

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

JOHNNY NEAL SEXTON, II

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000424

APPENDIX

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1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions
3 Indictment Nos.:
2015-GS-32-0989 thru 0991
4 State of South Carolina,)
5 Plaintiff,)
6 vs.) Transcript of Record
7 Johnny Neal Sexton, II,)
8 Defendant.)

9 April 15, 2015 through April 17, 2015
10 Lexington, South Carolina
11

12 BEFORE:

13 The Honorable Thomas A. Russo, Judge, and a Jury.

14 APPEARANCES:

15 Rhonda Patterson, Assistant Solicitor
16 Shannon Davis, Assistant Solicitor
Attorneys for the State

17

18 David M. Mauldin, Assistant Public Defender
19 Attorney for the Defendant

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ORIGINAL

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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P.O. Box 184, Lexington, South Carolina 29071

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April 15, 2014

THE COURT: Have a seat. I appreciate everyone returning. Again, maybe I don't need to apologize for something I have no control over. I'm sorry about the weather and that you have to come back and park and get through that to get here, but thank you all for being present and we are ready to proceed and so I recognize the State for the next case.

MS. PATTERSON: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. PATTERSON: The State of South Carolina calls indictment 2015-GS-32-989, 990, 991. State of South Carolina versus Johnny N. Sexton the Second, indicted for unlawful conduct towards a child three counts.

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

MR. MAULDIN: Your Honor, may we approach?

THE COURT: Yes.

(Side bar on the record.)

MR. MAULDIN: The defendant is not present and I'm objecting to the jury selection proceeding in his absence. I think it's a critical stage of the trial proceedings and affects his right to a fair trial under the Sixth Amendment of the U.S., Article 1, Section 3 or

1 14 of the South Carolina Constitution and we are going to
2 flesh that out later.

3 THE COURT: What we'll do is I'm going to note that
4 the defense is objecting and after jury selection we are
5 going to give Mr. Mauldin more opportunity to flesh out
6 his basis for his objection, okay? All right. Ready?

7 (Side bar ended.)

8 THE COURT: All right. Ladies and gentlemen, you
9 have heard Madam Solicitor call the case of the State of
10 South Carolina versus Johnny Neal Sexton the Second. Mr.
11 Sexton is charged under three indictments,
12 2015-GS-32-989, 990 and 991. Each of those are
13 indictments for the offense or the allegation of unlawful
14 conduct towards a child and to those charges or to those
15 indictments Mr. Sexton has pled not guilty which places
16 the burden of proof on the State to prove the elements of
17 these allegations or charges beyond a reasonable doubt.

18 I am going to, and as I told you earlier this week
19 on the case that we pulled the jury on on Monday, the
20 allegations, the indictments contain merely the
21 allegations of the charge that the State has made against
22 Mr. Sexton. This is not in any way or these indictments
23 and their contents are not in any way evidence in this
24 case. I am going to read to you the allegations of these
25 indictments so that I can ask you questions as it relates

1 to these allegations. And I believe, if I'm not
2 mistaken, Solicitor, these allegations are the same in
3 each indictment with the only change being each is on a
4 different child; is that correct?

5 MS. PATTERSON: That's correct, Your Honor.

6 THE COURT: Okay. So, ladies and gentlemen, I'm
7 going to read to you the allegations contained and then
8 I'll make you aware of the different children involved.
9 The allegations are this: That Johnny Neal Sexton the
10 Second in Lexington County, South Carolina on or between
11 the dates of November the 1st of 2013 through February
12 the 21st of 2014 while having charge or custody or being
13 the parent or guardian or being the responsible person
14 for welfare of the minor child in indictment
15 2015-GS-32-991, that being Minor3 , and in 990,
16 that being Minor1 , and in 989, that being Minor2
17 , so there's Minor3 , Minor1 and Minor2 and the
18 allegations are that Mr. Sexton did unlawfully place the
19 child or children at unreasonable risk of harm affecting
20 the child's life, physical or mental health or safety to
21 wit by exposing the child to drug activity and/or
22 deplorable living conditions as defined in Section
23 63-7-20 and in violation of Section 63-5-70 of the South
24 Carolina Code of Laws 1996 as amended..

25 Those are the allegations that have been made

1 against Mr. Sexton to which he has pled not guilty.
2 Based on what I have shared with you, ladies and
3 gentlemen, is there any member of the jury panel who
4 knows anything about these cases or these charges that I
5 have read? If so, please stand. Thank you. There are
6 none.

7 I'm going to ask the attorneys to stand and
8 introduce themselves. If you would please listen
9 carefully. We'll start with the State.

10 MS. PATTERSON: Thank you, Your Honor. Good
11 afternoon. My name is Rhonda Patterson. I'm an
12 Assistant Solicitor here in Lexington County. Joining me
13 is my co-counsel Ms. Shannon Davis. She is also an
14 Assistant Solicitor in my office. Also working out of
15 our office is investigator Jill Smith.

16 THE COURT: Ladies and gentlemen, is there any
17 member of the jury panel who is related by blood,
18 connected by marriage or who has any close business or
19 personal relationship with or who has ever either been
20 represented by or prosecuted by either Ms. Patterson or
21 Ms. Davis? If so, please stand. Thank you. There are
22 none. Mr. Mauldin.

23 MR. MAULDIN: I'm David Mauldin and I represent
24 Johnny Sexton.

25 THE COURT: Is there any member of the jury panel

1 related by blood, connected by marriage or who has any
2 close personal or business relationship with or who has
3 ever been represented by Mr. Mauldin? If so, please
4 stand. Thank you. There are none.

5 As you have heard in my reading of the indictments,
6 the Defendant in this case is Mr. Johnny Neal Sexton the
7 Second. Is there any member of the jury panel who is
8 related by blood, connected by marriage or who has any
9 close business or personal relationship with the
10 Defendant in this case Mr. Johnny Neal Sexton the Second?
11 If so, please stand. Thank you. There are none.

12 Ladies and gentlemen, that question that I asked you
13 as it related to Mr. Sexton is the same question that I
14 will have as it relates to these names that I'm about to
15 call. These are potential witnesses that may appear
16 during the course of this trial. I'm not sure that
17 they will all testify, I don't know who will be here for
18 that, but these are folks that are potential witnesses.
19 If you hear a name that I call out and that question
20 applies, I would ask that you go ahead and stand,
21 continue to listen, however, because I have several names
22 to call and it may be that you know more than one of
23 these individuals.

24 The following are possible or potential witnesses
25 who may appear during the course of this trial.

1 Sandra Black. Stephen Bair. Please stand if any of
2 these folks are in the courtroom. Mike Merckle. Everett
3 Smith. Jane Guevara. Greg Guidry. Norman Swalgreen.
4 Jamie Norris. Debbie Wright. Any member of the jury
5 panel related by blood, connected by marriage or have any
6 close business or personal relationship with any of those
7 folks? Go ahead and stand. Your name, sir.

8 ANDREW PILOT: Andrew Pilot.

9 THE COURT: Juror number 215. Oh, Olivia Sinclair.
10 That was another potential witness.

11 MS. DAVIS: Your Honor, she's gotten married and her
12 last name is now Woods.

13 THE COURT: All right. Olivia Woods? Anyone? All
14 right. Mr. Pilot, who on that list did you know?

15 ANDREW PILOT: You said Norm Swalgreen?

16 THE COURT: Swalgreen.

17 ANDREW PILOT: I think -- I don't know if this
18 applies, but I'm pretty sure that I did some work for him
19 at the business I work at recently. I don't know if
20 that's applicable to this situation or not.

21 THE COURT: Well, let me ask you this: If it is the
22 same Norman Swalgreen, if Mr. Swalgreen were to appear
23 and be a witness during the course of this trial, would
24 that in any way affect your ability to be fair and
25 impartial?

1 ANDREW PILOT: No, sir.

2 THE COURT: Thank you, sir. You may have a seat.

3 Yes, sir.

4 DARIUS CALDWELL: Juror number 40.

5 THE COURT: All right. Yes, sir, Mr. Caldwell.

6 DARIUS CALDWELL: Everett Smith. I think that's my
7 mom's neighbor.

8 THE COURT: All right. If Mr. Smith were to appear
9 as a witness in this case, would that in any way affect
10 your ability to be fair and impartial?

11 DARIUS CALDWELL: No, sir.

12 THE COURT: Thank you, sir. You may have a seat.
13 Anyone else? All right. Is there any member of the jury
14 panel or member of your family or close personal friend
15 who has ever been the victim of or accused of committing
16 a criminal offense? If so, please stand. Thank you.

17 There are none. I apologize. Ma'am, your name.

18 MARY DUNN: Mary Dunn. 84.

19 THE COURT: All right. Ms. Dunn, let me find your
20 name.

21 THE CLERK: Number 2 on the list.

22 THE COURT: There it is. Yes, ma'am, Ms. Dunn, is
23 it a member of your family or a friend?

24 MARY DUNN: Member of the family.

25 THE COURT: All right. And the fact that you had

1 that experience in your family, would that in any way
2 affect your ability to be fair and impartial?

3 MARY DUNN: It would not.

4 THE COURT: Thank you, ma'am. You may have a seat.
5 Is there any member of the jury panel or a member of your
6 family or a close personal friend who has ever been
7 affected either by drugs or by drug abuse? If so, please
8 stand. All right. I'll start over here and work our way
9 over. Sir, your name.

10 MICHAEL HILL: Michael Hill.

11 THE COURT: Mr. Hill. And the fact that you have
12 had that experience in your family, would that in any way
13 affect your ability to be fair and impartial?

14 MICHAEL HILL: No, sir.

15 THE COURT: Thank you, sir. Please have a seat.
16 Ma'am, your name, please.

17 TAMARA KNITTLE-STEVENSON: Tamara Knittle-Stevens.
18 167.

19 THE CLERK: Number 40, the last one.

20 THE COURT: I got you. And, ma'am, would that in
21 any way affect your ability to be fair and impartial,
22 ma'am?

23 TAMARA KNITTLE-STEVENSON: I'm really not sure. It's
24 like I was telling you on Monday when I was here, my
25 sister was actually convicted of criminal charges and

1 lost her children because of that.

2 THE COURT: Let me do this. I do recall our
3 conversation, ma'am. I'm going to excuse you from
4 participating in this case.

5 TAMARA KNITTLE-STEVENSON: Do I need to call back
6 again?

7 THE COURT: Well, I don't know yet, but if you will
8 have a seat, I promise you before you leave here I'll let
9 you know. Thank you. And then we have Mr. Pilot who is
10 juror number 215.

11 ANDREW PILOT: Yes, sir. Your Honor, just like it
12 was with Monday be the same situation with me. I'm not
13 sure if you recall our conversation or not, but I have
14 had those experiences.

15 THE COURT: And I'm going to excuse you as well,
16 Mr. Pilot, from this matter. So that would be juror 215
17 and juror 167.

18 THE CLERK: Yes, sir.

19 THE COURT: And I thank you all for bringing that
20 back to my attention. Is there any member of the jury
21 panel or a member of your family or close personal circle
22 of friends who have ever had any dealings with or with a
23 child or children abuse or have any, let's see, or have
24 dealt with anyone who may have either been accused of or
25 prosecuted for crimes involving children? If so, please

1 stand. Mr. Pilot, I have excused you. You don't need to
2 stand anymore. Thank you, sir. Mr. Hill, I believe?

3 MICHAEL HILL: Yes, sir. May I approach, Your
4 Honor?

5 THE COURT: Yes, sir, Mr. Hill. Juror 143, number
6 36.

7 MICHAEL HILL: I told you about my son on Monday.
8 There's a case pending right now with my granddaughter in
9 danger because of drug paraphernalia and I think that
10 probably would affect me.

11 THE COURT: With it being too close to home.

12 MICHAEL HILL: Yes, sir.

13 THE COURT: I'll excuse you from participating in
14 this matter. Thank you, Mr. Hill. He's got a situation
15 where his son is a drug addict and he's in the process of
16 having his kids taken away from him. I'll excuse him.
17 Come forward, folks.

18 BAILIFF: 138, your Honor.

19 THE COURT: All right. Lisa Henry.

20 LISA HENRY: Yeah. I lost a family member to child
21 abuse. It was a family member charged but never
22 convicted.

23 THE COURT: You heard the allegations in this case.
24 Would that in any way affect your ability to be fair and
25 impartial?

1 LISA HENRY: I probably believe it would, yes.

2 THE COURT: All right. Then I'll excuse you from
3 participation in this case, ma'am.

4 LISA HENRY: Just wait?

5 THE COURT: Yes. 138 is excused.

6 BAILIFF: 84, Your Honor.

7 THE COURT: Yes, ma'am. Ms. Dunn.

8 MARY DUNN: My immediate family member was a victim
9 and I was a victim of child abuse.

10 THE COURT: Okay. You've heard the allegations in
11 this case. Would that affect your ability to be fair and
12 impartial if you were?

13 MARY DUNN: It may. It's something I have dealt
14 with my entire life.

15 THE COURT: Sure. That's fine, Ms. Dunn. I'll
16 excuse you from participation in this case, okay?

17 BAILIFF: 196, Your Honor.

18 THE COURT: Yes, sir. Mark Nagel.

19 MARK NAGEL: My wife was abused by her uncle as a
20 kid. I've never met the uncle though.

21 THE COURT: You heard the allegations in this case.
22 Would that in any way affect your ability to be fair and
23 impartial?

24 MARK NAGEL: I don't think so.

25 THE COURT: Thank you, sir. Please have a seat.

1 BAILIFF: 29, your Honor.

2 THE COURT: Yes, ma'am.

3 DONNA BRITT: Donna Britt and I have had some
4 friends who have had experience with abuse.

5 THE COURT: Ms. Britt, would that in any way affect
6 your ability to be fair and impartial?

7 DONNA BRITT: No, sir. I don't think so.

8 THE COURT: Okay. Thank you very much, ma'am. You
9 may have a seat.

10 BAILIFF: 267, your Honor.

11 THE COURT: All right.

12 THE CLERK: Number 5.

13 THE COURT: Number 5. Mr. Thompson. Yes, sir.

14 ALFRED THOMPSON: I'm employed with the South
15 Carolina Advocacy Program and I work with the Richland
16 County Department of Social Services and Child
17 Enforcement Services caseworkers.

18 THE COURT: Would that, do you think that would
19 affect your ability to be fair and impartial in this
20 case?

21 ALFRED THOMPSON: No.

22 THE COURT: Okay. All right. Thank you, sir.
23 That's juror 267.

24 MR. MAULDIN: Your Honor, he works with DSS. I
25 think one of the witnesses in this case is a DSS person.

1 I move to strike him for cause.

2 MS. PATTERSON: He said he works with Richland
3 County DSS. This involves Lexington County.

4 THE COURT: He called it the --

5 MS. DAVIS: Advocacy.

6 THE COURT: Right and they work with DSS.

7 MS. PATTERSON: In Richland County.

8 THE COURT: Oh, okay.

9 MS. DAVIS: Right. Not Lexington County.

10 THE COURT: Okay. Those are two separate offices.

11 MS. PATTERSON: Yes, sir.

12 THE COURT: Okay. All right. Note your exception
13 to that, but I think he said he works with Richland
14 County so...

15 MR. MAULDIN: I object to you not striking him.

16 THE COURT: All right. I certainly note that.
17 Okay.

18 Is there any member of the jury panel who either
19 currently or in the past has been a contributor to
20 organizations which demands stricter enforcement of laws
21 such as Mothers Against Drunk Drivers, SADD, Students
22 Against Drunk Drivers, CAV, Citizens Against Violence.
23 Also organizations such as the South Carolina Sheriff's
24 Association, the South Carolina Police Association, the
25 Fraternal Order of Police, any of those types of

1 organizations if you have been a contributor either by
2 volunteering of your time or financially? If so, please
3 stand.

4 All right. And, ma'am, your name, please.

5 LINDA BURGESS: Linda Burgess.

6 THE COURT: Ms. Burgess. The fact that you have
7 been a contributor to any number of those organizations,
8 would that in any way affect your ability to be fair and
9 impartial, ma'am?

10 LINDA BURGESS: No, sir.

11 THE COURT: Thank you, ma'am. Please have a seat.

12 Yes, ma'am.

13 SHERRIE BEARD: Sherrie Beard.

14 THE COURT: All right. Ms. Beard. That's juror
15 number --

16 SHERRIE BEARD: 17.

17 THE COURT: -- 17. Ms. Beard, the fact that you
18 have been a contributor to those organizations or
19 organizations of that type, would that in any way affect
20 your ability to be fair and impartial, ma'am?

21 SHERRIE BEARD: No, sir.

22 THE COURT: Thank you, ma'am. You may have a seat.

23 Is there any member of the jury panel or a member of
24 your family or close circle of friends who either is
25 currently or formerly has been employed as a law

1 enforcement officer or who has had the power of arrest?

2 If so, please stand.

3 All right. Ms. Beard, juror number 17, a member of
4 your family I think it was?

5 SHERRIE BEARD: Yes.

6 THE COURT: Ma'am, would that in any way affect your
7 ability to be fair and impartial?

8 SHERRIE BEARD: No.

9 THE COURT: Thank you, ma'am. Please have a seat.
10 Yes, ma'am, your name, please?

11 KATHY ROBERTS: Kathy Roberts, juror 230.

12 THE COURT: All right. Ms. Roberts, a member of
13 your family, ma'am?

14 KATHY ROBERTS: Yes, sir.

15 THE COURT: And the fact that you have that
16 experience in your family, would that in any way affect
17 your ability to be fair and impartial?

18 KATHY ROBERTS: No, sir.

19 THE COURT: Thank you, Ms. Roberts. Please have a
20 seat. Yes, ma'am.

21 KELLEIGH DANTZLER: Kelleigh Dantzler, juror number
22 72 and no, sir, it would not affect me.

23 THE COURT: All right, Ms. Dantzler, thank you very
24 much, ma'am. Folks, we went through this on Monday and
25 the mission or the goal has not changed. We still, every

1 time we try a case in this courtroom, we look to impanel
2 a jury that can set aside anything outside this court and
3 give both the State and the defense a fair and impartial
4 trial. And so instead of continuing to ask questions to
5 determine that, I'm going to ask that catch all question
6 that I usually ask and that is, is there any member of
7 the jury panel who knows of any reason why you would not
8 be able to give both the State and the defense a fair and
9 impartial trial for any reason? If so, please stand.

10 All right. I'm going to get you all to come
11 forward, please.

12 BAILIFF: 36, your Honor.

13 THE COURT: Juror number 36. All right. Ms.
14 Burgess. Yes, ma'am.

15 LINDA BURGESS: Drunk drivers.

16 THE COURT: This is not a case that involves that.

17 LINDA BURGESS: I thought you said anything.

18 THE COURT: Well, I'm talking about involving this
19 case.

20 LINDA BURGESS: Sorry.

21 THE COURT: Yes, ma'am. This case you would be good
22 on?

23 LINDA BURGESS: I'll try.

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

25 MS. PATTERSON: Your Honor, with regard to her, we

1 spoke to her on Monday and she responded she couldn't be
2 fair in a drug case. On Casey's case that question was
3 asked and she said it would be difficult to convict in a
4 drug case and we moved to strike her for cause.

5 THE COURT: I didn't think she said no for that.
6 She kept telling me on Monday that it involved money and
7 not drugs.

8 MR. MAULDIN: She didn't want to give you a clear
9 answer. She just said she would try.

10 THE COURT: We'll strike her then. You want to move
11 her off?

12 MR. MAULDIN: Yes, please.

13 THE COURT: Okay. We'll take Ms. Burgess off. Yes,
14 ma'am.

15 BAILIFF: 72, your Honor.

16 KELLEIGH DANTZLER: I'm a child interventionist. I
17 work with children with special needs and I'm a reporter
18 for child abuse and neglect and I need to be open about
19 that.

20 THE COURT: Okay. So I want to hear you right. It
21 wouldn't affect your ability to be fair and impartial.
22 You just feel that it's important for us to know that you
23 are under an obligation to your work to report that if
24 you see it?

25 KELLEIGH DANTZLER: Absolutely.

1 THE COURT: Okay. Thank you very much, Ms.

2 Dantzler.

3 BAILIFF: 156, Your Honor.

4 THE COURT: Mr. Jarvis.

5 NELSON JARVIS: Yes, sir. I want to just clarify
6 the question earlier. Were you asking anybody who had
7 been accused of anything?

8 THE COURT: Sure.

9 NELSON JARVIS: I have been arrested, but the
10 charges were dropped.

11 THE COURT: What charge?

12 NELSON JARVIS: Criminal domestic violence first
13 offense, but I was never tried. It was nolle processed
14 and it's been expunged.

15 THE COURT: No. That's fine. Would that in any way
16 affect your ability to be fair and impartial?

17 NELSON JARVIS: No.

18 THE COURT: Okay. You're good then. Thank you,
19 sir. Thank you, Mr. Jarvis. He will remain with us.

20 BAILIFF: That appears to be all.

21 THE COURT: All right. Then we are ready to strike.
22 All right. Folks, the same process, same procedure that
23 we did on Monday we'll do today so that if your name is
24 called, please bring with you, you will come up and you
25 will stand here in front of the podium or whatever that

1 box is called, the IT box, I guess, and face the back of
2 the courtroom and bring with you any items, personal
3 items you may have brought to the court because it may be
4 that you won't be returning to your seat. You may be
5 coming over here to the jury box. We'll go through the
6 process. Madam Clerk will first inquire of the State.
7 As you recall from Monday they could either excuse you or
8 they could present you, and then if you're presented,
9 obviously if you're excused, you go have a seat, but if
10 you are presented, you will remain standing and then
11 she will inquire of the defense and they can either
12 excuse you or they can seat you. If you're excused, you
13 will go have a seat. If you're seated, you will come
14 over here to the jury box and so we'll go through that
15 process until we select our jury. Is the State ready to
16 proceed to jury selection?

