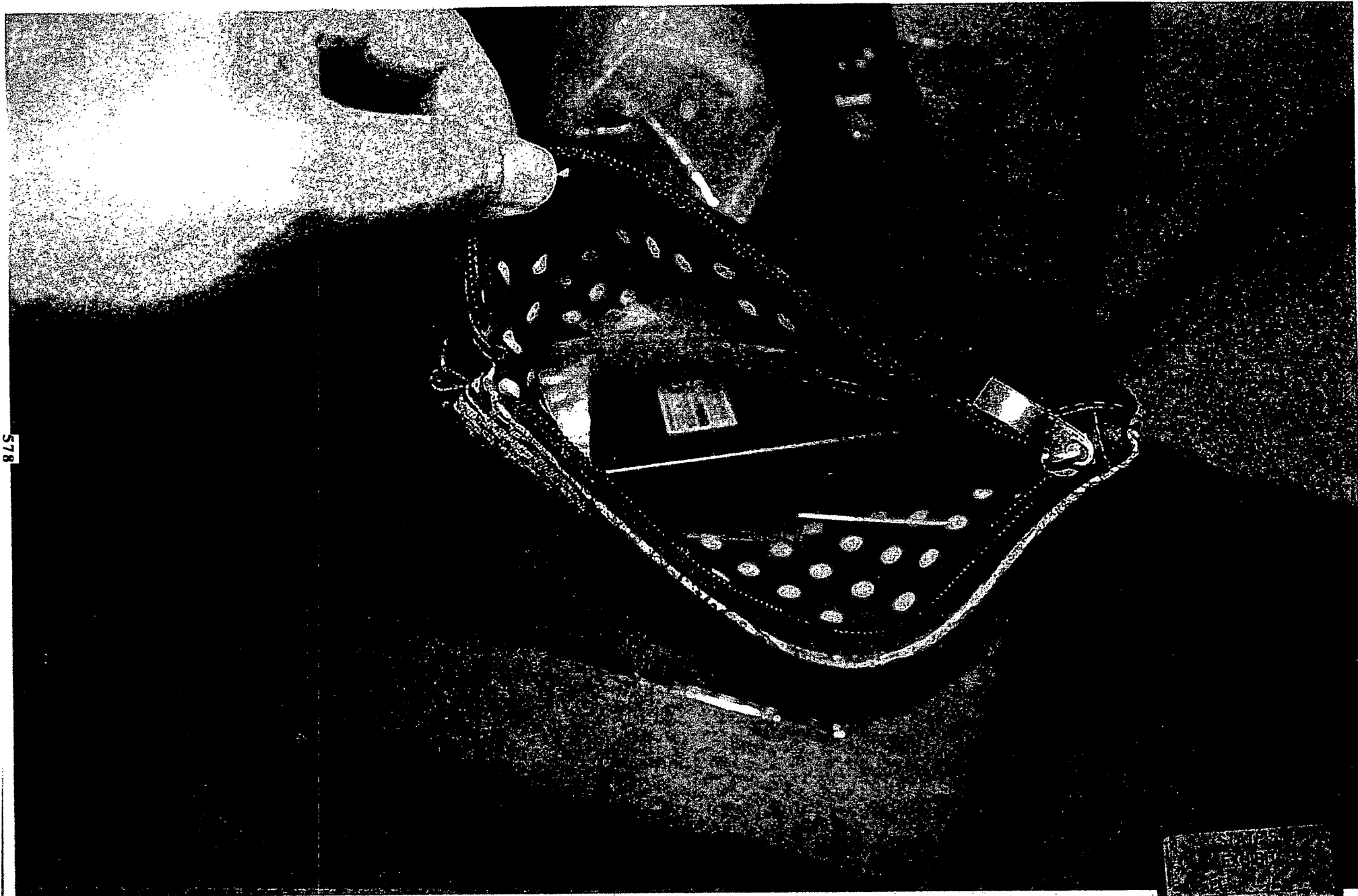


EXHIBIT  
FBI  
LABORATORY  
FBI  
LABORATORY

579



STATES  
1975  
10/10/75

10:21 AM 10/21/07 2:17 PM  
Kenny 2 1  
10/21/07



Sorry Stuart Had a  
busy day I'll get that  
to u tomorrow if  
that's alright

9:24 PM

My self it's been a  
full day



9:26 PM

Missed call

Hey did you wash  
some it up and did  
it make a difference



Tap message

100/1



Airplane

7:17 AM

Kenny

10:01:57 AM

some it up and did  
it make a difference

11:14 PM



I haven't washed  
any its not too bad  
on the taste and the  
high is good

11:16 PM

Yeah I had some  
one get some with a  
good bit of cut in it



11:24 PM

RECEIVED



1007.1

1007.1



1007.1

RECEIVED  
1007.1



I've got a lot of fine  
stuff in mine but  
haven't had any bad  
complaints yet. But  
I know I will