17 MS. PATTERSON: Yes, sir, Your Honor.

18 THE COURT: Defense ready?

19 MR. MAULDIN: Yes, Your Honor, subject to prior --

20 THE COURT: Sure. So folks if you would just listen
21 carefully for your name and bring whatever personal items
22 you may have brought to the courtroom with you.

23 THE CLERK: Proceed.

24 THE COURT: Yes, ma'am.

25 THE CLERK: Number 13, Susan Backman.

1 (Whereupon, Susan Backman, a white female, was
2 called forward.)

3 THE CLERK: What say for the State?

4 MS. PATTERSON: Please present the juror.

5 THE CLERK: What say for the defense?

6 MR. MAULDIN: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, ma'am.

8 Number 196, Mark Nagel.

9 (Whereupon, Mark Nagel, a white male, was called
10 forward.)

11 THE CLERK: What say for the State?

12 MS. PATTERSON: Please excuse the juror.

13 THE CLERK: Return to your seat, please, sir. 161
14 William Jones.

15 (Whereupon, William Jones, a white male, was called
16 forward.)

17 THE CLERK: What say for the State?

18 MS. PATTERSON: Please present the juror.

19 THE CLERK: What say for the defense?

20 MR. MAULDIN: Please excuse Mr. Jones.

21 THE CLERK: Return to your seat, please, sir.

22 Number 267, Alfred Thompson.

23 (Whereupon, Alfred Thompson, a black male, was
24 called forward.)

25 THE CLERK: What say for the State?

1 MS. PATTERSON: Please present the juror.

2 THE CLERK: What say for the defense?

3 MR. MAULDIN: Please excuse Mr. Thompson.

4 THE CLERK: Return to your seat, please, sir. 241,
5 Angela Sharpe.

6 (Whereupon, Angela Sharpe, a white female, was
7 called forward.)

8 THE CLERK: What say for the State?

9 MS. PATTERSON: Please present the juror.

10 THE CLERK: What say for the defense?

11 MR. MAULDIN: Please seat the juror.

12 THE CLERK: Please have a seat in the jury box,
13 ma'am. Number 54, Randy Caulder.

14 (Whereupon, Randy Caulder, a white male, was called
15 forward.)

16 THE CLERK: What say for the State?

17 MS. PATTERSON: Please excuse the juror.

18 THE CLERK: Please return to your seat, sir. 105,
19 Frances Funderburk.

20 (Whereupon, Frances Funderburk, a white female, was
21 called forward.)

22 THE CLERK: What say for the State?

23 MS. PATTERSON: Please present the juror.

24 THE CLERK: What say for the defense?

25 MR. MAULDIN: Please excuse the juror.

1 THE CLERK: Return to your seat, please, ma'am. 94,
2 Joe Flores.

3 (Whereupon, Joe Flores, a Hispanic male, was called
4 forward.)

5 THE CLERK: What say for the State?

6 MS. PATTERSON: Please, Your Honor, may we approach?

7 THE COURT: Yes.

8 (Side bar off the record.)

9 THE COURT: Mr. Flores, I'll just get you to have a
10 seat, sir.

11 THE CLERK: Number 114, Torsha Gary-Black.

12 (Whereupon, Torsha Gary-Black, a black female, was
13 called forward.)

14 THE CLERK: What say for the State?

15 MS. PATTERSON: Please present the juror.

16 THE CLERK: What say for the defense?

17 MR. MAULDIN: Please excuse the juror.

18 THE CLERK: Return to your seat, please, ma'am.

19 205, Marie Orris.

20 (Whereupon, Marie Orris, a white female, was called
21 forward.)

22 THE CLERK: What say for the State?

23 MS. PATTERSON: Please present the juror.

24 THE CLERK: What say for the defense?

25 MR. MAULDIN: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, ma'am.
2 145, Nicholas Holt.
3 (Whereupon, Nicholas Holt, a white male, was called
4 forward.)
5 THE CLERK: What say for the State?
6 MS. PATTERSON: Please present the juror.
7 THE CLERK: What say for the defense?
8 MR. MAULDIN: Please seat the juror.
9 THE CLERK: Have a seat in the jury box, sir.
10 Number 60, Andrew Cook.
11 (Whereupon, Andrew Cook, a black male, was called
12 forward.)
13 THE CLERK: What say for the State?
14 MS. PATTERSON: Please excuse the juror.
15 THE CLERK: Return to your seat, please, sir. 118,
16 Susan Gerdes.
17 (Whereupon, Susan Gerdes, a white female, was called
18 forward.)
19 THE CLERK: What say for the State?
20 MS. PATTERSON: Please present the juror.
21 THE CLERK: What say for the defense?
22 MR. MAULDIN: Please seat the juror.
23 THE CLERK: Have a seat in the jury box, ma'am.
24 Number 3, Douglas Addy.
25 (Whereupon, Douglas Addy, a white male, was called

1 forward.)

2 THE CLERK: What say for the State?

3 MS. PATTERSON: Please present the juror.

4 THE CLERK: What say for the defense?

5 MR. MAULDIN: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, sir. 132,

7 Sandra Harris.

8 (Whereupon, Sandra Harris, a white female, was

9 called forward.)

10 THE CLERK: What say for the State?

11 MS. PATTERSON: Please present the juror.

12 THE CLERK: What say for the defense?

13 MR. MAULDIN: Please seat the juror.

14 THE CLERK: Have a seat in the jury box, ma'am.

15 Number 72, Kelleigh Dantzler.

16 (Whereupon, Kelleigh Dantzler, a white female, was

17 called forward.)

18 THE CLERK: What say for the State?

19 MS. PATTERSON: Please present the juror.

20 THE CLERK: What say for the defense?

21 MR. MAULDIN: Please excuse the juror.

22 THE CLERK: Return to your seat, please, ma'am. 96,

23 Sarah Folston.

24 (Whereupon, Sarah Folston, a black female, was

25 called forward.)

1 THE CLERK: What say for the State?

2 MS. PATTERSON: Please present the juror.

3 THE CLERK: What say for the defense?

4 MR. MAULDIN: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, ma'am.

6 198, Charles Newton.

7 (Whereupon, Charles Newton, a white male, was called
8 forward.)

9 THE CLERK: What say for the State?

10 MS. PATTERSON: Please present the juror.

11 THE CLERK: What say for the defense?

12 MR. MAULDIN: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, sir. 183,
14 Mary Majewski.

15 (Whereupon, Mary Majewski, a white female, was
16 called forward.)

17 THE CLERK: What say for the State?

18 MS. PATTERSON: Please present the juror.

19 THE CLERK: What say for the defense?

20 MR. MAULDIN: Please seat the juror.

21 THE CLERK: Have a seat in the jury box, ma'am.

22 123, Timothy Graves.

23 (Whereupon, Timothy Graves, a white male, was called
24 forward.)

25 THE CLERK: What say for the State?

1 MS. PATTERSON: Please present the juror.

2 THE CLERK: What say for the defense?

3 MR. MAULDIN: Please seat the juror.

4 THE CLERK: Have a seat in the jury box, sir.

5 Number 297, Phoua Yang.

6 (Whereupon, Phoua Yang, an Asian female, was called
7 forward.)

8 THE CLERK: What say for the State?

9 MS. PATTERSON: Please present the juror.

10 THE CLERK: What say for the defense?

11 MR. MAULDIN: Please seat the juror.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 Alternates, Your Honor.

14 THE COURT: Two and one on each.

15 THE CLERK: Number 17, Sherrie Beard.

16 (Whereupon, Sherrie Beard, a white female, was
17 called forward.)

18 THE CLERK: What say for the State?

19 MS. PATTERSON: Please present the juror.

20 THE CLERK: What say for the defense?

21 MR. MAULDIN: Please excuse the juror.

22 THE CLERK: Return to your seat, please, ma'am. 29,
23 Donna Britt.

24 (Whereupon, Donna Britt, a white female, was called
25 forward.)

1 THE CLERK: What say for the State?

2 MS. PATTERSON: Please present the juror.

3 THE CLERK: What say for the defense?

4 MR. MAULDIN: Please excuse the juror.

5 THE CLERK: Return to your seat, please, ma'am.

6 Number 40, Darius Caldwell.

7 (Whereupon, Darius Caldwell, a black male, was
8 called forward.)

9 THE CLERK: What say for the State?

10 MS. PATTERSON: Please present the juror.

11 THE CLERK: What say for the defense?

12 MR. MAULDIN: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, sir.

14 That's alternate number 1, Your Honor. Number 230, Kathy
15 Roberts.

16 (Whereupon, Kathy Roberts, a white female, was
17 called forward.)

18 THE CLERK: What say for the State?

19 MS. PATTERSON: Please present the juror.

20 THE CLERK: What say for the defense?

21 MR. MAULDIN: Please excuse the juror.

22 THE CLERK: Return to your seat, please, ma'am.

23 Number 156, Nelson Jarvis.

24 (Whereupon, Nelson Jarvis, a white male, was called
25 forward.)

1 THE CLERK: What say for the State?

2 MS. PATTERSON: Please excuse the juror.

3 THE CLERK: Return to your seat, please, sir. 119,
4 Leah German.

5 (Whereupon, Leah German, a white female, was called
6 forward.)

7 THE CLERK: What say for the State?

8 MS. PATTERSON: Please present the juror.

9 THE CLERK: What say for the defense?

10 MR. MAULDIN: Please excuse the juror.

11 THE CLERK: Return to your seat, please, ma'am.
12 Number 223, Melissa Raisley.

13 (Whereupon, Melissa Raisley, a white female, was
14 called forward.)

15 THE CLERK: What say for the State?

16 MS. PATTERSON: Please present the juror.

17 THE CLERK: What say for the defense?

18 MR. MAULDIN: Please seat the juror.

19 THE CLERK: Have a seat in the jury box, ma'am.
20 That's alternate number 2, Your Honor.

21 THE COURT: All right. Any motions regarding jury
22 selection from the State?

23 MS. PATTERSON: Not from the State, Your Honor.

24 THE COURT: Anything from the defense other than the
25 matter we have taken under advisement?

1 MR. MAULDIN: No, Your Honor.

2 THE COURT: All right. Folks, ladies and gentlemen,
3 I want to thank you for your service this week. This is
4 going to conclude your service. We have another
5 courtroom that's going on downstairs. Their work load is
6 filled up and we are the only other court going. This
7 case is probably going to take us long enough to where we
8 don't really have time to try another case this week so
9 I want to thank you for your service. You're going to be
10 free to go in just a moment. You don't have to call
11 back. Your service has been concluded so as you leave,
12 if you need a work excuse.

13 Now, you will be getting a check here in the next
14 day or so for your service this week. Please don't think
15 that that's what we think about you and your time. It's
16 not a reflection on how we value your time. Your time is
17 priceless and we can't pay you for what your time is
18 actually worth, but you will get a little something for
19 being up here and there will be a work excuse with that
20 so if you can wait until you get that, that's fine. But
21 if you need the work excuse now, you can go down to the
22 Clerk's Office and they can give you one down there,
23 okay?

24 You have earned an exemption so that if you get
25 called for jury duty anymore this year, next year or the

1 year after, you can claim that exemption and be excused
2 from service. I tell people all the time it is just an
3 exemption. It doesn't mean you're not qualified to
4 serve. So if you do get another summons for jury duty in
5 state court and you want to serve, I would encourage you
6 to do so, but you do have that exemption if you need to
7 use it.

8 Again I want to thank you for your service. You
9 really don't understand, and I'm sincere when I tell you
10 this, you really don't understand how much work you have
11 actually done by just being available this week. We have
12 moved, I don't know the exact number, but we have moved
13 dozens of cases this week because of your being available
14 and so we really want to thank you. I wish you could
15 actually see the result of your being available because
16 just being available and ready to go, ready to sit here
17 and do your work resolves a lot of issues and so I want
18 to thank you for that. I hope it's not raining on you
19 when you leave. I don't have anything else for you so if
20 everyone else will remain seated. Folks, thank you for
21 your service. You're free to go.

22 (The remaining jury panel was excused.)

23 THE COURT: Folks, we are going to begin this trial
24 first thing in the morning. As I told you when you were
25 here earlier today, we had another case that we were

1 going to originally pull. It got resolved and so then we
2 moved to this case so I have some pretrial matters that I
3 need to take up this afternoon that will help the case
4 move along a little smoother and quicker once we get
5 started. So I'll do that this afternoon and so we don't
6 need you to sit around while we do that so I will excuse
7 you as well but I am going to need you back tomorrow.

8 So if you would, let me, I want to ask you if you
9 would be back in the jury room ready to go at 10:00
10 tomorrow morning. When you leave here, I'll get you to
11 follow the bailiff. He'll show you where the jury room
12 is. So when you report back, you'll come up here and
13 you'll report back here. Someone will be here to guide
14 you back into the jury room.

15 Now, when you leave, it's very important that you
16 have no conversation with anyone about this case; that
17 you don't allow anyone to talk with you about this case.
18 You're going to take an oath to try this case and to
19 reach a fair and just verdict based solely upon the
20 evidence that is presented during the course of this
21 trial so it's very important that you not talk with
22 anyone. Don't allow anyone to talk with you. When you
23 go home, your family, friends and loved ones may be
24 curious as to whether or not you have been selected. You
25 can tell them that you have been selected to be on a

1 jury, but that you are not allowed to tell them anything
2 further. You're not allowed to discuss any aspect of the
3 case. Saying something as innocent as, well, it involves
4 a fellow by the name of Johnny Sexton or, well, it
5 involves a case of unlawful conduct towards a child
6 because really that's pretty much all you know right now,
7 but saying something as innocent as that could possibly
8 elicit a response that might somehow affect your ability
9 to be fair and impartial. So it's very important that
10 you protect that ability. As you sit here now all of you
11 have indicated to the Court that there's nothing that you
12 are aware of that would cause you to not be able to give
13 both the State and the defense a fair trial. You need to
14 protect that ability.

15 So that also means, and we used to not have to say
16 this to juries, but we kind of do nowadays, we have these
17 computers and we have these cell phones that are
18 essentially pocket computers and there is a wealth of
19 information out there on the world wide web. Most of it
20 is garbage. Very little of it is reliable. I say that
21 to tell you you are not to do any independent
22 investigation. It would be highly improper because your
23 job and your role as a juror is to judge this case based
24 solely upon the evidence and the facts that are presented
25 during the course of this trial and not on anything

1 outside this courtroom.

2 So please, I think the best way to just say that to
3 you is this: When you report back in the morning, you
4 shouldn't know one thing about this case more than you
5 know right now. I tell jurors all the time put it out of
6 your mind. Enjoy your evening. If you are able to get a
7 good nights rest, do that. You will find tomorrow as you
8 sit here and you digest all the evidence and the things
9 that are presented that jury service can be taxing from a
10 mental standpoint. Obviously your mental faculties
11 operate better if you're well rested. So if you can get
12 a good nights rest tonight, do that. Come back tomorrow
13 morning ready to go. We'll start at 10:00.

14 Please don't -- My wife would hate me that I always
15 use her as an example. She is a wonderful women. She's
16 probably one of the most wonderful people I have ever
17 met, but she thinks if we have to be somewhere at 7:00,
18 she thinks we are on time if we leave the house at 7:00.
19 I try to explain to her, honey, we're late, okay? If you
20 leave your house tomorrow morning at 10:00, you're going
21 to be late unless you actually live in this room right
22 next to the jury room. So just allow yourself whatever
23 time you need to get here, find a parking space and come
24 on into the courthouse, okay?

25 Once we get everybody back at 10:00, we'll get

1 started at that point, all right? So if everyone else
2 will remain seated. Folks, if you will just follow the
3 bailiff and he'll show you where your room is and we'll
4 see you in the morning.

5 (Jury excused for the evening at 2:50 p.m.)

6 THE COURT: Now, before we proceeded to jury
7 selection, when the case was called for trial, Mr.
8 Mauldin on behalf of Mr. Sexton objected to proceeding
9 with jury selection this afternoon because Mr. Sexton was
10 not present and he wished to have that objection noted
11 and then I told him that we would certainly note that as
12 an objection which was timely and properly made and that
13 we would, once jury selection was concluded, of course, I
14 denied that request, but once jury selection was
15 concluded I would give him an opportunity to then place
16 upon the record the basis for his objection and we are
17 going to do that at this time. Mr. Mauldin.

18 MR. MAULDIN: Thank you, Your Honor. Mr. Sexton was
19 on the trial docket for this week and he did appear on
20 the first day of this week when, I guess, the jury pool
21 came in and the whole pool was qualified. I believe you
22 picked a jury on another case.

23 THE COURT: Right.

24 MR. MAULDIN: He was told to be on phone standby to
25 come back a day later this week. Well, it was our

1 understanding I guess by the close of business yesterday
2 that the case that pled out this morning was to be tried.
3 I was not notified to have Mr. Sexton to be up here as
4 any kind of back up. The case pled out. I was notified
5 at 11:00 a.m. this morning to get Mr. Sexton up here.
6 When I called Mr. Sexton, he had said that he had left
7 with a work crew. They ended up in Ridgeway, South
8 Carolina which is, I guess, about an hour, a little over
9 an hour away somewhere up near Winnsboro and that he
10 would do what he could to get back. I called to follow
11 up sometime in the afternoon. He said basically he rode
12 up with a work truck. The work truck wasn't going to
13 come back. They weren't going to bring him back and he
14 called a couple people and he couldn't get a ride here
15 today. I inquired with him about whether he waived his
16 presence for jury selection and he thought that it was a
17 crucial part or an important part of the trial process
18 and he wanted to be present. So our objection is that we
19 proceeded with jury selection in his absence. I don't
20 think he willfully failed to appear. I understand that
21 he went out and it's a situation where he can't get back.
22 I think he wasn't trying to run or anything of that
23 nature and I don't think that he should be punished by
24 missing that crucial stage of the process. So I think
25 picking the jury without his ability to see or

1 participate by discussing things with me in that process
2 would violate his right to a fair trial under the Sixth
3 Amendment of the U.S. Constitution, Article 1, Section 14
4 of the State Constitution and his right to due process
5 under the Fifth and Fourteenth Amendment of the U.S.
6 Constitution and Article 1, Section 3 and 6 and we would
7 move that the panel be struck and the trial not
8 proceed.

9 THE COURT: All right, sir. Ms. Patterson.

10 MS. PATTERSON: Thank you, Your Honor. It's the
11 State's position that the Defendant received notice on
12 April 3rd that his case was subject to trial this week.
13 He did appear on Monday morning. Again I'm sure he was
14 told that his case could be called for trial any day this
15 week. He took a chance and went to work this morning
16 knowing that his case could possibly be called for trial
17 any day this week so it's the State's position that he
18 has waived his right to be here. He's duly represented
19 by counsel in this critical stage, Your Honor, and I
20 think that's what the Constitution requires, that he's
21 represented at critical stage by an attorney and Mr.
22 Mauldin's presence will adhere to that Constitutional
23 protection.

24 THE COURT: All right. I do find that, and it was
25 the basis for my ruling earlier, to proceed with jury

1 selection. Mr. Sexton was here earlier this week; was on
2 the trial roster. I don't think there's any issue that
3 he had notice that his case could be called at any time
4 this week and that he was to be available and was put on
5 telephone standby. I agree with what Mr. Mauldin said.
6 I don't think that he was attempting to avoid trial, but
7 he did take the risk of going on a job that would require
8 him to be out of pocket and essentially made himself
9 unavailable.

10 The case before this one did, in fact, plea out
11 which made this the next case on the roster and Mr.
12 Mauldin was, obviously as his attorney, was here for jury
13 qualification process on Monday as was Mr. Sexton and
14 then, of course, obviously Mr. Mauldin was here today to
15 go through the procedure and the process of selecting a
16 jury and so I'm going to respectfully deny the motion to
17 quash this panel and continue the case.

18 I think Mr. Sexton's rights have been protected by
19 his counsel and that he did have representation through
20 this portion of the trial after having proper notice and
21 so I'm going to respectfully deny the motion to quash
22 this panel. Anything further, sir?

23 MR. MAULDIN: I think additionally, Your Honor,
24 thumbing through the Rules of Criminal Procedure, Rule 16
25 I think there also has to be a finding that he was

1 notified that the trial would proceed in his absence.

2 The State would have to provide that.

3 THE COURT: Am I not correct that that does appear
4 on his bond paperwork?

5 MS. PATTERSON: They do appear on the bond work,
6 Your Honor, and I also included it in his letter that was
7 sent out to him on April 3rd.

8 THE COURT: All right. Okay. I think that notice
9 was conveyed.

10 MR. MAULDIN: If she could make a copy of that for
11 the record, I would appreciate it.

12 MS. PATTERSON: I certainly will. I'll get you a
13 copy, Your Honor.

14 THE COURT: You don't have that up here right now,
15 but what I'll do is I'll get you to make a copy of that
16 for the Court and we'll mark that as a Court's -- We
17 haven't made a Court's exhibit in this case yet, have we?

18 MS. PATTERSON: No, sir.

19 THE COURT: We'll make that Court's exhibit number
20 1. All right. Now, is there anything that we can take
21 up this afternoon pretrial that would help us expedite
22 anything over the next day or so?

23 MR. MAULDIN: I believe that there is one thing we
24 can go over today that I thought of. Could I take a
25 brief two minute break?

1 THE COURT: Yes, sir. Let's do that. Let's be at
2 ease for a few minutes while you all do that. We'll take
3 a short break.

4 (Short recess.)

5 THE COURT: Back on the record.

6 David, did you see a copy of that letter?

7 MR. MAULDIN: Yes, sir.

8 THE COURT: We have gone ahead and made it a Court's
9 exhibit so it's in. Anything else? You had something
10 that you thought we might could take up.

11 MR. MAULDIN: Well, Your Honor, in part of the
12 discovery I think I received sometime last week I believe
13 it was was these Inflex records or records of
14 documentation. I guess allegations are in this case the
15 Defendant may have made the methamphetamine at near or
16 around the children. That's one of the allegations of
17 the drug thing and part of the discovery that I received
18 last week was a series of these records that are called
19 Inflex, I guess. I guess they are gathered by law
20 enforcement or by SLED to document Pseudoephedrine
21 purchases made by individuals throughout the State. And
22 I know that they have got a couple of witnesses here from
23 Wal-Mart and Walgreens. The documentation I have been
24 provided is from the law enforcement records. I haven't
25 been provided any records from Walgreens or Wal-Mart, if

1 they are attempting to get them in under some type of
2 hearsay exception. It's kind of difficult to phrase it
3 right now because I don't know how they are going to try
4 to introduce it, Your Honor, and I just didn't want it to
5 be a big thing where we were halfway up on the stand and
6 I make an objection and the jury has heard part of it.

7 THE COURT: All right.

8 MS. PATTERSON: Your Honor, the records that he's
9 referring to we did issue a subpoena and I'm actually
10 working on getting those documents because I asked them
11 to bring them in as their business records to see what
12 they have and so I have requested to the people that are
13 representing the two pharmacies if they can provide those
14 documents to me today. But they're just documents that's
15 referencing the Inflex what he already has so the
16 transactions will specifically be what they have in their
17 business records so hopefully I will have that when I get
18 back to my desk and I'll give them to Mr. Mauldin. But
19 it's basically just referencing the information that he
20 already has.

21 THE COURT: The SLED record you're referring to
22 lists these transactions?

23 MS. PATTERSON: Yes, sir.

24 THE COURT: And this is just the hard copy of the
25 paperwork of the transactions with the pharmacies?

1 MS. PATTERSON: Yes, sir. And I'll get that to him
2 hopefully because we called them before we came in. We
3 asked that they get those documents to us so we'll give
4 those to Mr. Mauldin.

5 THE COURT: Okay. All right.

6 MR. MAULDIN: I would inquire, the paperwork I got,
7 I guess, from SLED or Inflex is scanning an entire year
8 which also has information outside the scope of the
9 indictment. So are they limiting it, number 1?

10 MS. PATTERSON: I am. I'm limiting it to November
11 1st, 2013 up to the date the people went out which is
12 February 21st, 2014, so it will be limited.

13 MR. MAULDIN: So they are limited to that time
14 period? Well, Your Honor, I would object to any of those
15 records coming in even if the Walgreens or Wal-Mart
16 people, those are the records custodians for those
17 organizations?

18 MS. PATTERSON: Yes.

19 MR. MAULDIN: Even if they come in to testify
20 regarding these, I'm just going to kind of lay it out,
21 Your Honor, here and it may take a little bit of time so
22 bear with me.

23 THE COURT: Okay.

24 MR. MAULDIN: Obviously I would object to them under
25 Mr. Sexton's right to confrontation and right to a fair

1 trial and the Sixth Amendment of the U.S. Constitution
2 and Article 1, Section 14 of the State Constitution and
3 his right to due process under the Fifth and Fourteenth
4 Amendment of the U.S. Constitution and Article 1, Section
5 3 of the State Constitution.

6 Obviously these records are technically hearsay
7 because they are records that say that Mr. Sexton went to
8 these stores and purchased Sudafed. There's a store
9 clerk there that supposedly takes their ID and their
10 signature and they enter these into the records at the
11 store, okay? So obviously these are the records
12 custodians that they are bringing to testify and not the
13 individual clerks or the pharmacist or whoever it was
14 made that entry.

15 Our first position, Your Honor, obviously it's
16 hearsay and I assume they want to get it in under the
17 business records exception. It's our position that these
18 records documenting purchases of Pseudoephedrine are not
19 business records and the rules regarding business records
20 are referenced in the Statute 19-5-510 and Rule 803-6.

21 Your Honor, these records that they have from the
22 pharmacy regarding the purchase of Sudafed it's our
23 position that these are records that they are required to
24 keep by law and under Section 44-50-398(b)(2), and SLED
25 is the repository of these records under Statute

1 23-3-1200 and under that Section 23-3-1200(e) it states
2 that these records that are kept are sent to SLED as a
3 requirement of the statute. These are not public records
4 and not to be used by - not to be released under Freedom
5 of Information or anything like that. They are solely
6 for the purpose of sending it to SLED and not to be
7 maintained as a public record.

8 So these records are basically for law enforcement
9 purposes to maintain and prosecute the unlawful purchase
10 of excessive Pseudoephedrine or in cases where people are
11 making methamphetamine to document whether or not the
12 purchases are there so these aren't business records kept
13 for their business. These are records that law
14 enforcement through or I guess the State through the
15 statutory scheme requires them to keep and send solely
16 for the purposes of law enforcement to monitor and
17 maintain those purchases. It's not for their business.
18 They are not able to release it. They are not public
19 records at all. And they are not relied on for their
20 business affairs.

21 So number 1, I would say it's not a business record
22 and also because these records are solely provided to law
23 enforcement it's our position that they are only prepared
24 for litigation purposes, Your Honor. And I'm going to
25 cite a real old case here. Palmer v. Hoffman, 318US109

1 which is a 1943 U.S. Supreme Court case that involved an
2 accident report prepared by a railroad employee was found
3 admissible under a business records exception because it
4 was prepared for litigation purposes and it's our
5 position that this information that's solely to be sent
6 to law enforcement is to be prepared for purposes of
7 prosecution or for litigation. Do you follow me on that?

8 THE COURT: I thought you said the records in that
9 case were admissible?

10 MR. MAULDIN: Inadmissible because they were
11 prepared for purposes of litigation in this case suing
12 the train company, okay?

13 THE COURT: Okay. Got you.

14 MR. MAULDIN: So it's for those reasons that they
15 are required by law enforcement, that they are not to be
16 released to the public and that they are made for law
17 enforcement purposes for the aid of litigation or
18 prosecution, that they are not business records under
19 that statute and the Rule 803-6.

20 Additionally, Your Honor, besides our position that
21 it's not a business record we would hold that entry of
22 these matters violates the confrontation clause. Again,
23 we go back, they are testimonial in nature. Johnny
24 Sexton came to Wal-Mart on this date and made a purchase,
25 made an attempt to try to, or made a purchase of

1 Pseudoephedrine and we believe that we should have the
2 opportunity to cross examine the individual clerks that
3 made these transactions and I would cite Crawford v.
4 Washington 541US36.

5 There have been some follow up cases. Melendez-Diaz
6 v. Massachusetts which is 557US305 and that involved a
7 chemist report for a drug analysis that testimonial
8 business records is inadmissible if the business activity
9 is basically for production of evidence at trial and
10 again it's our assertion that these records are kept
11 solely for the means of law enforcement to monitor it and
12 it's kept for use for prosecution. And I would also into
13 cite Bullcoming v. New Mexico, 131 Supreme Court 2705
14 which would say the document solely created for
15 evidentiary purposes in aid of police investigation ranks
16 as a testimonial evidence.

17 So our position is it's not a business record for an
18 exception as to the hearsay. If Your Honor does not rule
19 that way, then it shouldn't come in under those
20 confrontation clause cases decided by the Supreme Court.
21 Basically these records are not made for business
22 purposes. They are made for prosecution and that
23 allowing these records in would be inadmissible and would
24 violate again his right to confrontation under the Sixth
25 Amendment of the U.S. Constitution and Article 1, Section

1 14 of the State Constitution and his right to due process
2 under the Fifth and Fourteenth Amendments U.S., Article
3 1, Section 3 State and his right to a fair trial under
4 obviously those previous provisions as well.

5 THE COURT: All right. Thank you, sir. Madam
6 Solicitor.

7 MS. PATTERSON: Thank you, Your Honor. It's the
8 State's position that these records are kept during the
9 normal course of business, Your Honor. They are not kept
10 strictly for prosecuting people, Your Honor, or for
11 litigation. They help the pharmacies keep track that the
12 person is not making too many of the Pseudoephedrine
13 purchases, Your Honor, so it helps them to keep track of
14 the person's purchases and not specifically for
15 litigation, Your Honor, because hopefully if it's in the
16 normal course of business because these records are kept,
17 if the person is trying to exceed the maximum purchases
18 required by law they are actually able to be stopped and
19 so, therefore, Your Honor, there would be no litigation,
20 there would be no prosecution.

21 Under the business record exception, Your Honor,
22 it's not required that these records be for public record
23 to fall under this exception. It's just that the
24 business keeps the records in its normal ordinary course
25 of business, Your Honor, which we submit both of these

1 pharmacies would do. With respect to the confrontation
2 clause, Your Honor, defense counsel certainly can cross
3 examine these custodians of the records, Your Honor,
4 with respect to their personal knowledge of the actual
5 purchase, Your Honor, and we would submit, Your Honor,
6 that that goes to credibility and not admissibility, Your
7 Honor, and, therefore, you know, he would still be
8 protecting his client's interests and would have the
9 right to cross examine them about that, Your Honor. We
10 don't have every clerk that made the individual
11 purchases, Your Honor, but these certainly are the
12 custodians of these records, Your Honor, so that we would
13 ask that this information be allowed in.

14 THE COURT: Now, the custodians, I guess it may
15 remain to be seen with regards to the testimony, but
16 these are folks that are able to testify as to store
17 policy and procedure on how that record is made and how
18 it is, what the requirements are of the company or of the
19 collection of these matters?

20 MS. PATTERSON: Yes, sir, Your Honor. They would
21 certainly be able to lay the foundation.

22 THE COURT: And the reason I'm asking it obviously
23 Mr. Mauldin it wouldn't do any good to cross examine
24 somebody who is going to come in here and all they can
25 say is I don't know. I was just told to bring these

1 records over. I keep the records and I don't know
2 anything about store policy or how they are made or -- In
3 other words, see what I'm saying? MS.

4 PATTERSON: Yes, sir, Your Honor. They will be able to
5 testify to that.

6 THE COURT: You need somebody who is going to be
7 more than just a courier, I guess, is what I'm saying.

8 MS. PATTERSON: Yes, Your Honor. They will be able
9 to testify to that.

10 THE COURT: All right. Let me just say this. I
11 agree with Ms. Patterson. I think these do fall under
12 the business record exception. I think they are business
13 records. The pharmacies, they are not allowed to run
14 their business without keeping these records. It's part
15 of the business of the pharmacy and again it is, I
16 understand the argument from Mr. Mauldin's standpoint
17 that these records are used to prosecute people who
18 violate the law on Pseudoephedrine and they are only kept
19 for that purpose, but that's only one way to look at the
20 records. The other way to look at the records is simply
21 as you mentioned, is that in this country there is a law
22 against how often and how much Pseudoephedrine a person
23 can purchase and this is a way for a business to keep a
24 record of that so that they can maintain their compliance
25 with the law and not allow an abuse of that statute. So

1 I don't have an issue with regards to these being a
2 business record assuming that that's established through
3 your witness. As far as the confrontation clause goes
4 what we may do is we may have you proffer that testimony
5 so that it will give me an opportunity to determine if
6 there is something here that can be effectively cross
7 examined which I assume there will be based on what you
8 shared with me. What I don't want to do is the old
9 unringing the bell thing is to have your witnesses
10 testify at length on direct and then find that they
11 really don't have the information which is appropriate
12 for cross examination which would cover the confrontation
13 clause issue. So what we may do is we may let you
14 proffer that testimony outside the jury's presence to
15 determine whether or not it does meet the confrontation
16 clause issue. You see what I'm saying? I know you're
17 telling me that they are going to be able to testify to
18 the procedures, the collection and all of that and that's
19 fine if they are able to do that. But in other words,
20 what I'm saying is that I'm not denying the admissibility
21 of the records based on the proffer. I just want to
22 allow you to proffer that testimony just to give an
23 opportunity to see if it is, in fact, more than simply a
24 courier or someone who can actually answer questions on
25 cross examination with regards to that.

1 MS. PATTERSON: With regard to like policy and
2 records keeping.

3 THE COURT: Correct.

4 MS. PATTERSON: Okay. I understand. Thank you.

5 THE COURT: So I guess the bottom line is I'm going
6 to withhold my ruling on the admissibility of those
7 records until we have the opportunity to do that
8 tomorrow.

9 MS. PATTERSON: Yes, sir, Your Honor.

10 THE COURT: Anything else that we can deal with
11 today or any other pretrial matters that we can deal
12 with?

13 MR. MAULDIN: I don't know. There's a co-defendant
14 in this case, Your Honor, Jamie Norris. She's provided,
15 I guess, unlimited statements in the discovery provided
16 as far as the responding officer's report and the
17 investigating officer's report regarding events that had
18 occurred that day, but I don't know if they are intending
19 to go into events. They have kind of enlarged the scope
20 of the indictment to a three month period instead of
21 things that happened that day and I didn't know if she
22 made any statements regarding any activity during that
23 period of them that I may be able to have to use as cross
24 examination and obviously if she differs from her
25 previous statements that she made to them.

1 THE COURT: Are there any statements that
2 Mr. Mauldin does not have?

3 MR. MAULDIN: Since the initial investigation.

4 MS. PATTERSON: She hasn't given us any written
5 statements, Your Honor. We certainly have met with her
6 and talked to her, but she hasn't given us any written
7 statements.

8 THE COURT: All right.

9 MR. MAULDIN: I don't know if I can be provided with
10 maybe like a summary or content of prior things that she
11 -- She might testify differently from what she said to
12 them and that would be something that I could use to -- I
13 mean obviously that's an eventuality I think under Brady
14 that I might be entitled to if the content is different.
15 Obviously if it's more than what's provided in the
16 discovery already about the data, if she's talked with
17 them and said, well, during this three month period X, Y
18 and Z happened on X, Y, Z day and the she gets up on the
19 stand and her testimony is different, I should be able to
20 have that to cross examine her of the use on this day and
21 you're saying this now and now you're saying this on X, Y
22 and Z.

23 THE COURT: Well, I don't know how I can give you
24 that if she hasn't given a statement to that effect.

25 MR. MAULDIN: They could summarize what she's told

1 them in like an e-mail or a document. Often the police
2 officers summarize what people tell them in the police
3 reports. It's done that way.

4 THE COURT: If you have any statements that she's
5 prepared or anything, I mean, turn those over, but I'm
6 not going to make them reveal to you their conversations
7 with their witnesses as they are preparing for trial.

8 MS. PATTERSON: Your Honor, for the record, of
9 course we asked her more questions, but she didn't tell
10 us anything different. Her testimony hasn't changed with
11 regards to the statement or the information that she gave
12 law enforcement that they provided in the reports so she
13 hasn't said anything that's different so nothing
14 exculpatory.

15 THE COURT: Okay. Anything else?

16 MR. MAULDIN: That's all I can think of right now,
17 Your Honor.

18 THE COURT: And there may be other things. We'll
19 address it. Now, I have the jury coming in at 10:00
20 rather than 9:30. That was just really a precautionary
21 thing for me. I have a Bible study every Thursday
22 morning and we usually get done and I'm usually able to
23 be here before 9:30 but a couple of times I have run late
24 and have you all sit around. I didn't want that to
25 happen so I gave myself a little bit of extra time

1 because I come from Florence so I anticipate though that
2 I will be here around 9:15 or so so if anything does come
3 up, you know, give a holler over if you need to. I
4 should be here, okay? All right. Then we'll start then
5 first thing in the morning.

6 MS. PATTERSON: Thank you.

7 MR. MAULDIN: Thank you, Your Honor.

8 (Whereupon, court was adjourned for the day at 3:30
9 p.m.)

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1 April 16th 2015

2 (Whereupon, Court's Exhibit #1 marked for
3 Identification.)

4 (Whereupon, State's Exhibits #1 through #27 marked
5 for Identification.)

6 THE COURT: Thank you, folks. Please have a seat.

7 David, I have a charge that I would propose that I
8 would give prior to beginning. I would basically tell
9 the jury that essentially that you may note that Mr.
10 Sexton is not at counsel table for the defense. Under
11 the laws of the State of South Carolina a Defendant
12 may be tried even if the Defendant does not attend the
13 trial. But the fact that the Defendant is not present
14 may not be considered against that Defendant in any
15 manner. You are to draw no inferences whatsoever because
16 the Defendant is not present. There is no requirement
17 that a Defendant must be present at a trial.

18 MR. MAULDIN: Yes, sir. I think we need for the
19 record, the Defendant is not present, Your Honor. I did
20 have some communication with him last night about court
21 beginning today at 10:00. I have not been able to
22 contact him. I don't know for what reason that he's not
23 here, whether it's medical.

24 THE COURT: You haven't heard anything today?

25 MR. MAULDIN: I haven't heard anything as to any

1 reason. I would object to the trial proceeding in his
2 absence again under his right to a fair trial and the
3 Sixth Amendment, Article 1, Section 14. Sixth Amendment
4 U.S., Article 1, Section 14 of the State and right to due
5 process under the Fifth and Fourteenth U.S., and Article
6 1, Section 3 of the State and there was some
7 contemplation of him actually testifying. We haven't
8 gotten to that point yet, but I would also cite that, his
9 right to present a legal defense under the Sixth and
10 Fourteenth Amendment U.S., and Article 1, Section 14 of
11 the State.

12 THE COURT: Okay. All right. And I certainly
13 understand your position, however, this is a situation
14 that Mr. Sexton has made himself unavailable for whatever
15 reason and I don't know what it is. But he's been on
16 notice that his case was subject to being called for
17 trial this week. He was also put on notice that his case
18 would proceed in his absence if he did not appear.

19 As you stated, you have spoken to him. I understand
20 yesterday that situation, but he was well aware that he
21 was to be, his case was going to be tried this morning
22 and again it remains to be seen why he's not here. I
23 don't know that we'll know that, but at least at this
24 point I don't think he can rely on those protections when
25 he's the one himself who has made himself unavailable for

1 trial. So I would certainly note your objection to the
2 Court's ruling, but we are going to proceed. In that
3 light, I had discussed this with counsel prior to us
4 getting started here. Are you still of the mind set that
5 you would like to have something said to the jury about
6 his absence before we get started?

7 MR. MAULDIN: Yes. I do object to proceeding, but I
8 would like something said at the beginning.

9 THE COURT: Okay. And just so the record is clear,
10 I would start by telling the jury that the Defendant,
11 that they may note that the Defendant is not present at
12 counsel table, but that under the laws of the State of
13 South Carolina a Defendant may be tried even if the
14 Defendant does not attend the trial. But the fact that
15 the Defendant is not present may not be considered
16 against that Defendant in any manner. You are to draw no
17 inferences whatsoever because the Defendant is not
18 present. There is no requirement that a Defendant be
19 present at trial. And that's what I would propose to
20 instruct the jury.

21 MR. MAULDIN: Yes, sir.

22 THE COURT: Okay. Is there anything else that we
23 need to take up before we get started?

24 MR. MAULDIN: Just two brief things, Your Honor.
25 The children, the subject of this case, the three

1 children were tested, I think, hair follicle test for the
2 presence of drugs. From what I see on the witness list
3 the State does not intend to put those results into
4 evidence and the people that tested the drugs. I would
5 say that there should be no mention of any drug test.

6 THE COURT: And I'm assuming that there will be no
7 reference to that?

8 MS. PATTERSON: Your Honor, the State does intend to
9 reference the fact that the kids took a drug test. We
10 were not intending on talking about the results of the
11 drug test because we are not trying to get the results
12 in. But I think it's part of policy from the Department
13 of Social Services to have the kids drug tested. Our
14 chief investigating officer relied on those drug results
15 in getting her warrants, but we are not going to mention
16 that they were positive, but we will mention that they
17 were tested, Your Honor, as part of her investigation.

18 THE COURT: And you intend to submit testimony that
19 that was part of her reason for getting the warrants?

20 MS. PATTERSON: Yes, sir, Your Honor.

21 THE COURT: All right. That's just a backdoor way
22 of getting those results in. I think that would be
23 highly improper.

24 MS. PATTERSON: Your Honor, it was also the
25 Department of Social Services' policy that someone from

1 their agency will testify because that's part of their
2 investigation as well, Your Honor. The mom is also going
3 to testify that she complied with DSS requirement. She
4 got drug tested. The kids got drug tested.

5 THE COURT: Well, it's up to you if you want to talk
6 about that the kids got drug tested, but you don't want
7 to tell the jury what the results of those tests were.
8 But to then have an investigator say based on those test
9 results, I got my warrants, that's basically saying that
10 they tested positive.