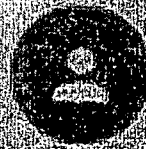
12:25 AM

I'm getting a few

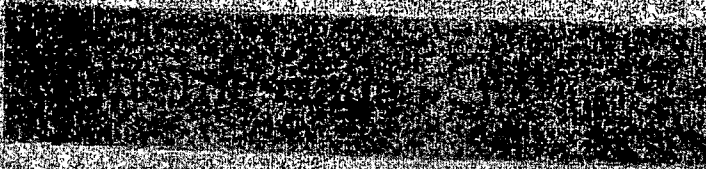


12:29 AM

Hey Kenny give a  
call I need to see  
about something



1:00 PM



160 / 1



kenny

+1 864 570 072



David

964 202 5970

7:03 PM

Hey give me a holler



7:12 PM



U home stuart

6:20 PM



Your phone  
goes straight to  
voicemail

6:20 PM



160 / 1



Kenny  
+1 864-570-07...



Your phone  
goes straight to  
voicemail

6:20 PM

If you're home, ill  
ride over

6:20 PM

My phone died been  
trying to charge



6:31 PM



Oh. Ok. I'm getting  
a shower and I will



10 messages

100 / 1



SMS

Airplane

77% 2:12 AM

Kenny

19 Jan 57 10:00

Oh, I'm going  
to shower and I will  
call you

OK

7:10 PM

Hey Kenny I need to  
see about getting  
out from you and  
I hope to be going  
tomorrow

2:37 PM

1/2

CD

100/1

A

515

Airplane

77% 2:10 AM

Ken

41.10.157.107

Yeah that should be  
a problem it might  
be a little later

2:30 PM

That will be fine.  
Just let me know  
when u head this  
way

2:41 PM

OK

2:41 PM

100%

Airplane. [icon]

↑ 97% 2:18 AM

← [icon] [icon] [icon] [icon]

10:50:01

OK

2:41 PM

Hey I'm headed  
your way

3:36 PM

I'm here

3:53 PM

they give me a call

6:50 PM

100%



SLY

STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Plaintiff,

-vs-

Indictment No.: 19GS01-0549

KENNETH EARLE MCGILL,

Defendant.

### JURY CHARGE #1

#### ENTRAPMENT

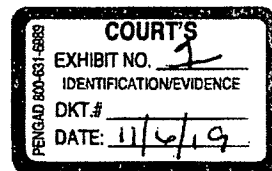
The defendant in this case has pled to the defense of entrapment.

Entrapment is defined as the conception and planning of an offense by an officer or other person working with law enforcement agents under some sort of arrangement and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion, or fraud of the officer. Entrapment occurs where one is instigated, induced or lured by law enforcement, a law enforcement entity, or a person acting at the request or behest of law enforcement for the purpose of prosecution into the commission of a crime which he had otherwise no intention of committing.

The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime.

The entrapment defense consists of two elements:

- (1) government inducement of the crime; and



(2) lack of predisposition on the part of the defendant to engage in the criminal conduct.

Predisposition, the principal element in the defense of entrapment, focuses upon whether the defendant was an unwary innocent or, instead, an unwary criminal who readily availed himself of the opportunity to perpetrate the crime. The defense of entrapment is not available to a defendant with a predisposition, independent of government inducement and influence, to commit the crime with which the defendant is presently charged.

The defense of entrapment has as its basis the fact that the law does not tolerate any person, particularly a law enforcement officer, generating in the mind of a person who is innocent of any criminal purpose the original intent to commit a crime, thus, entrapping such person into the commission of a crime which he would not have committed or even contemplated but for such inducement. Where a crime is person so entrapped, as his acts do not constitute a crime.