11 MS. PATTERSON: Well, she used that in addition to
12 other things.

13 THE COURT: Well, she's not going to be able to do
14 that. She's not going to be able to use that as a reason
15 why she got her warrant. I mean, do you see where I'm
16 coming from? That's basically saying to the jury -- And
17 I don't know why you are not trying to get the test
18 results in. Apparently maybe you don't have the people
19 who did the testing available or what the reason is, but
20 that's just a backdoor way of getting the results in
21 without going through the steps appropriate. Because
22 obviously it's common sense that if they were drug tested
23 and those tests came back negative, that that would not
24 have been an incentive for the investigator to get her
25 warrants.

1 MS. PATTERSON: Yes, sir. Can DSS mention that
2 that's part of their policy?

3 THE COURT: They can mention that it's part of their
4 policy to drug test, but there can't be any testimony
5 that as a result of those tests being conducted we got
6 warrants.

7 MS. PATTERSON: Yes, sir.

8 THE COURT: I mean, I'm assuming that you would
9 object to that, Mr. Mauldin.

10 MR. MAULDIN: I do, Your Honor. I object to any
11 mention of any drug test if they are not going to put
12 them in. The prejudice of it outweighs the probative
13 value. The probative value would be if they had the
14 tests and they could say if it's positive. As you're
15 saying, it's kind of a backdoor and I think it
16 compromises his right to a fair trial and due process as
17 far as the evidence coming in and he's prejudiced by the
18 probative value of even mentioning drug tests if they're
19 not going to put in the results.

20 THE COURT: I would agree with that.

21 MR. MAULDIN: At all.

22 THE COURT: There will be no mention of drug
23 tests.

24 MS. PATTERSON: Okay. That's fine.

25 THE COURT: Okay. I'm sure there are other criteria

1 that they followed.

2 MS. PATTERSON: Yes, sir.

3 MR. MAULDIN: Secondly, Your Honor, I believe
4 Investigator Merckle responded to the residence on
5 February 21. That's how this investigation began. It
6 began with other officers and Merckle was with the Drug
7 Enforcement Team and they called him in. He found two
8 jars with a liquid in them. Those jars were destroyed.
9 I believe they are intending to have him testify that he
10 believed that one jar had Coleman camp fuel in it and he
11 believed the other jar had ether in it, but those items
12 were destroyed and never tested for those substances and
13 I would object to him testifying, speculating basically
14 as to what was in those jars.

15 THE COURT: Do you intend to go into that?

16 MS. DAVIS: Your Honor, Investigator Merckle is a
17 certified meth tech as part of the NET Team and I would
18 just have him say based on his training and experience.

19 THE COURT: You're going to have him qualified as an
20 expert?

21 MS. DAVIS: I can. I can attempt to.

22 THE COURT: I think you have to if he's going to
23 give an opinion.

24 MS. DAVIS: I think so.

25 THE COURT: With regards to that.

1 MS. DAVIS: Okay.

2 THE COURT: Now, and then we'll just have to let you
3 go through that qualification, those qualifications as to
4 whether or not he - and let Mr. Mauldin cross examine on
5 that issue as to whether or not he can qualify as an
6 expert.

7 MS. DAVIS: Yes, sir, Your Honor.

8 THE COURT: Okay. So with regard to that issue
9 we'll just revisit that at the appropriate time.
10 Anything else before we bring the jury out? Anything
11 from the State?

12 MS. PATTERSON: Nothing from the State.

13 THE COURT: Anything further from the defense?

14 MR. MAULDIN: No, Your Honor.

15 THE COURT: All right. Let's bring the jury out,
16 please.

17 (Whereupon, the prospective jury enters the
18 courtroom at 10:18 a.m.)

19 THE COURT: Okay. Ladies and Gentlemen, I'm glad
20 everybody made it back. Okay. We'll get started here,
21 but before we do, a couple of things I want to mention.

22 First off, it's important that you are comfortable
23 or as comfortable as we can make you. The temperature in
24 here we try to keep it - it's hard to make everybody
25 happy. It's like a never ending issue at my house. My

1 wife is very cold natured. Cold natured. She's not a
2 cold person. But if it drops below 80 degrees, she gets
3 cold. On the other hand, if it gets above 50, I get hot
4 so we are always fighting that battle at the house. We
5 can't fight that battle here so we try to keep it at what
6 is an acceptable temperature. Some of you may be a
7 little chilly. Some of you may not. If it becomes
8 uncomfortable for anyone, please let me know and we'll
9 try to adjust it.

10 Also throughout the case, we'll take breaks
11 throughout the trial, but there are times, and I don't
12 know if there is any delicate way to put this, but
13 sometimes mother nature comes calling at a time when we
14 are not on a break and you just have to answer that call.
15 If that occurs, you need to just let me know that you
16 need a break. It doesn't matter if it's right in the
17 middle of somebody's testimony. We can always stop
18 testimony and pick back up where we left off. That's not
19 a problem. If anyone needs a break at any time before we
20 actually take one, get either the bailiff's attention or
21 get my attention and we'll stop and we'll take a break
22 and we'll just start right back where we left off.
23 That's not an issue.

24 Also it's important obviously that you hear all of
25 the testimony as well as the attorneys and the Court so

1 if at any time you can't hear something, just let me know
2 that you didn't catch that or you didn't hear it and
3 we'll have that individual repeat their response, okay?

4 And then the last thing is you may note that Mr.
5 Sexton is not sitting over at the defense table. What
6 I want to share with you and charge you is this: Under
7 South Carolina law a Defendant may be tried even if that
8 Defendant does not attend the trial. But the fact that
9 the Defendant is not present may not be considered
10 against that Defendant in any manner. You are to draw no
11 inferences whatsoever from the fact that the Defendant is
12 not present. There is no requirement that a Defendant be
13 present at a trial.

14 So I wanted you to understand that and clear that up
15 before we got started.

16 Now, I'm going to talk to you about some things
17 procedurally that we're going to be following, but before
18 I do that, I'm going to ask you to give Ms. Frick your
19 attention and she's going to place you under your oath
20 for your role as jurors in this case.

21 THE CLERK: Please stand and raise your right hands.

22 (The jury was duly sworn by the Clerk of Court at
23 10:35 a.m.)

24 THE COURT: Ladies and gentlemen, I know everybody
25 has different experiences. I don't know if any of you

1 have ever actually sat in on an actual jury trial before.
2 Most people, if you took a survey of just a general cross
3 section of the community, most people have never had the
4 opportunity that you are having this week to sit in on an
5 actual jury trial. Most folks experience with regards to
6 jury trials is what they have seen in movies or what they
7 have read in books or seen on television. As we all
8 know, those trials are always filled with high drama and
9 intense action, sometimes riveting circumstances. There
10 is a reason for that. That's Hollywood.

11 Now, during the course of this trial while any
12 number of those things could occur, what's important for
13 you to keep in mind is that this trial is not for your
14 entertainment. This trial is a fundamental part of our
15 democracy. Oftentimes as we go through jury trials it's
16 a slow process. Sometimes it's very deliberate. It can
17 be repetitive. In other words, it's very much different
18 than the things that you have seen on television or that
19 you have read in books or seen in the movies.

20 This courtroom is a place of honor that is dedicated
21 to the protection and to the preservation of citizens'
22 rights through what many people have called the greatest
23 justice system ever created. The attorneys that appear
24 before you are advocates for the parties that they
25 represent. But first and foremost they are officers of

1 the Court sworn to uphold the integrity and the fairness
2 of our judicial system. You should expect them to be
3 professional, competent and ethical in the representation
4 of their client's interest.

5 Now, you have just taken an oath to try this case
6 and to reach a fair and a just verdict and so you are
7 also expected to be professional, reasonable and ethical
8 in the performance of your duties which I have absolutely
9 no doubt you will do. And I want to take this
10 opportunity to thank you for your contribution to our
11 system of justice here in Lexington County.

12 Now, I'm going to tell you a little bit about the
13 procedures or the steps that we're going to follow as we
14 go through the trial so that you will maybe, you'll be
15 better able to follow along with how things are going.

16 As you recall from yesterday, the Defendant Mr.
17 Sexton is charged by these indictments which were filed
18 with the Court. And he's charged with the offenses of
19 unlawful conduct towards a child in each of those three
20 indictments. The elements of those charges, the elements
21 of the unlawful conduct towards a child, I will explain
22 those elements to you when I give you the charge on the
23 law at the end of the case. What is important for you to
24 keep in mind throughout the course of this trial is that
25 the indictments are simply the charges which bring this

1 case into court and they are not in any sense evidence of
2 any of the allegations that are contained in those
3 indictments.

4 Mr.. Sexton has pled not guilty so those indictments
5 and the State therefore has the burden of proving each of
6 the elements of the indictments beyond a reasonable
7 doubt. It will be your duty, ladies and gentlemen, to
8 decide whether or not the State has met that burden.
9 Your purpose as jurors is to find and to determine the
10 facts of this case. You are the sole judges of the facts
11 in this case. If at any time I make any comment
12 regarding the facts, you must disregard those comments
13 because only you the jury can decide what the facts are
14 in this case.

15 You determine the facts from the testimony that you
16 hear from the witness stand and other evidence or other
17 items which may come in during the course of the trial.
18 It is up to you to determine what inferences you feel
19 may be properly drawn from that evidence. It is
20 especially important that you perform your duty of
21 determining the facts diligently and conscientiously
22 because ordinarily there is no way that I can correct an
23 erroneous determination of facts by a jury.

24 Now, on the other hand but with equal emphasis the
25 same law that makes you the judges of the facts makes me

1 the judge of the law. The law as given by the Court is
2 the only law that you may consider. You must accept and
3 follow it even though you may disagree with it. I'm not
4 allowed to tell you anything about the facts in this case
5 or what I think about the facts in this case and you are
6 not allowed to disagree with me about what the law is or
7 what you think the law should be. Your job is to take
8 the law as I give it to you, apply it to the facts as you
9 find the facts from the testimony of the witnesses and
10 any other evidence that may be introduced in arriving at
11 your verdict.

12 Now, until I advise you that it is appropriate to
13 begin your deliberations, you are to have no conversation
14 about this case and that means even amongst yourselves.
15 Throughout the course of the trial, as I said earlier,
16 we'll take breaks at times and you will go back into the
17 jury room, but when you go back there, you are not to
18 talk about what has occurred here during the course of
19 the trial or about anything regarding the trial. You
20 must reserve all of those thoughts until the end of the
21 trial. It is very important, ladies and gentlemen, that
22 you keep an open mind throughout this trial and that you
23 do not decide any issue until all of the evidence has
24 been presented, the parties have had an opportunity to
25 address you with their closing remarks, and I have given

1 you the law. Only after all of that has occurred, will
2 you then be in a position to begin discussing the case
3 and to deliberate.

4 Now, it is your solemn responsibility to determine
5 the guilt or innocence of the Defendant and your verdict
6 must be based solely on the evidence as it is presented
7 during this trial and on the law as I instruct it to you.

8 Now, in just a moment I'm going to recognize the
9 Solicitors and one of these young ladies will come
10 forward and make an opening statement. Essentially that
11 statement will probably be comprised of what they believe
12 the evidence in this case is going to show. Once they
13 have concluded their opening remarks, I would then
14 recognize Mr. Mauldin on behalf of the defense and he may
15 make an opening statement, although he's not required to.
16 But he may do so. What is important for you to
17 understand is this: What the attorneys tell you in their
18 opening statements is not evidence. It is merely their
19 contention as to what they believe the evidence will
20 show. They are not under oath so what they share
21 with you is not evidence in the case. The evidence in
22 the case will be presented to you through witnesses who
23 are placed under oath and testify from the witness stand
24 as well as any exhibits which may come in during the
25 course of the trial.

1 During the trial, ladies and gentlemen, from time to
2 time you may hear one of the attorneys say something
3 along these lines. Judge, we need to approach the bench
4 for a moment. Or, Your Honor, we have a matter of law we
5 need to take up with the Court. If I can resolve an
6 issue of law up here at the bench and not have to send
7 you out, I'll do that. But there may be a time that I'll
8 need to ask you to step back into the jury room while I
9 handle a matter of law.

10 As I told you earlier, you're the judges of the
11 facts and I'm the judge of the law. There are times, it
12 depends on whatever that issue may be, there are times
13 that I might be required to make some comment about the
14 testimony or about some evidence that was presented in
15 connection with the ruling that I'm required to make on
16 the law. To protect you from those comments, because as
17 I told you earlier, I'm not to have any influence over
18 you about the evidence, so to protect you from those
19 comments I may have to ask you to step back into the jury
20 room, allow me to resolve that issue of law and then
21 bring you back out and then we'll resume at that point.
22 So if I send you out, that would be the only reason that
23 I would do that.

24 In determining what the facts are in this case
25 you're going to have to decide whether or not the

1 testimony from the witnesses is believable. It's going
2 to be my duty to rule as a matter of law whether the
3 testimony is allowed into this record at all or not. But
4 once testimony is allowed into this record whether or not
5 you believe it is solely up to you to decide. In
6 deciding whether to believe a witness you have the right
7 to consider the interest of a witness, the bias of any
8 witness, the opportunity for the witness to have seen the
9 matters and the things about which that witness
10 testifies, and the way a witness acts on the witness
11 stand. You have the right, ladies and gentlemen, to
12 consider anything that's in this record that will help
13 you to evaluate the credibility or the believability of
14 the witnesses who testify. That means it is important
15 that you pay close attention to each witness, to the
16 attorneys as well as to the Court. Do not let your
17 thoughts wander throughout this trial but pay close
18 attention to everything that is presented so that at the
19 close of the evidence after the lawyers have had an
20 opportunity to address you with their closing arguments
21 and I have given you the law, you will then be in a
22 position to go back into the jury room, take the law as I
23 gave it to you, apply it to the facts as you find the
24 facts to be and arrive at a verdict.

25 Now, before I turn it over to the attorneys, let me

1 first inquire from the State, are there any objections or
2 exceptions to the Court's opening remarks?

3 MS. PATTERSON: None from the State, Your Honor.

4 THE COURT: Any from the defense?

5 MR. MAULDIN: No, Your Honor, but we would like to
6 approach.

7 THE COURT: All right. Come up.

8 (Side bar off the record.)

9 THE COURT: All right. Ms. Davis.

10 MS. DAVIS: Thank you, Your Honor. May it please
11 the Court.

12 THE COURT: Yes, ma'am.

13 MS. DAVIS: To little boys daddy is Superman. He's
14 the biggest, strongest man in the world. The man they
15 look up to to take care of them and to keep them safe.
16 To provide for them. To give them what they need. To
17 love them. Unfortunately, for Minor3 and Minor2 and Minor1
18 the Defendant was a sad excuse for a father.

19 In this case you will hear that the Defendant was
20 cooking methamphetamine in a small camper where these
21 children lived, where they slept, where they played. He
22 also was cooking meth in the van that they rode in.

23 Now, you will hear from law enforcement that this is
24 a highly dangerous and flammable process to cook
25 methamphetamine and these children were exposed to that.

1 Not only were they exposed to the process of cooking it,
2 you will hear that the Defendant was also smoking it and
3 getting high while the children were home exposing them
4 to that type of terrible lifestyle.

5 Now, you will also hear that these boys were not
6 being taken care of. You will hear from DSS. These
7 children were living the deplorable conditions. The
8 camper they were living in was not somewhere where three
9 small children, two one year old and one two year old
10 should be living. You will get to see the pictures.
11 You'll see how they were living then.

12 Fortunately DSS did come in and they removed these
13 children from this home and they took them to where they
14 were actually being protected, where they are safe, and
15 where they are being properly cared for.

16 Now, we have talked about the father. I'm sure
17 you're wondering about where is the mother in all of
18 this. You will hear from her. Her name is Jamie Norris.
19 She will tell you what happened. She will tell you about
20 the terrible decision she made whenever she was with the
21 Defendant. She'll tell you she was a bad mother. She
22 was getting high. She was doing meth. She knew the
23 Defendant was cooking meth around their kids, but she
24 took responsibility for her bad actions. She admitted
25 what she was doing was wrong and you will hear from her.

1 Ladies and gentlemen, what we are going to ask you
2 to do at the end of this trial is to hold the Defendant
3 responsible for his actions, for putting these small
4 children in the risk of harm and for neglecting them. We
5 will ask you at the end of this trial to find him guilty
6 of unlawful conduct towards a child, towards those three
7 little boys. Thank you.

8 THE COURT: Thank you, Ms. Davis. Mr. Mauldin.

9 MR. MAULDIN: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 MR. MAULDIN: Johnny is innocent until he's proven
12 guilty. The Judge told you about that as part of our
13 judicial system, as part of our democracy. You've
14 probably heard it a million times on the television or in
15 the news, but it's a very important concept. So your
16 mind set when you're listening to the witnesses or
17 reviewing any evidence as presented by the State is Mr.
18 Sexton is innocent. Why are we here? That should be
19 your baseline here today.

20 This case began February 21st of last year 2014 and
21 the police and a DSS worker was going out to this
22 residence and they were there to serve an eviction
23 notice. DSS was there for a checkup. And the only
24 person there was Jamie Norris. She was the only person
25 there. Johnny Sexton was not there. So she tells them

1 that he had been cooking meth out in the van earlier that
2 morning and they had got into a fight and that he had
3 left. But he's not there.

4 Their whole case relies on Jamie Norris, her
5 testimony. Whether or not they were together at the
6 time. How long they had been together. Whether they
7 were living there. Whether they had not been living
8 there. Whether they had been making meth. Whether he
9 was responsible for the condition of that. It's entirely
10 on her.

11 Why are we here? Mr. Sexton is innocent. And I
12 believe after review of the evidence at the close of the
13 case you will still think that. Thank you.

14 THE COURT: Thank you, Mr. Mauldin. Call your first
15 witness.

16 MS. PATTERSON: Your Honor, the State calls Jamie
17 Norris.

18 Thereupon,

19 JAMIE NORRIS
20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: My name is Jamie Kathryn Norris,
25 N-o-r-r-i-s.

JAMIE NORRIS - DIRECT BY MS. PATTERSON

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1 DIRECT EXAMINATION

2 BY MS. PATTERSON:

3 Q. Jamie, where are you currently living?

4 A. Goodman Correctional Institution.

5 Q.. Where is Goodman Correctional Institution located?

6 A. Broad River Road.

7 Q. Would that be in the South Carolina Department of
8 Corrections?

9 A. Yes, ma'am.

10 Q. How long have you been living at Goodman
11 Correctional Institution?

12 A. Since August 2014.

13 Q. Why are you in prison?

14 A. For two counts of unlawful conduct.

15 Q. Did you plead guilty to those counts?

16 A. Yes, ma'am.

17 Q. Were they pertaining to your children?

18 A. Mm-hmm.

19 Q. And tell us about those three children. How old are
20 they and what are their names?

21 A. Minor1 is four. Minor1 . And then Minor2 and
22 Minor3 are two. They're twins.

23 Q. When is Minor1's birthday?

24 A. [REDACTED], 2011.

25 Q. When are the twins' birthday?

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

- 1 A. [REDACTED] 2012.
- 2 Q. Where are your boys currently living?
- 3 A. With my sister in Boerne, Texas.
- 4 Q. Do you miss your boys?
- 5 A. Yes, ma'am.
- 6 Q. Do you love your boys?
- 7 A. Mm-hmm.
- 8 Q. Who are the father of those three boys?
- 9 A. Johnny Sexton.
- 10 Q. How long had you and Johnny been together?
- 11 A. Five years.
- 12 Q. Did you live together during those five years?
- 13 A. Yes, ma'am.
- 14 Q. What are some of the addresses that you lived with
- 15 Johnny?
- 16 A. [REDACTED] Weston Watch Road in Irmo, South Carolina 29063
- 17 was the address of our house and then the other, the second
- 18 place we lived at was in Siesta Cove Campground on 378.
- 19 Q. Let's go back to the house in Irmo. Whose house was
- 20 that?
- 21 A. Mine.
- 22 Q. Did you own that house?
- 23 A. Yes, ma'am.
- 24 Q. How did you own that house?
- 25 A. I inherited it when my mom passed away.

JAMIE NORRIS - DIRECT BY MS. PATTERSON

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1 Q. How long did you and Johnny live in that house
2 together?

3 A. Four and a half years.

4 Q. And then do you remember when you moved out of that
5 house?

6 A. Mm-hmm.

7 Q. When?

8 A. September 21st of 2013.

9 Q. And when you moved out of that house, where did you
10 live?

11 A. We lived in a hotel for about a month or two and
12 then we bought a camper and we lived at Siesta Cove
13 Campground.

14 Q. You said "we". Who all lived there?

15 A. Me, Chip, Minor 1, Minor 2 and Minor 3 .

16 Q. Who is Chip?

17 A. Johnny Sexton.

18 Q. You call Johnny Chip?

19 A. Mm-hmm.

20 Q. So you, Johnny and the boys, you all moved into that
21 camper. And Siesta Cove, where is that located?

22 A. 378 in Lexington.

23 Q. Lexington County?

24 A. Yes, ma'am.

25 Q. Now, did you meet with me and a couple people from

- 1 my office about coming here today to testify?
- 2 A. Mm-hmm.
- 3 Q. Did we talk about your charges at all?
- 4 A. No, ma'am.
- 5 Q. Did I make you any promises about your testimony
- 6 today?
- 7 A. No, ma'am.
- 8 Q. Did I threaten you in any way about testifying?
- 9 A. No, ma'am.
- 10 Q. Did you agree to come and testify truthfully about
- 11 the living situation with you, Johnny and the three boys?
- 12 A. Yes, ma'am.
- 13 Q. Is that why you are here today?
- 14 A. Mm-hmm.
- 15 Q. Now, where did you and Johnny meet?
- 16 A. At the river by the zoo.
- 17 Q. When you met Johnny, were you involved in drugs?
- 18 A. No, ma'am.
- 19 Q. How long had you been with Johnny before you got
- 20 involved in drugs?
- 21 A. About three years.
- 22 Q. What kind of drugs did you get involved in?
- 23 A. Uhm, just the meth really.
- 24 Q. Whose idea was it for you to start taking meth?
- 25 A. His.

JAMIE NORRIS - DIRECT BY MS. PATTERSON

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1 Q. And do you know why Johnny asked you about taking
2 meth?

3 A. I had been prescribed Adderall from when I was a
4 child and he was, like I was trying to get prescribed back on
5 it and then the doctor, I couldn't get to see a doctor because
6 I didn't have health insurance and I was taking care of our
7 three kids and he really wasn't helping and I was staying up
8 with the twins at night and stuff and he said, well, since --

9 MR. MAULDIN: Your Honor, I have a matter to take up
10 outside the presence of the jury.

11 THE COURT: All right. Ladies and gentlemen, let me
12 get you to step back into the jury room and let me take
13 up this matter of law and then we'll bring you right back
14 out. Please have no conversation about the case.

15 (Whereupon, the jury goes into the jury room.)

16 THE COURT: Okay. Yes, sir, Mr. Mauldin.

17 MR. MAULDIN: Yes, sir. Thank you, Your Honor. The
18 indictments allege the wrongdoing of Mr. Sexton occurring
19 between November 1 of 2013 and February 21 of 2014 and I
20 believe they were having, she said that before this that
21 they had been going together for about five years and
22 then three years later they're involved in drugs. The
23 time period she's getting into is before the time period,
24 I believe, that's alleged in the indictments and I think
25 it's improper for 4(b) evidence of prior bad acts and I

1 would move for a mistrial.

2 THE COURT: Well, has she gone into any of that yet?

3 MS. PATTERSON: No, sir. She just had started
4 talking about what she was doing earlier.

5 THE COURT: What time frame are we in?

6 MS. PATTERSON: They started dating five years
7 before this incident date which would have been --

8 BY THE WITNESS:

9 A. 2009.

10 MR. MAULDIN: 2009. She testified three years later
11 they started doing drugs which would be 2012.

12 MS. PATTERSON: And she talked about --

13 MR. MAULDIN: And that they both started using
14 drugs.

15 MS. PATTERSON: And she was talking about what she
16 did. We haven't started talking about what Mr. Sexton
17 had did.

18 THE COURT: Okay.

19 MR. MAULDIN: I think we are getting into that. She
20 said she had a prescription for Adderall or something
21 like that and he discussed with her about maybe using
22 meth.

23 THE COURT: Well, I think that's when your objection
24 came up. She started talking about her Adderall
25 prescription.

1 MR. MAULDIN: Yes, sir. And it's the whole line of
2 questioning. They both were using drugs three years
3 after in 2012..

4 THE COURT: Well, she testified that she was using.
5 That he encouraged it, but she was using. It may not be
6 appropriate, but it's not illegal to encourage somebody,
7 an adult. I'm going to deny the motion for a mistrial
8 because I think nothing has been said at this point.
9 However, I don't know you guys' position as far as this
10 conduct prior to -- I don't have the indictments in front
11 of me but --

12 MR. MAULDIN: November 1, 2013.

13 THE COURT: -- that time frame.

14 MS. PATTERSON: Yes, sir, Your Honor. And I can
15 fast forward to that time frame when the jury comes in.

16 THE COURT: I think you need to focus on the range
17 that's in the indictments.

18 MS. PATTERSON: Certainly. I'll jump to that
19 point.

20 THE COURT: All right.

21 MR. MAULDIN: And in addition, Your Honor, we did
22 approach the bench, but I did receive, my paralegal was
23 actually able to get in contact with Mr. Sexton via text
24 message and he has related that he is struck in his
25 driveway. Apparently there was a rain last night and he

1 has a dirt driveway that's a quarter of a mile long and
2 it's washed out and he is trying to get up here, but he
3 can't, and I would still object to the trial continuing
4 without him. I don't necessarily think that it's a
5 willful failure to appear here.

6 THE COURT: Well, here's the thing. I understand
7 about the rain. I don't know where he lives, but I
8 understand that we did have an awful lot of rain last
9 night over the time frame, but he knew he had to be in
10 court this morning or knew that his trial was going
11 forward this morning and you get a text message some time
12 well after 10:00 that he's stuck, his driveway is a
13 quarter of a mile long. That's a long driveway, but
14 that's not a long way. Nothing would have prevented him
15 from walking up to the main road and catching a ride or
16 calling you this morning and saying, Mr. Mauldin, I need
17 help getting to the courthouse. Mr. Sexton is going to
18 have to take some responsibility to get himself here if
19 he chooses to be here. So I'm not influenced or I have
20 heard nothing that would cause me to change my earlier
21 ruling that the case is to proceed in his absence. I
22 don't think anything that I have heard here causes me to
23 believe that he has been prevented from being here
24 through no fault of his own. So I'm going to note your
25 exception to that and your objection to that, but the

1 trial is going to continue. I hope he gets up here.

2 There is nothing that I have heard that says he can't get
3 here but for it may take a little more effort. So all
4 right. Let's bring the jury back in.

5 (Whereupon, the jury returns to the courtroom.)

6 THE COURT: All right. Ladies and gentlemen, thank
7 you for your courtesy in allowing me to take care of
8 that. We're ready to proceed. Ms. Patterson, you may
9 continue your examination.

10 MS. PATTERSON: Thank you, Your Honor.

11 BY MS. PATTERSON:

12 Q. Jamie, when did you and Johnny move to Siesta
13 Cove?

14 A. November of 2013.

15 Q. Was it the beginning or the middle or the end of
16 November 2013?

17 A. Towards the end, I believe.

18 Q. How did you find out about Siesta Cove?

19 A. The Internet. He had called up about it.

20 Q. So he took care of the arrangements --

21 A. Yes.

22 Q. -- for you all to move Siesta Cove?

23 A. Mm-hmm.

24 Q. When you and Johnny lived at Siesta Cove, did you do
25 drugs?

1 A. Yes, ma'am.

2 Q. What type of drugs did you do?

3 A. Meth.

4 Q. How often would you two do methamphetamine?

5 A. Uhm, everyday. Sometimes multiple times a day.

6 Q. Where did you get the methamphetamine?

7 A. He learned to cook it.

8 Q. When you say "he", who are you talking about?

9 A. Johnny Sexton.

10 Q. Did you know how to cook it?

11 A. No, ma'am.

12 Q. Did you know what would be used in cooking the
13 methamphetamine?

14 A. No, ma'am. I knew a couple of the ingredients but I
15 didn't. I don't.

16 Q. Did you ever see him making the methamphetamine?

17 A. Yes, ma'am.

18 Q. Where would he make it?

19 A. In the van for the most part. In his van.

20 Q. Would he make it someplace else?

21 A. Sometimes he made it in the camper.

22 Q. And when he would make the methamphetamine in the
23 van, would you and the boys be in the van?

24 A. No, ma'am.

25 Q. When he would make it in the house, would you and

1 the boys be in the house?

2 A. No, ma'am.

3 Q. Where would you go?

4 A. I had my own truck and I would take them and I would
5 go to a friend's house or just go ride around somewhere. I
6 just - I thought doing that was keeping them safe from it.

7 Q. When you all would -- Tell the jury how does a
8 person use meth?

9 A. Smoke it.

10 Q. When you smoke it, does it have a smell?

11 A. Yes, ma'am. Mm-hmm. It does.

12 Q. Is there any other ways that you would use it?

13 A. That's the only way I would use it.

14 Q. Would Johnny smoke it?

15 A. Mm-hmm.

16 Q. And when you all would smoke the meth, where would
17 you be?

18 A. In the camper.

19 Q. And where would your boys be?

20 A. In the other room.

21 Q. Inside the camper?

22 A. Yes, ma'am.

23 Q. And was it - was this a big camper?

24 A. (Witness shaking head.) Mmm-mmm. It was about, I
25 think 70 feet. Maybe not. Maybe not. No. That's too long.

1 Sorry.

2 Q. So was it big, small, medium size camper?

3 A. It was a small camper. It was two rooms and a
4 kitchen.

5 Q. And when you would smoke the meth, would the boys
6 come in contact with things that was in the room where you
7 would be smoking it?

8 A. (Witness nodding head.) Yes, ma'am.

9 Q. When Johnny would be making the meth, you said you
10 took your boys away. Why would you take them away?

11 A. Because the chemicals, like you could smell the
12 chemicals that he was using from 10, 20 feet away.

13 Q. And would you ever go and purchase a -- What are
14 some of the ingredients that you know of that Johnny would use
15 in making meth?

16 A. The batteries. The Sudafed. The Coleman camping
17 fuel. Those are the only ones I know of off the top of my
18 head.

19 Q. And would you go and purchase some of these items?

20 A. Yes, ma'am.

21 Q. Would Johnny go and purchase some of these items?

22 A. Yes, ma'am.

23 Q. And what would you go purchase?

24 A. I would get the Sudafed and the batteries sometimes
25 and the Coleman. I would get all three of those.

1 Q. Did Johnny purchase pseudoephedrine, too?

2 A. Mm-hmm.

3 Q. Where would you all go to purchase pseudoephedrine?

4 A. Any drugstore. Any local drugstore. Wal-Mart.

5 CVS. Rite Aid. Walgreens.

6 Q. Would all these stores be in the Lexington area?

7 A. Yes, ma'am.

8 Q. Did go to any other stores in other areas?

9 A. Yes, ma'am.

10 Q. What areas were those?

11 A. All over Columbia, Irmo, Blythewood.

12 Q. Jamie, after you and Johnny would do meth, for about
13 how long would you stay high?

14 A. About eight months. What was the question? I'm
15 sorry.

16 Q. When you would cook meth and take the meth, about
17 how long -- When Johnny would cook the meth and you guys would
18 take the meth, how long would you be high?

19 A. Oh, like six hours, eight hours.

20 Q. Who was there taking care of your children while you
21 all were high?

22 A. I was.

23 Q. Was Johnny there, too?

24 A. Yes, ma'am.

25 Q. Did Johnny live with you and the boys?

1 A. Yes, ma'am.

2 Q. Did you all live at the Siesta Cove address
3 together?.

4 A. Yes, ma'am.

5 Q. Now, do you remember the day that all of this
6 happened, February 21st --

7 A. Mm-hmm.

8 Q. -- 2013. Take us back to that day. What had
9 happened that morning?

10 A. Me and Chip, me and Johnny had gotten in an argument
11 and he, he left and then --

12 Q. How did he leave?

13 A. He was - he left in his van.

14 Q. And did you leave as well after the argument?

15 A. I did. I went to the gas station and then I went
16 right back because I was thinking that he was going to come
17 back because that's what he always did. He would leave and be
18 gone for a little bit and then come right back.

19 Q. Did you have the boys with you?

20 A. Yes, ma'am.

21 Q. And so what happened that day when law enforcement
22 arrived? Do you remember who the law enforcement officer was
23 that came out first?

24 A. I would know him if I saw him.

25 Q. Do you know why he came out?

- 1 A. Mm-hmm. He had an eviction notice --
- 2 Q. And --
- 3 A. -- for not --
- 4 Q. Go ahead. I'm sorry.
- 5 A. -- for not paying rent at Siesta Cove.
- 6 Q. Did he give you the paperwork on that eviction?
- 7 A. Yes, ma'am.
- 8 Q. Did anybody else arrive with him?
- 9 A. Mm-hmm. Olivia Sinclair from DSS was with him.
- 10 Q. Did you speak to them about the conditions of your
- 11 home?
- 12 A. Yes, ma'am.
- 13 Q. Did you speak to them about you and Johnny's drug
- 14 activity?
- 15 A. Yes, ma'am.
- 16 Q. Did you give them permission to search inside your
- 17 home?
- 18 A. Yes, ma'am.
- 19 Q. Did they go inside your home?
- 20 A. Mm-hmm.
- 21 Q. Did they find things that they asked you about --
- 22 A. Yes, ma'am.
- 23 Q. -- related to drug activity? And when was the last
- 24 time you and Johnny had done drugs prior to February 21st?
- 25 A. The day before.

- 1 Q. Were the boys there?
- 2 A. Yes, ma'am.
- 3 Q. When you all would do methamphetamine, would you
- 4 keep your house clean?
- 5 A. -- No, ma'am.
- 6 Q. Did you properly feed your boys?
- 7 A. No, ma'am.
- 8 Q. Did Johnny help you keep the house clean?
- 9 A. (Witness shaking head.)
- 10 Q. Would he participate in feeding the boys?
- 11 A. (Witness shaking head.)
- 12 Q. Jamie, I'm showing you what's been marked as State's
- 13 exhibit number 7, 15 and 17. First number 7. Do you
- 14 recognize that picture?
- 15 A. Yes, ma'am.
- 16 Q. Who is in that picture?
- 17 A. Me.
- 18 Q. Is that the way you appeared on February 21st,
- 19 2014?
- 20 A. Yes, ma'am.
- 21 Q. Would that picture fairly and accurately describe
- 22 the way you looked?
- 23 A. (Witness nodding head.)
- 24 Q. Did anybody make any changes to those pictures?
- 25 A. No, ma'am.

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1 MS. PATTERSON: Your Honor, at this time I move
2 State's exhibit number 7 into evidence.

3 MR. MAULDIN: No objection, Your Honor.

4 THE COURT: Without objection State's 7 is in
5 evidence.

6 BY MS. PATTERSON:

7 Q. I'm going to show you State's exhibit 15 and 17. Do
8 you recognize who is in those photographs?

9 A. (Witness nodding head.)

10 Q. Who are those?

11 A. My kids, Minor1 and Minor2 and Minor3 .

12 Q. Is that the way the boys looked on February 21st,
13 2014?

14 A. (Witness nodding head.)

15 Q. Is that the way your home looked?

16 A. Yes, ma'am.

17 Q. Did anybody change anything about those pictures?

18 A. (Witness shaking head.)

19 Q. They fairly and accurately represent the way your
20 boys and your home looked on February 21st?

21 A. Yes, ma'am.

22 MS. PATTERSON: Your Honor, at this time I move
23 State's exhibit 15 and 17 into evidence.

24 MR. MAULDIN: No objection.

25 THE COURT: Without objection.

1 BY MS. PATTERSON:

2 Q. Jamie, this picture of you, you look different. Do
3 you know why you were looking like this, Jaime?

4 A. The meth. That's when I used the meth.

5 Q. There's a picture of your boys and a picture of your
6 house. Why did your house look like this Jamie?

7 A. 'Cuz you don't care about anything but that drug
8 when you're on it.

9 Q. So you didn't clean up?

10 A. (Witness shaking head.)

11 Q. Johnny didn't help you clean up?

12 A. No, ma'am.

13 Q. Nobody made sure the boys were protected or safe --

14 A. (Witness shaking head.) No, ma'am.

15 Q. -- in these living conditions?

16 A. (Witness shaking head.)

17 Q. And these photographs, would these be some of the
18 things that were present when you and Johnny were smoking --

19 A. Yes, ma'am.

20 Q. -- meth in that camper?

21 A. (Witness nodding head.)

22 Q. And your boys are sitting on the couch and playing
23 near the items exposed. Now when the officers came to your
24 home that day, did they ask you to leave out of your home?

25 A. (Witness nodding head.) They took me to jail that

1. day.

2. Q. Before they took you to jail, you said you gave the
3. officer and DSS permission to enter your home?

4. A. Yes, ma'am.

5. Q. Did they question you about some of the things they
6. saw in your home?

7. A. Yes, ma'am.

8. Q. Do you remember some of the things they asked you
9. about?

10. A. Yes, ma'am.

11. Q. Did they ask you about a funnel?

12. A. (Witness nodding head.)

13. Q. Did they ask you about some acid that was in the
14. home?

15. A. Yes, ma'am.

16. Q. What did you tell them about the acid?

17. A. That it was, uhm, to, it was, uhm, to unclog
18. drains.

19. Q. Did Johnny use it to unclog drains?

20. A. No, ma'am.

21. Q. What did Johnny really use that acid for?

22. A. For - it was one of the ingredients for meth to cook
23. it.

24. Q. Do you know why - do you know about that funnel?

25. A. (Witness nodding head.)

1 Q. And did you use that funnel?

2 A. No, ma'am.

3 Q. Who used that funnel?

4 A. Johnny.

5 Q. What did he use it for?

6 A. He would take the stuff and pour it in there and
7 then what the funnel caught was the meth.

8 Q. And did they ask you about some fuel that was found
9 in the home?

10 A. Yes, ma'am.

11 Q. Did you know what that fuel was used for?

12 A. I - I still don't know exactly what it's used for.
13 I just know it's an ingredient they use.

14 Q. And again, how do you know all of this
15 information?

16 A. Because I would go to the store and get some of the
17 stuff sometimes.

18 Q. Who would tell you what you needed to buy?

19 A. Chip. Johnny. Sorry.

20 Q. Why did you go buy the stuff when he would ask?

21 A. Because I wanted to get high, too.

22 Q. Now, when law enforcement came, you said Johnny had
23 already left the home?

24 A. Yes, ma'am.

25 Q. He left in the van?

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1 A. Mm-hmm.

2 Q. And do you remember when you were arrested for these
3 charges?

4 A. What was the question?

5 Q. Do you remember when you were arrested specifically
6 for the unlawful conduct charges?

7 A. That day. No. It was -- The day that I first got
8 arrested for this time was May 26th, I believe.

9 Q. So you got arrested in May of 2000 of when?

10 A. '14.

11 Q. '14. For the unlawful conduct charge?

12 A. Yes, ma'am.

13 Q. Where were you staying then?

14 A. In his van. In Chip's van.

15 Q. Where was that van located when you got arrested?

16 A. Blythewood.

17 Q. What property was that?

18 A. His aunt - uhm, Robert and Debbie, his aunt and
19 uncle's property.

20 Q. Why were you guys staying in the van?

21 A. Because he was cooking meth there for them.

22 Q. And the day you got arrested, do you remember what
23 time of the day it was?

24 A. It was early in the morning. Like -- I don't
25 remember exactly what time, but they woke us up there. It was

1 probably like 7:00.

2 Q. So you were asleep when they came to arrest you?

3 A. Yes, ma'am.

4 Q. And where were you positioned in the van?

5 A. I was in the passenger seat.

6 Q. Where was Johnny?

7 A. He was in the driver's seat.

8 Q. Did Johnny get arrested that day?

9 A. No. He saw the cops and ran.

10 Q. How do you know he saw the cops?

11 A. Because he woke up and said, he said, "oh, shit,
12 there's the cops."

13 Q. And he took off?

14 A. Mm-hmm. And he said, "I'll be right back", and I
15 never saw him again.

16 Q. And you were arrested that day?

17 A. Yes, ma'am.

18 Q. Did you tell law enforcement that Johnny had been
19 there?

20 A. Mm-hmm.

21 Q. Did they make an attempt to look for him?

22 A. Yes, ma'am.

23 Q. Do you know if they found him?

24 A. They didn't.

25 Q. Did the children ride in that van that Johnny was

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1 making the methamphetamine in?

2 A. Yes, ma'am.

3 Q. When they rode in that van, were they in contact
4 with things that had been in contact with the methamphetamine
5 while he was cooking?

6 A. Yes, ma'am.

7 Q. Did Johnny have clothes and other personal items in
8 the Siesta Cove residence?

9 A. Yes, ma'am.

10 Q. Did he handle the business of you guys living
11 there?

12 A. Yes, ma'am.

13 Q. Did you even know who the landlord was initially?

14 A. No, ma'am.

15 Q. And why did you all go to so many places to buy
16 pseudoephedrine?

17 A. Uhm, because it's hard. Some stores don't have it
18 and so it's hard to find.

19 Q. Were you guys ever prevented from making those
20 purchases?

21 A. Yes, ma'am.

22 Q. Do you know why you were prevented from making the
23 purchases?

24 A. Because you are only allowed so many a month.

25 Q. And, Jamie, did you and Johnny Sexton live at Siesta

1 Cove?

2 A. Yes, ma'am.

3 Q. In Lexington County?

4 A. Yes, ma'am.

5 Q. Did you all move in there in November?

6 A. Mm-hmm.

7 Q. 2013?

8 A. (Witness nodding head.)

9 Q. And were you all using drugs in the presence of your
10 children?

11 A. Yes, ma'am.

12 Q. Was Johnny making methamphetamine?

13 A. Yes, ma'am.

14 Q. Was he making it in the house and in the van that
15 the children were exposed to?

16 A. Yes, ma'am.

17 Q. Did you and Johnny while living at Siesta Cove fail
18 to maintain a safe living environment for those children?

19 A. Yes, ma'am.

20 Q. And Johnny lived in that location with you?

21 A. Yes, ma'am.

22 Q. And you pled guilty and took responsibility to what
23 you did, correct?

24 A. Yes, ma'am.

25 Q. And you are here today to testify about what Johnny

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1 did as well?