If the intent to commit the crime did not originate with the defendant and he was not carrying out his criminal purpose, but the crime was suggested by law enforcement, a law enforcement entity, or a person acting at the request or behest of law enforcement acting with the purpose of entrapping and cause the arrest of the defendant, then the defendant is not criminally liable for the acts so committed. However, the fact that a government official merely affords opportunities or facilities for the commission of the offense does not constitute entrapment. Entrapment occurs only when the criminal conduct was the product of the creative activity of law-enforcement officials, that is, when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute.

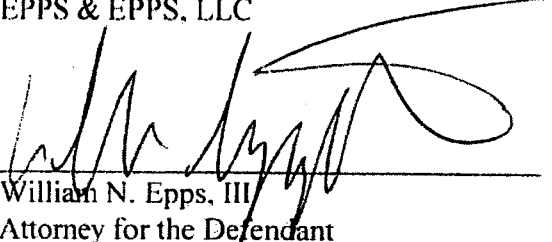
Where the doing of a particular act is a crime regardless of the consent of anyone, if the criminal intent originates in the mind of the defendant and the criminal offense is completed, the fact

that an opportunity is furnished or that the defendant is aided in the commission of the crime in order to secure the evidence necessary to prosecute him therefore constitutes no defense. The purpose of the law enforcement officer is not to solicit the commission of the offense, but to ascertain if the defendant is engaged in an unlawful business. It is no defense that law enforcement, a law enforcement entity, or a person acting at the request or behest of law enforcement, a law enforcement, acting as a decoy, furnished and opportunity for the commission of the offense to be committed, the theory being that the offender acts of his own volition and is simple caught in his own devices.

In considering the defense of entrapment, you must ascertain whether the acts charged as constituting the offense were the result of the intent of law enforcement, a law enforcement entity or a person acting at the request or behest of law enforcement to place the defendant in a position where he might be charged with the offense and the defendant had no previous intention of committing such offense, in which event, the defendant may not be convicted. If you find the defendant was acting in pursuance of his own intent when he committed the act and law enforcement, a law enforcement entity, or a person acting at the request or behest of law enforcement was merely affording him the opportunity of doing so, in that event, the defense of entrapment would not relieve the defendant from criminal responsibility.

The defense of entrapment is an affirmative defense. This means the defendant must prove by the preponderance of the evidence that he was entrapped by actions of law enforcement, a law enforcement entity, or a person acting at the request or behest of law enforcement. The defendant has the burden of showing that he was induced, tricked or incited to commit a crime, which he would not otherwise have committed.

EPPS & EPPS, LLC



William N. Epps, III  
Attorney for the Defendant

November 6, 2019  
Anderson, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF ABBEVILLE )

IN THE COURT OF GENERAL SESSIONS  
EIGHTH JUDICIAL CIRCUIT

INDICTMENT:

19GS01-0549

State of South Carolina )

v. )

Kenneth Earle McGill )

Defendant. )

**VERDICT FORM**

PLEASE ANSWER THE QUESTION BELOW:

- 1) As to Indictment No.19GS01-0549, which charges the Defendant with Trafficking in Methamphetamine 100 grams or more, but less than 200 grams, we the Jury find the Defendant:

COA

**GUILTY**

**NOT GUILTY**

Carol D. Ashley  
Forelady  
November 16, 2019

Abbeville County, South Carolina  
November 16, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

MAR 26 2021

SC Court of Appeals

APPEAL FROM ABBEVILLE COUNTY  
COURT OF GENERAL SESSIONS

Donald B. Hocker, Circuit Court Judge

Appellate Case No.: 2019-001902

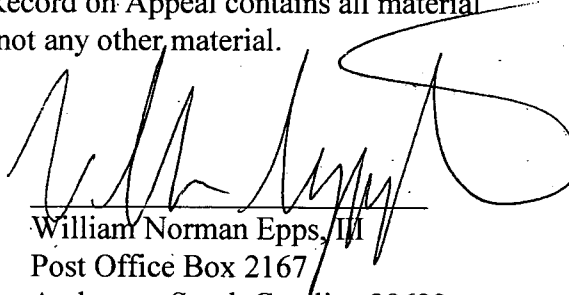
The State of South Carolina.....Respondent

v.

Kenneth Earle McGill.....Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



William Norman Epps, III  
Post Office Box 2167  
Anderson, South Carolina 29622  
(864) 224-2111  
ATTORNEY FOR APPELLANT

March 1, 2021