2 A. Mm-hmm.

3 Q. And those are your three boys together, correct?

4 A. Yes, ma'am.

5 Q. And do you have anything to gain by testifying
6 today?

7 A. No, ma'am.

8 MS. PATTERSON: Jamie, thank you. Answer any
9 questions the defense attorney may have.

10 THE COURT: Cross.

11 CROSS EXAMINATION

12 BY MR. MAULDIN:

13 Q. Ms. Norris, the police had actually been by the
14 camper in Siesta Cove some time in January to serve an initial
15 eviction notice; is that correct?

16 A. That's what I have heard.

17 Q. And Johnny moved out of the camper some time in
18 January to his aunt's house in Blythewood, didn't he?

19 A. No, sir.

20 Q. Because besides being behind in the rent and being
21 evicted, you guys were having problems and he decided to leave
22 and you didn't want to go to the aunt's house because you
23 didn't get along with her; is that right?

24 A. No, sir.

25 Q. And he had been away for about a month and then he

1 came that day in February to confront you because he had heard
2 that you had been using drugs; isn't that correct?

3 A. No, sir.

4 Q. He came there to confront you because he heard you
5 had been using drugs and you got into an argument because he
6 wanted to take the kids away and you wouldn't let him?

7 A. No, sir.

8 Q. And then after he left, the police and DSS showed up
9 and you thought that he had called DSS on you, didn't you?

10 A. No, sir.

11 Q. You thought that he called DSS on you and you knew
12 you were in trouble and so you decided to throw him under the
13 bus; isn't that correct?

14 A. No, sir.

15 Q. Well, you knew you had done wrong; is that correct?
16 Because you pled guilty; is that right?

17 A. Yes, sir.

18 Q. And you pled guilty to one count; is that right?

19 A. There was three counts initially. They dropped it
20 to two.

21 Q. Right. And you were sentenced to ten years
22 suspended on four years in prison and two years of probation;
23 is that correct?

24 A. Yes, sir.

25 Q. And that was for the two charges to be run together;

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1 is that right?

2 A. Mm-hmm.

3 Q. And you're still in prison and you are not due to
4 get out until sometime next year; is that right?

5 A. Right.

6 Q. And you don't hope that by coming here and
7 testifying today that the State has somehow agreed to reduce
8 your sentence so you can get out?

9 A. No, sir.

10 Q. You don't believe that that is going to happen?

11 A. No, sir.

12 MR. MAULDIN: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MS. PATTERSON: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. PATTERSON:

17 Q. Jamie, at the time that you pled guilty, do you
18 remember when that date was?

19 A. August 13th.

20 Q. Of what year?

21 A. 2014.

22 Q. And had I even talked to you at all about that at
23 your time of pleading guilty about your charges?

24 A. No, ma'am.

25 Q. I just gave you the plea offer to plead straight up

1 to two counts; is that correct?

2 A. Mm-hmm.

3 Q. And the judge sentenced you on his own, correct?

4 A. Yes, ma'am.

5 Q. I had nothing to do with your sentence, did I?

6 A. Mmm-mmm.

7 Q. And when I spoke to you about coming here to
8 testify, again I made you no promises or no agreements about
9 your charges?

10 A. No, ma'am.

11 Q. As a matter of fact, you never even asked me
12 anything about helping you, did you?

13 A. Mmm-mmm. No, ma'am.

14 Q. And, Jamie, why did you and Johnny have that
15 argument that morning?

16 A. Uhm, he had spent that night out and I - I mentioned
17 that he may have been cheating on me. I made an accusation of
18 him cheating on me and he got physical with me and I screamed
19 and he left.

20 Q. Jamie, I'm going to show you what's been marked as
21 State's exhibit number 27. Do you recognize what's in that
22 photograph?

23 A. (Witness nodding head.)

24 Q. Who is in that photograph?

25 A. Me.

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1 Q. Is that the way that you looked on February 21st,
2 2014?

3 A. Yes.

4 Q. Does it look like it's been changed or altered in
5 any way?

6 A. No.

7 MS. PATTERSON: Your Honor, at this time we move
8 State's exhibit 27 into evidence.

9 MR. MAULDIN: No objection.

10 THE COURT: Without objection.

11 BY MS. PATTERSON:

12 Q. Jamie, what does this picture show? What's that on
13 your face?

14 A. A mark on my chin.

15 Q. How did you get that mark on your chin?

16 A. From him when he kicked me.

17 Q. So you wasn't mad at Johnny -- So you were upset
18 with Johnny because he actually got physical with you, right?

19 A. Yes, ma'am.

20 Q. And it had nothing to do that you were scared that
21 he was going to report you to DSS or anything, did it?

22 A. Right.

23 Q. And this is because you accused him of cheating on
24 you?

25 A. Yes, ma'am.

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1 Q. Because you all were still together living in that
2 house, right?

3 A. Yes, ma'am.

4 MS. PATTERSON: Thank you, Jamie. No further
5 questions.

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

7 THE COURT: Thank you, ma'am. You may step down.
8 Call your next witness.

9 MS. PATTERSON: The State calls Stephen Bair.
10 Thereupon,

11 STEPHEN BAIR
12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. After you're
14 seated, please state your full name spelling your last
15 name for the record.

16 THE WITNESS: Stephen Ray Bair, B-a-i-r.

17 DIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. Deputy Bair, where are you employed?

20 A. Pardon me, ma'am?

21 Q. Where are you employed?

22 A. Lexington County Sheriff's Department.

23 Q. What's your title?

24 A. Currently my title is fugitive deputy with Lexington
25 County Sheriff's Department assigned to the U.S. Marshal Task

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1 Force.

2 Q. How long were you employed with Lexington County
3 Sheriff's Department?

4 A. Overall a little over four years, ma'am.

5 Q. What was your title in February 2014?

6 A. I was a deputy with the warrant division.

7 Q. And as a deputy with the warrant division, what were
8 some of your duties?

9 A. I delivered civil process to the District Three area
10 which is Gilbert, Batesburg, Leesville. I also was
11 responsible for criminal warrants in that area.

12 Q. Did you ever get involved in serving some documents
13 on Johnny Sexton the Second?

14 A. I did, yes, ma'am.

15 Q. And did you ever have to serve a rule to show cause
16 on him?

17 A. I served a rule to vacate on him at his property, I
18 believe, on John Long Road.

19 Q. I'm going to show you what's marked as State's
20 exhibit 8 and 9 and ask you if you recognize these documents.
21 First document number 8.

22 A. Yes, ma'am. That is the rule to vacate that I
23 served on him.

24 Q. Who is the parties involved in that action?

25 A. The parties would be the landlord being the

1 plaintiff, Norman Swalgren and it's versus Johnny Sexton who
2 would be the defendant.

3 Q. When did you serve that notice to him?

4 A. January 23rd of 2014.

5 Q. Who did you personally serve that to?

6 A. I personally served it to Mr. Sexton, Johnny
7 Sexton.

8 Q. How do you know?

9 A. Because he answered the door to the RV and I asked
10 if he was Johnny Sexton and he said yes and I handed him the
11 paperwork and explained what it entailed and he said he
12 understood. Wished me a good night. I wished him one and we
13 went our separate ways.

14 Q. What time was that document served?

15 A. I believe it says 6:20 in the evening here.

16 Q. And again when was that dated?

17 A. January 23rd, 2014.

18 Q. January 23rd, 2014, you personally served Johnny
19 Sexton at that address?

20 A. I did.

21 Q. Okay. I'm going to show you what's been marked as
22 State's exhibit number -- I'm sorry. Does that document
23 fairly and accurately represent the document that you served
24 to Mr. Sexton?

25 A. It does.

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1 Q. Does it look like it's been changed in any way?

2 MR. MAULDIN: I have no objection to that document
3 being introduced, Your Honor.

4 MS. PATTERSON: I would ask that 8 and 9 be admitted
5 into evidence.

6 MR. MAULDIN: No objection.

7 THE COURT: Without objection.

8 BY MS. PATTERSON:

9 Q. And I'll pass you State's exhibit number 9. Do you
10 recognize that document?

11 A. I do.

12 Q. What is that?

13 A. It's a writ of ejectment on the same property that
14 the rule to vacate was issued on.

15 Q. What date is that writ of ejectment?

16 A. February 21st, 2014.

17 Q. Do you know who you served that to?

18 A. I served that to Jamie Norris.

19 Q. So where did you serve it to Ms. Norris?

20 A. At the property listed, [REDACTED] John Long Road, lot

21 [REDACTED].

22 Q. Was Mr. Sexton present when you went out that day?

23 A. He was not.

24 Q. Do you remember what time you went out to the
25 property on February 21st of 2014?

1 A. I believe it was around 2:30 in the afternoon.

2 Q. Okay. When you went out there, did you go alone?

3 A. Initially, yes, ma'am.

4 Q. And did you ever meet up with anybody else going out
5 to the property?

6 A. Yes, ma'am, I did. As I was attempting to find the
7 property again, I believe DSS pulled up behind me. They were
8 looking for the same property.

9 Q. Do you know who the person was representing DSS?

10 A. According to my report I believe it was Ms. Olivia
11 Sinclair.

12 Q. Did you and Ms. Sinclair ultimately find the
13 property that you were looking for?

14 A. Yes, ma'am, we did.

15 Q. When you got there, did you talk to anybody located
16 at the property?

17 A. Ms. Norris was there, yes, ma'am.

18 Q. Where was she?

19 A. She was inside of the RV.

20 Q. Who knocked on the RV?

21 A. I did.

22 Q. When you initially came up to the property, did you
23 notice anything about the environment of the property?

24 A. At the time, no, ma'am. Nothing in particular other
25 than some clutter outside. There was nothing out other than I

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1 believe a vehicle, a table with some junk on it and basic
2 things that I would see in that area of John Long Road.

3 Q. And when you -- Did you tell Ms. Norris why you were
4 there?

5 A. I did.

6 Q. Did she seem to understand?

7 A. Yes, ma'am, she did.

8 Q. Did Ms. Olivia Sinclair tell her why she was
9 there?

10 A. Yes, ma'am, she did.

11 Q. After she told her why she was there, did she seem
12 upset?

13 A. Yes, ma'am, she was very visibly upset.

14 Q. Now, without saying what Jamie may have told you,
15 did she tell you and Ms. Sinclair about any drug activity in
16 the home?

17 A. She did mention to me --

18 MR. MAULDIN: Objection. Hearsay, Your Honor..

19 THE COURT: Sustained as to hearsay.

20 BY MS. PATTERSON:

21 Q. Without saying what she told you, did she tell you
22 anything?

23 A. Yes.

24 Q. And once she told you and gave you this information,
25 did she give you or Ms. Sinclair permission to enter her

- 1 home?
- 2 A. She did.
- 3 Q. Once you entered the home, what did you see?
- 4 A. I saw open mason jars in the kitchen area, funnel,
5 filter, other items that I believe may possibly be used in the
6 manufacture of methamphetamine.
- 7 Q. Did you have this knowledge based on your experience
8 and training in law enforcement?
- 9 A. Yes, ma'am. We have had training.
- 10 Q. Once you saw these items, what did you do?
- 11 A. I immediately had everybody that was inside of the
12 RV go outside of the RV to a safer area and called
13 narcotics.
- 14 Q. Why did you do that?
- 15 A. Because I was unsure if there was actually an active
16 meth lab inside of the residence.
- 17 Q. How far back did you have everybody get?
- 18 A. Approximately 50 to 60 feet.
- 19 Q. When you say everybody, who was the people that you
20 had move back?
- 21 A. Ms. Norris and there were three children there as
22 well.
- 23 Q. When you initially entered the house, did you see
24 the three kids?
- 25 A. I did, yes, ma'am.

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1 Q. Where were they?

2 A. They were in the living area. I believe two of them
3 were on the couch. One of them was sitting on the floor. It
4 was right inside the door of the residence.

5 Q. Do you remember what the kids were doing?

6 A. One of them was eating cereal out of the box. The
7 other two I believe were just sitting on the couch playing.

8 Q. And so after you removed everybody, what did you do?

9 A. At that point I contacted narcotics to have them
10 come out and make sure there wasn't an active lab. I also had
11 Ms. Sinclair at that point, I believe, started speaking to Ms.
12 Norris so I just waited on narcotics, stood by and waited for
13 them to get there and do what they needed to do.

14 Q. Did they come out?

15 A. They did.

16 Q. After they came out, what did you do?

17 A. After they had finished with all of their procedures
18 and what they needed to do, I went back into the house to take
19 more pictures basically of the living environment and the
20 items that had been found by narcotics. I needed that
21 information because I was going to place the children in
22 emergency protective custody.

23 Q. Deputy Bair, I'm going to show you some exhibits.
24 First is State's exhibit number 12. Do you recognize that
25 picture?

1 A. I do.

2 Q. And what does that picture show?

3 A. I'm inspecting a jar that was found on one of the
4 top shelves in the kitchen area containing a funnel and a
5 coffee filter.

6 Q. Is that you in that photograph?

7 A. Yes, ma'am, it is.

8 Q. Is that the way that - is that something that you
9 saw inside Mr. Sexton's house when you went out to serve that
10 writ of ejectment?

11 A. Yes, ma'am.

12 Q. Does it look like it's been changed in any way?

13 A. No, ma'am, it does not.

14 Q. That's the funnel with the coffee filter one of the
15 things that concerned you?

16 A. Yes, ma'am.

17 MS. PATTERSON: Your Honor, at this time I move
18 State's exhibit 12 in evidence.

19 MR. MAULDIN: No objection, Your Honor.

20 THE COURT: Without objection.

21 BY MS. PATTERSON:

22 Q. When did you -- Did you see this when you initially
23 went into the house?

24 A. I actually could see that from the doorway. That
25 was after Ms. Sinclair went into the house.

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1 Q. I'm going to show you State's exhibits 1 through 6
2 and ask you to take a look at these (proffering.) Do you
3 recognize those photographs?

4 A. Yes, ma'am.

5 Q. Are those photographs you took of the residence on
6 February 21st, 2014?

7 A. They are.

8 Q. Let me ask you something. That residence, where is
9 it located?

10 A. [REDACTED] John Long Road, lot [REDACTED].

11 Q. Is that in Lexington County?

12 A. It is.

13 Q. So that is in your jurisdiction?

14 A. Yes, ma'am.

15 Q. Do those photographs accurately reflect the
16 residence that you seen on that day?

17 A. Yes, ma'am.

18 Q. Do they look like they have altered or changed in
19 any way?

20 A. No, ma'am.

21 MS. PATTERSON: Your Honor, at this time I move
22 State's exhibits number 1 through 6 into evidence.

23 MR. MAULDIN: No objection, Your Honor.

24 THE COURT: Without objection they are in
25 evidence.

1 BY MS. PATTERSON:

2 Q. In the first picture, what does it show?

3 A. That shows the RV that the children and Ms. Norris
4 were in at the time that I served the papers.

5 Q. Is this what you drove up to on that day?

6 A. Yes, ma'am, it is.

7 Q. The clutter and the debris, did that cause you any
8 concern when you found out three little small children were
9 living there?

10 A. It did cause me a little concern.

11 Q. State's exhibits 2 through 6, what do they show?

12 A. They show the inside of the RV which is the clutter,
13 trash and other debris found inside as well as I believe
14 there's a photo in there of the refrigerator and its contents
15 which are insubstantial at best.

16 Q. Did these living conditions cause you any concern
17 when you knew there was three small children living there?

18 A. Those conditions definitely caused me concern.

19 Q. State's exhibit number 6, the refrigerator.

20 A. Yes, ma'am.

21 Q. Did that cause you some concern?

22 A. Yes, ma'am.

23 Q. When you found out three small children were living
24 there?

25 A. It did.

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1 Q. I'm going to show you State's exhibits number 10 and
2 11. I'm going to also show you number 19. Do you recognize
3 the items that are in those photographs?

4 A. Yes, ma'am, I do.

5 Q. Were those items located at the Siesta Cove address
6 of Johnny Sexton when you went out there on February 21st of
7 2014?

8 A. Yes, ma'am, they were.

9 Q. Do they fairly and accurately represent what you saw
10 when you went into that home?

11 A. Yes, ma'am.

12 MS. PATTERSON: Your Honor, at this time I move
13 these exhibits be moved into evidence.

14 THE COURT: Any objection?

15 MR. MAULDIN: No objection.

16 THE COURT: Without objection.

17 BY MS. PATTERSON:

18 Q. State's exhibit number 19, what does that photograph
19 show that caused you concern?

20 A. Inside of the orange bucket on the right-hand side
21 of the photograph on top of the stepladder there was a bottle
22 of industrial grade acid. What I believed to be industrial
23 grade acid.

24 Q. Why did that concern you?

25 A. I believed it was possibly used in the manufacture

1 of methamphetamine. Also it was sitting somewhere where I
2 believe easily a child could reach.

3 Q. State's exhibit number 10. What's shown in that
4 picture?

5 A. As it was explained to me, this is a grinder that I
6 believe was being used to alter pseudoephedrine.

7 Q. State's exhibit number 11?

8 A. These are mason jars containing at the time what I
9 believe to be an unknown fluid that I thought may have
10 something to do with methamphetamine. It was later explained
11 to me that it was --

12 MR. MAULDIN: Objection, Your Honor. He can't talk
13 about what was explained to him.

14 THE COURT: Sustained as to any hearsay.

15 BY THE WITNESS:

16 A. Containing a fluid that was unknown at the time.

17 BY MS. PATTERSON:

18 Q. And all of these items, were they in close proximity
19 with each other in the home?

20 A. Yes, ma'am. They were all in the kitchen area.

21 Q. Now, these pictures look like they were taken
22 outside. Were these items removed from the home?

23 A. They were.

24 Q. Who removed them?

25 A. Narcotics.

STEPHEN BAIR - DIRECT BY MS. PATTERSON

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1 Q. And again, you said that orange bucket contained?

2 A. What I believed to be an industrial grade acid.

3 Q. So you were initially out there just to serve a writ
4 of ejectment?

5 A. That is correct.

6 Q. But because of what you, based on your knowledge and
7 experience and training, what you saw it became more of that
8 than just serving some documents that day?

9 A. Yes, ma'am, it did.

10 Q. You became concerned for the safety of these kids?

11 A. Yes, ma'am.

12 MS. PATTERSON: Thank you, Deputy Bair. Answer any
13 questions the defense has.

14 MR. MAULDIN: I have no questions for this witness,
15 Your Honor.

16 THE COURT: Thank you very much, sir. You may step
17 down. Call your next witness.

18 MS. DAVIS: The State calls Norman Swalgreen.
19 Thereupon,

20 NORMAN SWALGREEN
21 after having been first duly sworn, testified as follows,

22 THE CLERK: Please have a seat. After you're
23 seated, please state your full name spelling your last
24 name for the record..

25 THE WITNESS: My name is Norman Swalgreen. Last

1 name spelled S-w-a-l-g-r-e-e-n.

2 DIRECT EXAMINATION

3 BY MS. DAVIS:

4 Q. Good morning, Mr. Swalgreen. How are you?

5 A. I'm fine. Thank you.

6 Q. Mr. Swalgreen, where are you from?

7 A. From north of Chicago.

8 Q. Why did you come down here?

9 A. My goodness. There's a story behind that, but
10 mostly because of the weather and that type of thing. It
11 doesn't get 20 below here in South Carolina so that's a good
12 thing.

13 Q. We have rain, but not that cold.

14 A. Well, so does Chicago.

15 Q. Where do you work?

16 A. Well, I actually retired so I don't have a full-time
17 job. I retired twice and moved down here approximately 21
18 years ago. But almost 13 years ago we bought a little
19 campground and marina on Lake Murray so that keeps me busy
20 now.

21 Q. What did you retire from?

22 A. I spent 22 years in law enforcement and I spent 10
23 years working for a pharmaceutical company. I was in charge
24 of their security at their headquarters.

25 Q. Okay. So now you own Siesta Cove?

1 A. That is correct. Well, I do and the bank, yes.

2 Q. Okay. Like most people. What type of property is
3 Siesta Cove?

4 A. Siesta Cove has campers. We have approximately 45,
5 50 campers there. Campsites. Then it's also we have a marina
6 that holds approximately 35 boats. We have a boat ramp and we
7 sell gas and we have a little store there that we sell
8 different items in.

9 Q. Now, do you rent the campers or do you rent just the
10 land, the campsites?

11 A. Just the sites.

12 Q. Okay. So the people that live there have to provide
13 their own building or camper?

14 A. Camper. That's correct. Yes.

15 Q. How does someone go about renting some land from you
16 there?

17 A. Well, they come in and we like to do our best to
18 find out what kind of individuals they are before we rent out.
19 Sometimes we are not very successful, but we do our best.
20 They come in and we talk to them and usually the person that
21 works at the store has them fill out a form that gives some
22 information where they work and that type of thing, and then
23 when that's filled out, they contact me and say this person is
24 here and they are working here and this and that and they have
25 a couple kids or something like that and tell me a little bit

1 about it and I say okay, go ahead, and it's fine and that's
2 the way it works.

3 They will put down money for that month and what we
4 do is we prorate the amount that they owe for the month. So
5 our monthly rent for a campsite is \$320 a month. For
6 instance, if they come in on the 15th half way through the
7 month, then they pay up front and pay \$160 but it's prorated.
8 They also, by the way, pay their own electric. We have meters
9 on every campsite and they pay their own electric out there.
10 And then every month after that they get a statement stating
11 what they owe for the campsite and how much their electric
12 is.

13 Q. Mr. Swalgreen, you said that there was an
14 information form that they fill out when they initially come
15 in to talk about renting a site; is that right?

16 A. That's correct.

17 Q. Do you keep track of all the records for the
18 business?

19 A. We keep all the records out at the store, yes.

20 Q. So any documentation, any invoices for rent or any
21 information sheets, you would be the person that would have
22 those?

23 A. Well, yes. They are out at the store. I have an
24 individual that does take care of those things for me, but
25 yes.

NORMAN SWALGREEN - DIRECT BY MS DAVIS

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1 Q. And you have access to them?

2 A. Yes. Absolutely, yes.

3 Q. Mr. Swalgreen, I'm going to show you what's been
4 marked as State's exhibit 20. I want to see if you recognize
5 this.

6 A. Yes, I do.

7 Q. What is that?

8 A. This is our informational sheet that is made out by
9 the individual that plans on, or is requesting to rent the
10 campsite.

11 Q. Okay. And did you provide the Solicitor's Office
12 with that document?

13 A. Yes, I did..

14 Q. Has it been altered or changed in any way?

15 A. No, it has not.

16 Q. So this came directly from your records at Siesta
17 Cove?

18 A. That is correct.

19 MS. DAVIS: Your Honor, at this time the State would
20 move exhibit number 20 into evidence.

21 THE COURT: Any objection?

22 MR. MAULDIN: No objection, Your Honor.

23 THE COURT: Without objection.

24 BY MS. DAVIS:

25 Q. Mr. Swalgreen, did you fill this out?

- 1 A. No, I did not fill that out.
- 2 Q. Who filled this out?
- 3 A. Mr. Johnny Sexton filled that out.
- 4 Q. And would Mr. Sexton have been the person that came
- 5 in and inquired about renting the property?
- 6 A. Yes.
- 7 Q. Now, do you know Mr. Sexton?
- 8 A. Prior to this time or since he moved in?
- 9 Q. Since he moved in?
- 10 A. Yes.
- 11 Q. Did you know him before he moved in?
- 12 A. No, I did not.
- 13 Q. Okay. Did he live at the camper at Siesta Cove?
- 14 A. Yes, he did.
- 15 Q. How do you know that?
- 16 A. Well, on a number of different occasions I would see
- 17 him out there in the morning, afternoon, early evening and
- 18 that type of thing, but I also, he was behind on paying his
- 19 rent so I had on a number of different occasions which I
- 20 always do I approach the individual to find out what they have
- 21 in mind, you know, and so I did that and he constantly said he
- 22 has money coming in. He would pay the rent and there wouldn't
- 23 be a problem.
- 24 Q. Did he ever tell you that he didn't live there?
- 25 A. Never once, no.

1 Q. When you came and asked him about the rent being
2 behind?

3 A. No.

4 Q. He always told you money would be coming in?

5 A. That's right.

6 Q. Never you need to talk to Jamie? I don't live
7 there?

8 A. No. Absolutely not. No.

9 Q. Do you know who else lived there in the camper with
10 him?

11 A. Well, I know -- I don't know if it was his wife or
12 what the relationship, but there was a female there and they
13 had at least that I saw three children and I'm only guessing
14 on the ages. They had twins and the twins were maybe a year,
15 somewhere around there. They were still in diapers. And then
16 there was another girl that was maybe four, maybe five years
17 old, somewhere in that neighborhood that I saw out there also.
18 The three of them I recall clearly.

19 Q. So you remember three children being there?

20 A. Yes.

21 Q. Okay. And they were all very young?

22 A. Yes.

23 Q. Do you know if they had any cars out there, any
24 vehicles?

25 A. They did. They had, as I recall, the best as I can

1 recall now, they had like a green colored van, maybe a
2 Plymouth or a Dodge type van.

3 Q. Okay. Who did you see driving that mainly?

4 A. Johnny Sexton.

5 Q. Did you see the female that lived there drive it?

6 A. No, I did not.

7 Q. Did she have another car that was there?

8 A. No, she did not.

9 Q. Okay. Now, you said that you would see the
10 Defendant there often, Mr. Sexton there often?

11 A. Yes.

12 Q. At all times of the day?

13 A. Right.

14 Q. You had no question in your mind that he lived
15 there?

16 A. None in my mind, no.

17 Q. And he's the one that inquired about the property?

18 A. That is correct.

19 Q. Did there come a time that you had to evict Mr.
20 Sexton from the property?

21 A. Yes. After talking to him numerous times about
22 being behind on his rent and his promises not being fulfilled,
23 I went to the magistrate's office in Batesburg/Leesville and
24 had a eviction notice taken out on him and I believe that was
25 sometime in January of 2014.

NORMAN SWALGREEN - DIRECT BY MS DAVIS

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1 Q. Mr. Swalgreen, did you have any other reason for
2 having him evicted?

3 A. Well, the reason I went to the magistrate's office
4 was because of the rent, but sometime after that -- And can I
5 just go on and explain this?

6 Q. Did you have complaints from other people living
7 there about any arguments occurring at the property?

8 A. Yes, I did.

9 MR. MAULDIN: Objection, Your Honor. Hearsay.

10 BY MS. DAVIS:

11 Q. Did you hear any arguments between --

12 THE COURT: Sustained as to any hearsay.

13 MS. DAVIS: I apologize.

14 BY MS. DAVIS:

15 Q. I'll ask you a different question. Did you ever
16 hear the Defendant, Mr. Sexton and the woman that lived there
17 arguing?

18 A. I heard Mr. Sexton yelling at the lady that was
19 living there with the kids.

20 Q. Okay. So you heard them arguing?

21 A. I heard them personally arguing, yes.

22 Q. Okay. So they were behind in their rent so you went
23 to the magistrate's office to have them evicted. Did you fill
24 out any documents at the magistrate's office?

25 A. Yes, I did.

1 MS. DAVIS: Your Honor, the State would move 21, 22
2 and 23 into evidence.

3 MR. MAULDIN: No objection.

4 THE COURT: Without objection they are in
5 evidence.

6 BY MS. DAVIS:

7 Q. Mr. Swalgreen, I'll show you what's been entered as
8 State's number 21. Can you tell us what that is?

9 A. Yes. This is an application for ejectment and rule
10 to vacate or show cause. It's a form that I fill out any
11 time, and in this case it was filled out because of failure to
12 pay rent and I stated on there how much rent he owed and that
13 type of thing. Yes, that was filled out by me.

14 Q. So this is your handwriting on here?

15 A. My scribbling, yes.

16 Q. And your signature on that?

17 A. Yes, it is. Yes.

18 Q. Let's go to State's number 22. Tell the jury what
19 this is, please.

20 A. This is -- Well, I don't know that I have a copy of
21 this.

22 Q. Is this your signature on that?

23 A. Yes, it is. This was to have them actually evicted.
24 Yes. It is my signature on it and it's to have them
25 physically moved out of the campground.

1 Q. This is a form that you would have gotten from the
2 magistrate's office?

3 A. Yes. Yes. You have to go back twice. You go back
4 the first time to file and then they are served so they can go
5 ahead and they can pay the rent ahead of time and they can
6 settle up. If they don't within a certain length of time, you
7 get a letter saying that you have to go before the magistrate
8 a second time, fill out another form or do some things and pay
9 another fee and then the Sheriff's Department gets it and they
10 serve him.

11 Q. This is quite a process?

12 A. Yes, it is. It's not a quick process.

13 Q. Okay. So he had a certain amount of time to pay
14 that and then you came back and signed this affidavit saying he
15 still hasn't paid?

16 A. That's correct.

17 Q. Okay. Now, let's look at State's number 23. Tell
18 me what this is.

19 A. This is a notice that I give to them. It's a five
20 day notice that I issue to people and it basically says you
21 have five days to come up with the money for that you are
22 behind on or I will take action. So that was filled out by me
23 also.

24 Q. Who would you have given this to?

25 A. I would have given that to Johnny Sexton.

1 Q. Mr. Swalgreen, do you remember when Johnny Sexton
2 moved onto the property?

3 A. Yes. Vaguely, yes.

4 Q. I'm going to show you State's number 20. This is
5 the information sheet. It says date in. Would that be the
6 day they moved in?

7 A. No. That that would be the date they filled out the
8 application and they paid their first rent.

9 Q. So November 2nd of 2013.

10 A. Yes.

11 Q. They would have moved in around that time?

12 A. Yes. Some people they want a certain site and
13 they will pay it and they won't move in for a month, but I
14 believe they moved in shortly after that period. If not on
15 that period, shortly after that period.

16 Q. Mr. Swalgreen, whose name did put on the writ of
17 ejectment whenever you went to the magistrate's office?

18 A. Johnny Sexton.

19 Q. Why did you use his name instead of the other people
20 living in the camper?

21 A. Well, because as far as I'm concerned he owned the
22 camper. He filled out the informational sheet. He signed up
23 for the lot and that type of thing.

24 Q. Do you recall when they moved off of your
25 property?

NORMAN SWALGREEN - DIRECT BY MS DAVIS

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1 A. Well, it was shortly after I had called the
2 Sheriff's Department because of the threats he had made to her
3 that I heard. It was like, you know, maybe a few days after
4 that. I believe somebody else came and picked up the trailer
5 and moved the trailer off the site. It was like his brother
6 or somebody related to him.

7 Q. So is their camper on the property now?

8 A. No, it's not.

9 Q. You have a new renter there, a new tenant?

10 A. Yes.

11 Q. Mr. Swalgreen, you said that you called law
12 enforcement. Do you remember if that was on November - or
13 February the 21st? Is that the same day that they came and
14 took the children?

15 A. Yes.

16 Q. So that would have been the same day that you called
17 law enforcement about threats?

18 A. Yes. When I heard him threatening to kill her, I
19 called the Sheriff's Department to give them a heads up on it
20 and the dispatcher told me we'll send a deputy out for a
21 well-being check and then after that all the other took place
22 so...

23 Q. So Mr. Sexton was on the property that day?

24 A. He was.

25 Q. And you heard him on there?

1 A. I heard him and saw him, yes.

2 Q. Did you see him leave the property?

3 A. No, I did not.

4 MS. DAVIS: That's all the questions I have for you.
5 Please answer any the defense has.

6 MR. MAULDIN: I have no questions for this witness,
7 Your Honor.

8 THE COURT: Thank you very much, sir.

9 MS. DAVIS: Your Honor, may he be excused?

10 THE COURT: Any objection?

11 MR. MAULDIN: No objection, Your Honor.

12 THE COURT: Thank you very much, sir. You're free
13 to go. You all step up here for a minute.

14 (Side bar off the record.)

15 THE COURT: Folks, I was just trying to get an
16 understanding of schedule wise. I have got, in talking
17 with counsel I have got a matter of law that I need to
18 take up before we proceed which will take about 30
19 minutes so I'm going to go ahead and let you go for lunch
20 at this time and that's going to take me, like I said,
21 about 30 minutes or so and then I have got to give the
22 staff plenty of time for them to get lunch so I'm going
23 to give you an extended lunch. I'll ask you to be back
24 at 2:30, okay? So that gives you a little under two and
25 a half hours. But I would ask that you, please, continue

JANE GUEVARA - PROFFERED - DIRECT BY MS. PATTERSON

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1 to do everything within your power to protect your
2 ability to be fair and impartial. Do not allow anyone to
3 discuss the case with you. Don't talk with anyone about
4 the case. Just basically put it in the back of your
5 minds for a while and enjoy your lunch break. Then,
6 if you would, please, be back at 2:30 and we'll start
7 back at that time. So everyone else remain seated while
8 the members of the jury are excused.

9 (The jury was excused for lunch.)

10 THE COURT: Let's go ahead and proffer that
11 testimony.

12 MS. PATTERSON: Yes, sir, Your Honor. Ms. Davis is
13 getting Ms. Guevara. The State calls Jane Guevara.
14 Thereupon,

15 JANE GUEVARA
16 after having been first duly sworn, testified as follows,

17 THE CLERK: Please have a seat. After you're
18 seated, please state your full name spelling your last
19 name for the record.

20 THE WITNESS: Jane Guevara, G-u-e-v-a-r-a.

21 DIRECT EXAMINATION

22 BY MS. PATTERSON:

23 Q. Ms. Guevara, where are you employed?

24 A. At the Wal-Mart pharmacy.

25 Q. How long have you been employed with the Wal-Mart

1 pharmacy?

2 A. Six years.

3 Q. What's your title at the Wal-Mart pharmacy?

4 A. I'm a cashier of the pharmacy.

5 Q. And in your capacity as cashier of the pharmacy, do
6 you have access to your business records?

7 A. I do.

8 Q. Does your pharmacy keep records regarding the sale
9 of pseudoephedrine purchases?

10 A. Yes, it is kept in our computer.

11 Q. Is it kept in the normal and ordinary course of your
12 business?

13 A. Yes, it is.

14 Q. Why does your pharmacy keep these records?

15 A. To be in compliance with federal laws of selling
16 Sudafed.

17 Q. Do you know how these records are made?

18 A. Yes. When they come in, they are asked for, we have
19 to ask them for an ID which we have to put in the expiration
20 date and we have to look at each ID because it don't matter if
21 they've been in before or not, we still have to put in the
22 expiration date so we have to hand key that in. We are not
23 allowed to scan them and therefore when they go into the
24 records, then we'll know if they have gotten their amount of
25 Sudafed for a 30 day period.

1 Q. What's the amount of pseudoephedrine a person can
2 get within a 30 day period?

3 A. 9 grams.

4 Q. And is this a Wal-Mart policy?

5 A. Wal-Mart has its own policy of how many they can buy
6 in a 365 day period. But the Federal Government says 9 grams
7 a month and Wal-Mart complies to that.

8 Q. And that's why you keep those records you just spoke
9 of?

10 A. Yes.

11 Q. Are these checks made at every purchase?

12 A. Yes.

13 Q. Is it done every time per your policy?

14 A. It is.

15 Q. And these records are maintained how?

16 A. They are put in, we put them in our computer and
17 they are maintained in our database at the Wal-Mart
18 pharmacy.

19 Q. Are you able to see about different purchases at
20 other Wal-Mart locations as well?

21 A. We are not. We are not able to see other Wal-Marts,
22 but the pharmacists do - can - can -- But with the federal
23 thing it goes in there anyway so it doesn't matter if they
24 bought it in our store or another store, it still tells us
25 whether or not it can be sold.

1 Q. So these regards are kept and maintained in a safe
2 way?

3 A. It is.

4 Q. Was your company subpoenaed about some records on
5 Johnny Sexton between the dates of November 1st, 2013 and
6 February 21st, 2014?

7 A. We were.

8 Q. Did you provide me with those records?

9 A. I did. This is at two locations. Just at two
10 locations.

11 Q. And do these records fairly and accurately represent
12 the records that's kept in the ordinary and normal course of
13 business of Wal-Mart?

14 A. Yes, ma'am.

15 MS. PATTERSON: Your Honor, would you like me to
16 inquire further?

17 THE COURT: No. That's fine. Mr. Mauldin, any
18 cross examination you wish to conduct?

19 CROSS EXAMINATION

20 BY MR. MAULDIN:

21 Q. Which Wal-Mart do you work at, Ms. Guevara?

22 A. Sunset Boulevard.

23 Q. So that's the one here in Lexington?

24 A. Right.

25 Q. You work as a cashier there?

JANE GUEVARA - PROFFERED - CROSS BY MR. MAULDIN

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1 A. Yes, sir.

2 Q. You have access to the records. Do you maintain the
3 records at all?

4 A. No, I do not.

5 Q. Do you ensure their quality or anything like that?

6 A. The only thing that we do as cashiers is when
7 someone comes in, we have to get their ID and instead of just
8 - if they're in our system, we can't just acknowledge that
9 they're in our system. We actually have to put in their
10 expiration date on their license so therefore we have to, that
11 way we have to make sure that the license is the person that
12 is handing it to us.

13 Q. It's you're understanding that these records are
14 kept in compliance, I guess, with federal and state laws; is
15 that right?

16 A. Yes, sir.

17 Q. Do you coordinate with providing this information to
18 the federal or state authorities?

19 A. We just, as cashier I put it into our system and our
20 system coordinates with, now it's called, it's the national
21 government database is what it comes up as.

22 Q. Now, you provided the State, I believe, with two
23 pages of documents; is that right?

24 A. Yes, sir.

25 Q. Is each page a different store?

1 A. Yes, sir. One page is 881, our store and the second
2 page is Killian Road. The address is up in the right corner
3 of which store is which.

4 Q. Now, other than entering these as a requirement by
5 law, you don't use this information in your regular course of
6 business other than doing --

7 A. No. We just keep it so that if we are audited, we
8 have the information.

9 Q. And to report it to the federal or state
10 authorities; is that correct?

11 A. Right.

12 Q. Now, let's see. You were actually listed on one of
13 these, correct?

14 A. Yes. Yes, sir.

15 Q. Do you get a signature from the people at the time
16 you enter this?

17 A. Yes. Once I enter it, we have a signature pad that
18 they have to sign.

19 Q. Does this record that you provide contain any of
20 those signatures?

21 A. This record does not, no. That's the cashier that
22 sold it.

23 Q. You would have no independent recollection of the
24 person who may have bought it?

25 A. Not unless it's someone that regularly comes in

JANE GUEVARA - PROFFERED - REDIRECT BY MS. PATTERSON

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1 sometimes. Now, the system also does, if they have had too
2 many or denied them the sale, the system has the e-mail - I
3 mean not e-mail, a .com number that they can go to a website
4 and then I give them the transaction number so that they can
5 see why the website tells them why they were denied.

6 MR. MAULDIN: I have no further questions.

7 MS. PATTERSON: Can I clarify something?

8 THE COURT: Yes, ma'am.

9 REDIRECT EXAMINATION

10 BY MS. PATTERSON:

11 Q. Just quickly, Ms. Guevara. I asked you about these
12 records and they are required by Wal-Mart's policy to be kept
13 in the ordinary course of business per Wal-Mart's
14 pseudoephedrine policy?

15 A. Mm-hmm.

16 Q. And the government pseudoephedrine policy?

17 A. Right.

18 Q. So Wal-Mart keeps these records to comply with its
19 own policy?

20 A. Theirs and the government policy. They are not a
21 hard copy. It's in our hard drive, yes.

22 Q. So these records are kept in your system --

23 A. Right.

24 Q. -- per Wal-Mart's policy in its course of
25 business?

GREG GUIDRY - PROFFERED - DIRECT BY MS. PATTERSON

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1 A. Right.

2 MS. PATTERSON: Thank you, Ms. Guevara.

3 THE COURT: Thank you very much, ma'am. You may
4 step down.

5 MS. PATTERSON: The State calls Greg Guidry.

6 THE COURT: Just because we're proffering testimony
7 outside the jury's presence, sequestration is still in
8 effect so she will have to step out. Normally if it was
9 just a trial and she was done testifying, she could
10 remain in the courtroom.

11 MS. PATTERSON: I didn't think we were sequestering
12 witnesses.

13 THE COURT: Oh, you weren't doing that?

14 MS. DAVIS: No, sir.

15 THE COURT: It seemed to be because they were all
16 outside so she can stay in then.

17 Thereupon,

18 GREG GUIDRY

19 after having been first duly sworn, testified as follows,

20 THE CLERK: Please have a seat. After you're
21 seated, please state your full name spelling your last
22 name for the record.

23 THE WITNESS: Greg Guidry, G-u-i-d-r-y.

24 DIRECT EXAMINATION

25 BY MS. PATTERSON:

1 Q. Mr. Guidry, where are you employed?

2 A. I work for Walgreens.

3 Q. In what capacity?

4 A. I'm a district pharmacy supervisor.

5 Q. Are you actually a pharmacist?

6 A. I am.

7 Q. How long have you been a pharmacist?

8 A. A little over 20 years.

9 Q. And how long have you been a pharmacist
10 supervisor?

11 A. I have been a pharmacy supervisor cumulatively for
12 about nine years.

13 Q. As part of -- So you know a lot about Walgreens and
14 its pharmaceutical practices and policies; is that correct?

15 A. Yes, ma'am.

16 Q. Is one of those pharmacy policies and practices
17 keeping records of the sale of pseudoephedrine?

18 A. Correct.

19 Q. Do you all do that in the -- Does Walgreens do it in
20 its normal course of business?

21 A. Yes.

22 Q. And why are those records kept?

23 A. Well, there's state law that requires - that keeps
24 track of pseudoephedrine due to the methamphetamine use and so
25 forth in the state so there are limits that are kept that we

1 have to make sure that we abide by and also just to make sure
2 we are providing the best health care so that we don't have
3 people buying it for a non medical purpose that it's intended
4 for.

5 Q. So part of Walgreens' policy is not only to comply
6 with federal and state regulations, but also to protect
7 customers; is that correct?

8 A. Correct. To make sure we are giving them the right
9 thing so they can get better.

10 Q. Do you know how these records are entered each time
11 that the customer that's attempting to or purchases the
12 product that contains the pseudoephedrine, do you know how the
13 records are kept each time?

14 A. Yes, ma'am.

15 Q. Can you explain that process to us?

16 A. Sure. The person walks to the counter and says I
17 would like to purchase Sudafed which we keep behind the
18 counter. We will ask for the identification. Obviously it
19 has to be a valid ID, meaning it's not expired. We do accept
20 a driver's license, an ID card or a passport. Then once we
21 get that identification and verify that it is valid, we enter
22 in the driver's license or ID number into the system or
23 passport ID number. Passports are extremely rare. Once we
24 put that into the system, if they are not new to our system,
25 then it will immediately populate their information because we

1 probably entered in their information in the past for the same
2 reason and that would obviously make the transaction go a
3 little smoother. If not, we have to physically put in their
4 address so there's a record of the address. So that once a
5 profile is created, then it determines obviously if it's a new
6 patient or a new person, if we are entering in the profile,
7 then that would obviously be a new purchase so it probably
8 would be a legitimate purchase so it wouldn't stop them in any
9 way. But if for some reason it did, they already have a
10 profile created and we typed in the number and it showed their
11 profile and we scan the item, it will stop if it's already
12 exceeded the limit that our system keeps track of which is 3.6
13 grams per day or single transaction or nine grams in a 30 day
14 calendar. Or I'm sorry. Not calendar but successive days.

15 Q. And is this process followed each time this purchase
16 is made by someone?

17 A. Hundred percent every single time.

18 Q. Do you know who how the records are maintained?

19 A. Yes, ma'am.

20 Q. How are they maintained?

21 A. We have an electronic system to where at any point
22 we can pull up a report up to two years indicating any
23 purchases made for that item based on the profiles created.

24 Q. I'm going to show you State's exhibit number 24. Do
25 you recognize that document?

1 A. Yes, ma'am. That's one of our logs of Sudafed
2 purchases.

3 Q. Does that log, is that log kept in the ordinary
4 course and normal course of Walgreens' pharmacy business?

5 A. Yes, ma'am.

6 Q. And in your company, was your company subpoenaed to
7 bring that printout to court this week?

8 A. Correct. Yes, ma'am.

9 Q. Does that printout appear to be fairly and
10 accurately representative of what your company's printout
11 looks like on a person that purchases pseudoephedrine?

12 A. Yes, ma'am.

13 MS. PATTERSON: Thank you. Please answer any
14 questions the defense attorney may have.

15 THE COURT: Mr. Mauldin.

16 CROSS EXAMINATION

17 BY MR. MAULDIN:

18 Q. Mr. Guidry, as the district pharmacy supervisor
19 where do you work or do you move around?

20 A. So I cover -- Well, in my specific role I cover the
21 west side of South Carolina and the east side of Georgia so I
22 have about 35 stores that I work with.

23 Q. Okay. And is it your job to maintain these
24 records?

25 A. It's not my job to maintain, but it is my job to

GREG GUIDRY - PROFFERED - CROSS BY MR. MAULDIN

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1 maintain correct procedures within the stores to make sure
2 that they are all being followed appropriately.

3 Q. And these records are kept for compliance as you
4 said with the state and federal law regarding the purchase of
5 pseudoephedrine and they are not to be released to the general
6 public for anything; is that correct?

7 A. Correct. This is an internal document. We also use
8 them if law enforcement requests this information.

9 Q. Whose job is it to maintain these records?

10 A. Well, the records are maintained through data entry
11 so that the technicians and pharmacists that are in the midsts
12 of a process ringing up the customer enters the data and then
13 reports are only accessed as needed.

14 Q. So you have this document that you provided to the
15 Prosecutor's Office here and basically they asked you to print
16 it up and you printed it up and brought it over; is that
17 correct?

18 A. Correct.

19 MR. MAULDIN: I have no further questions.

20 MS. PATTERSON: Nothing further, Your Honor.

21 THE COURT: Thank you very much, sir. You may step
22 down. All right.

23 MS. PATTERSON: Your Honor, those are the two
24 representatives that we have of those pharmacies. It's
25 the State's position that both of them are qualified

1 custodians of the records. Your Honor, they are very
2 knowledgeable about the process and procedure, the
3 policies of the store as well as the government. They
4 are knowledgeable about the maintaining of the records,
5 Your Honor. There is nothing to suggest that these
6 records are anything but kept and maintained in a safe
7 and reliable manner so we ask that they be able to
8 testify about the admission of these pseudoephedrine
9 records, Your Honor.

10 THE COURT: All right. Mr. Mauldin.

11 MR. MAULDIN: Your Honor, obviously I would still
12 object. I would cite the motion I made yesterday, the
13 extended motion I made yesterday. And here today neither
14 - one was a cashier and one was a supervisor. Neither
15 one of them said that were actually responsible for
16 maintaining the records. They just printed up a copy of
17 the records and brought it over here kind of a courier
18 service. I don't believe number 1, they are the
19 qualified person to admit this evidence.

20 Secondly, as I argued yesterday, Your Honor, that I
21 maintain that these aren't business records; that they
22 are kept for law enforcement purposes. The young lady
23 from Wal-Mart testified that they weren't used in any way
24 in their business practices when I asked her that
25 question.

1 They're mainly used for litigation and prosecution
2 of cases where people are either buying too much
3 pseudoephedrine or in cases like this and I don't believe
4 it's a business record and they've reflected it's more of
5 a record for law enforcement purposes.

6 So, number 1, they're not qualified. Number 2, it's
7 not a business record, and then I would fall back also on
8 the confrontation clause argument that they would need
9 each individual person who handled the transaction just
10 as if you can't have a supervisor testify about what
11 another individual did on a drug test and I think that is
12 in Bullcoming v. New Mexico that I cited yesterday that
13 there is a confrontation issue. These records are kept
14 for law enforcement purposes and for litigation and the
15 confrontation clause, I believe, is implicated beyond the
16 hearsay exception, Your Honor, and I don't believe that
17 they should come in.

18 THE COURT: All right.

19 MR. MAULDIN: And I refer to the arguments I made in
20 more detail yesterday.

21 THE COURT: Yes, sir. Yes, sir. And that's
22 certainly noted. I'm going to respectfully overrule your
23 objections. I certainly note them for the record.
24 Overruled. I'm going to allow it. I think that these
25 folks do represent qualified individuals that can testify

1 as to the records and procedures and I think I ruled
2 yesterday as far as the business records I don't have any
3 concerns that these are, in fact, valid business records.
4 These pharmacies, they can't operate as a business unless
5 they comply with the law and they are complying with the
6 law. There's use of these records beyond simply
7 prosecution purposes. They are also used to track as the
8 one witness testified as to the health and welfare of the
9 customers with regards to the use of these products. So
10 I'm going to respectfully overrule the objection and
11 allow it.

12 Is there anything else that we need to take up
13 before we break?

14 MS. PATTERSON: Not from the State, Your Honor.

15 MR. MAULDIN: Not at this time, Your Honor.

16 THE COURT: Okay. It's 12:30 so we have got a
17 couple hours. We'll start back with this matter at 2:30.
18 I have got a bond hearing that we are doing at 2:00 so
19 court will be in recess until 2:00 for court personnel
20 and then for the purposes of this trial we'll start back
21 at 2:30 for this trial, okay?

22 (Luncheon recess.)

23 * * * * *

24

25

1 * * * * *

2 BAILIFF: All rise. Court is now in session.

3 THE COURT: Thank you. Please keep your seats.

4 Is there anything we need to take up before the jury
5 comes back out? And we'll just pick up with the State's
6 case where we left off.

7 MS. PATTERSON: Nothing from the State.

8 MR. MAULDIN: Nothing, Your Honor.

9 THE COURT: All right. Dee, if you would, please,
10 ask the members of the jury to join us.

11 (Whereupon, the jury returned to the courtroom at
12 2:35 p.m.)

13 THE COURT: All right. Ladies and gentlemen, I hope
14 everyone had a good lunch break and didn't get too wet.
15 We are ready to resume now. If you will recall when we
16 broke for lunch, we were on the State's case so we'll
17 pick up where we left off and recognize the State for
18 your next witness.

19 MS. PATTERSON: Thank you, Your Honor. The State
20 calls Ms. Jane Guevara.

21 Thereupon,

22 JANE GUEVARA

23 after having been first duly sworn, testified as follows,

24 THE CLERK: Please have a seat. After you're
25 seated, please state your full name spelling your last

1 name for the record..

2 THE WITNESS: Jane Guevara, G-u-e-v-a-r-a.

3 DIRECT EXAMINATION

4 BY MS. PATTERSON:

5 Q. Ms. Guevara, where are you employed?

6 A. The Wal-Mart pharmacy on Sunset.

7 Q. And that's in Lexington?

8 A. Yes, ma'am.

9 Q. How long have you been employed with Wal-Mart
10 pharmacy?

11 A. Six years.

12 Q. What is your position with Wal-Mart pharmacy?

13 A. I'm a cashier in the pharmacy.

14 Q. Does the Wal-Mart pharmacy keep records regarding
15 the sale of pseudoephedrine purchases?

16 A. Yes, they do.

17 Q. Are these records kept in the normal and ordinary
18 course of business at Wal-Mart?

19 A. It is. They're kept electronically.

20 Q. Why does Wal-Mart pharmacy keep records?

21 A. For to be in compliance with the government and
22 Wal-Mart regulations of keeping the amount of pseudoephedrine
23 sold to each individual.

24 Q. What is the amount of pseudoephedrine that can be
25 sold to one person?

JANE GUEVARA - DIRECT BY MS. PATTERSON

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1 A. Nine grams in 30 days.

2 Q. Is that government regulations?

3 A. It is.

4 Q. Is it also Wal-Mart's policy?

5 A. It is. Wal-Mart also has a policy of only selling a
6 certain amount within 365 days in a year's time.

7 Q. Where is the pseudoephedrine kept?

8 A. Behind the counter in the pharmacy.

9 Q. So when a person comes in to purchase
10 pseudoephedrine, walk us through that process.

11 A. They come in and they ask for whatever the product
12 may be and we get their ID and when we get their ID, we have
13 to pull them up manually. If they're in our system, we have
14 to go in and put in the expiration date on their driver's
15 license or ID and then they are - we scan the item that they
16 would like and if they are allowed for the sale, we can
17 continue with the sale and they have to sign for it and accept
18 the fact that know that it does have the pseudoephedrine in
19 it. And if denied sale, then there's a website we can send
20 them to with a transaction number. It gives them a reason why
21 we were not able to sell it to them.

22 Q. Does a person need a prescription to purchase
23 pseudoephedrine?

24 A. No, they don't.

25 Q. And you said if the person is denied the purchase.

1 Why would a person be denied a purchase?

2 A. Because they have either purchased it somewhere else
3 or purchased it too quickly to be able - they would have
4 exceeded their nine grams.

5 Q. And is there any safeguards in the Wal-Mart pharmacy
6 to make sure that the person purchasing the pseudoephedrine is
7 the person on the identification that's presented?

8 A. Yes. We have to visually ID it, look at their
9 picture and look at them and then enter their expiration date
10 and verify their birth date and everything and most of time we
11 will, if we take their ID, we ask them their birth date. We
12 ask them to repeat what birth date is on the ID.

13 Q. So are these your safeguards to protect Wal-Mart?

14 A. Yes, ma'am.

15 Q. Is this done at every sale with every sale of the
16 product that contains pseudoephedrine, are these procedures
17 followed?

18 A. Every time.

19 Q. And how are your records kept?

20 A. They're kept electronically on our hard drive where
21 we can pull them up by pulling up that screen.

22 Q. Do you have access to the records that are kept by
23 Wal-Mart as they relate to the sale of products that contain
24 pseudoephedrine?

25 A. We can, yes.

JANE GUEVARA - DIRECT BY MS. PATTERSON

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1 Q. And do your company maintain these records some kind
2 of way?

3 A. They do. They maintain them electronically.

4 Q. And I'm going to show you what's been marked as
5 State's exhibit number 25 and 26. Do you recognize those
6 documents?

7 A. Yes, ma'am.

8 Q. What are those two documents?

9 A. This is when the pseudoephedrine was sold to Mr.
10 Sexton and --

11 MR. MAULDIN: Objection, Your Honor. They haven't
12 introduced the items into evidence yet.

13 MS. PATTERSON: I'll lay the foundation, Your Honor.

14 THE COURT: All right.

15 BY MS. PATTERSON:

16 Q. Do you recognize what's in that -- Did your company
17 receive a subpoena from my office regarding pseudoephedrine
18 purchases for Johnny Sexton between November 1st, 2013 and
19 February 21st, 2014?

20 A. Yes, ma'am.

21 Q. Do those documents appear to be -- Are those
22 documents the documents that you provided to our office
23 pursuant to that subpoena?

24 A. Yes, it is.

25 Q. And do they appear to be altered or changed in any

1 way?

2 A. No, ma'am.

3 Q. Are those documents that you got from Wal-Mart's
4 computerized system that's kept in the ordinary and normal
5 course of your business?

6 A. Yes, ma'am. This is from two different stores.

7 MS. PATTERSON: Your Honor, at this time I move that
8 these exhibits be entered into evidence.

9 MR. MAULDIN: Objection based on my prior motions,
10 Your Honor.

11 THE COURT: Overruled. I'll allow them in.

12 BY MS. PATTERSON:

13 Q. Ms. Guevara, in document number 25 what is the
14 customer's name on that document?

15 A. Johnny Sexton.

16 Q. What is the date of birth?

17 A. [REDACTED]/78.

18 Q. And which Wal-Mart location is this referring to?

19 A. This is Killian Road in Columbia.

20 Q. What are the dates that -- What is it at the top?
21 What is it labeled at the top?

22 A. Connexus Pharmacy System. Is that what you mean?

23 Q. Yes. And what does this show?

24 A. It shows that pseudoephedrine was sold at the time
25 and the date and the type of pseudoephedrine that was told to

JANE GUEVARA - DIRECT BY MS. PATTERSON

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1 him.

2 Q. What date does it show on that document?

3 A. I have got December 6th, 2013 on two occasions. It
4 looks like he just bought two boxes at the same time. And
5 then again on December 18, 2013.

6 Q. How many counts are in each box that he purchased?

7 A. 48 count each.

8 Q. Each count was 48 count on each of those dates?

9 A. Mm-hmm.

10 Q. You say one day two purchases were made?

11 A. Right. Because of the amount of milligrams in the
12 pseudoephedrine. In that type of Sudafed they were only
13 allowed to buy two.

14 Q. I'll show you State's exhibit 26. What is the
15 customer's name on that document?

16 A. Johnny Sexton.

17 Q. What is his date of birth?

18 A. [REDACTED]/1978.

19 Q. Is this the pseudoephedrine summary as well?

20 A. It is.

21 Q. For which Wal-Mart location is this?

22 A. This is Sunset Boulevard here in Lexington.

23 Q. What dates are shown on that report?

24 A. January 5th of 2014, January 17th, 2014, and
25 February 10th, 2014.

1 Q. What did he purchase?

2 A. The first one he purchased two boxes of
3 pseudoephedrine 48 count and one box each on the other two
4 each of 48 count.

5 Q. And as a clerk in the pharmacy do you know why
6 pseudoephedrine is taken?

7 A. Yes, ma'am.

8 Q. What is it taken for?

9 A. It's broken down for methamphetamine. It's a part
10 and product of it.

11 Q. Are you trained with that knowledge?

12 A. We are. And I'm also trained to make sure that we
13 look at the items in their cart because sometimes they
14 coincide.

15 Q. What would -- What is the medical purposes of
16 pseudoephedrine? Do you know that?

17 A. It is a nasal decongestant.

18 Q. And it's to help a person with --

19 A. With allergies and nasal congestion.

20 MS. PATTERSON: Thank you, Ms. Guevara. Please
21 answer any questions the defense attorney may have.

22 CROSS EXAMINATION

23 BY MR. MAULDIN:

24 Q. Hello, Ms. Guevara. Now, you have listed about six
25 different purchases; is that correct?

JANE GUEVARA - CROSS BY MR. MAULDIN

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1 A. Yes, sir. I think so.

2 Q. And you were present for one of those purchases?

3 A. I was.

4 Q. But you don't have any independent recollection of
5 it?

6 A. No. It's a very busy place.

7 Q. And you can testify about what store policy is, but
8 you can't ensure that everybody follows the store policy
9 yourself?

10 A. Uhm, we have pretty strict - we're pretty strict in
11 our policies especially concerning Sudafed.

12 Q. You have heard of identity fraud, haven't you?

13 A. Yes, sir.

14 Q. You have heard of people using fake ID's?

15 A. Yes, sir.

16 MR. MAULDIN: No further questions.

17 MS. PATTERSON: Your Honor, we would ask that this
18 witness be excused to return to work.

19 THE COURT: Any objection?

20 MR. MAULDIN: No objection, Your Honor.

21 THE COURT: Thank you very much, ma'am. You're free
22 to go.

23 MS. PATTERSON: Your Honor, the State calls Greg
24 Guidry.

25 Thereupon,

1 GREG GUIDRY
2 after having been first duly sworn, testified as follows,
3 THE CLERK: Please have a seat. After you're
4 seated, please state your full name spelling your last
5 name for the record.

6 THE WITNESS: Greg Guidry, G-u-i-d-r-y.

7 DIRECT EXAMINATION

8 BY MS. PATTERSON:

9 Q. Good afternoon, Mr. Guidry. Where are you
10 employed?

11 A. I work for Walgreens.

12 Q. What is your title at Walgreens?

13 A. I'm a district pharmacy supervisor.

14 Q. Before you became a district pharmacy supervisor,
15 were a pharmacist?

16 A. And I still am.

17 Q. How long were you a pharmacist?

18 A. I've been a pharmacist for 20 years.

19 Q. How long have you been a district pharmacy
20 supervisor?

21 A. Cumulatively about eight or nine years. Eight and a
22 half years.

23 Q. In your capacity as a district pharmacy supervisor,
24 are you aware of the policy when it comes to Walgreens and the
25 records that they keep?

GREG GUIDRY - DIRECT BY MS. PATTERSON

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1 A. I'm aware, yes.

2 Q. That's regarding the purchases of items containing
3 pseudoephedrine?

4 A. Absolutely.

5 Q. Can you explain to the jury what are some of the
6 policies that Walgreens have in place?

7 A. So we have a system through our register computer
8 system that we do track the amount of pseudoephedrine that is
9 purchased. We have policies that coincide with the state
10 ruling which is no more than 3.6 grams per day and nine grams
11 per 30 days. Our system will not allow us to sell any Sudafed
12 based on an identification that's presented beyond those
13 measures. It will not allow the sell.

14 Q. Are your pharmacies and the people that work within
15 your pharmacies, are they trained with these procedures?

16 A. Very well, yes.

17 Q. Are all these procedures followed during each
18 transaction?

19 A. Absolutely without fail. In fact, most times we
20 actually have a pharmacist that when someone asks for Sudafed,
21 the pharmacist will actually come over and do a consult to
22 verify it's the best choice for the patient.

23 Q. Why does Walgreens do that?

24 A. Well, we do two pieces. We want to make sure that
25 people, you know, get well if they're really truly having an

1 issue, but also we want to help with having a pharmacist be
2 that person to help. If someone is up to no good potentially
3 buying things that are used for other purposes, we want to
4 make sure that we are doing the right thing to help the
5 system.

6 Q. What would happen if a person has exceeded the
7 amount of pseudoephedrine that they can purchase?

8 A. So the register will not allow the purchase to be
9 made. It will not allow the transaction.

10 Q. Does Walgreens keep the records regarding the sale
11 of pseudoephedrine purchases in it's normal and ordinary
12 course of business?

13 A. It does, yes.

14 Q. Why does your pharmacy again keep these records?

15 A. The records are to make sure that we abide by the
16 state rules and that we don't break any laws in how much we do
17 sell, but also to keep an internal - keep the internal pieces
18 in place for the community that we do the right thing.

19 Q. Are these records made each time at the time of each
20 purchase?

21 A. Yes, ma'am.

22 Q. How are these records made?

23 A. So they're electronic records and at any point in
24 time if we needed to go back and pull up records which is rare
25 we would ever do that, but if we had to pull it up for

GREG GUIDRY - DIRECT BY MS. PATTERSON

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1 reasons, legal reasons, we could run a report up to two years
2 worth of data on purchases.

3 Q. Was your company subpoenaed to bring records of
4 pseudoephedrine purchases for Johnny Sexton between the dates
5 of November 1st, 2013 and February 21st, 2014?

6 A. Yes, ma'am.

7 Q. I'll show you what's been marked as State's exhibit
8 number 24 and I ask you to take a look at that document. And
9 are you familiar with that document?

10 A. I am familiar.

11 Q. And does that document show the information that was
12 requested in the subpoena from my office?

13 A. That is correct.

14 Q. Does it look like the information has been changed
15 or altered in any way?

16 A. Not at all.

17 MS. PATTERSON: Your Honor, at this time I would
18 move State's exhibit number 24 be admitted into
19 evidence.

20 THE COURT: All right.

21 MR. MAULDIN: I object, Your Honor.

22 THE COURT: Subject to your objection. Overruled.

23 BY MS. PATTERSON:

24 Q. Mr. Guidry, what does that document show?

25 A. This is a transaction log purchases made for an ID

1 that was run belonging to a customer named Johnny Sexton.

2 Q. What are the dates of the purchases on that
3 document?

4 A. They are from November 5th, 2013, January 15th,
5 2014.

6 Q. And on the November purchase what did Mr. Sexton
7 purchase?

8 A. This was for the Sudafed 20 count long acting pills
9 or 12 hour lasting pills for one box.

10 Q. What about the January purchase?

11 A. The January purchase was for the 16 count of the
12 pseudoephedrine product long acting.

13 Q. How long does the long acting supposed to last?

14 A. It's supposed to last 12 hours.

15 Q. So on the November 5th purchase he purchased 20
16 count of the 12 hour pseudoephedrine and on January 15th the
17 16 count of the 12 hour long acting pseudoephedrine?

18 A. Yes, ma'am.

19 Q. And would that document show any blocked
20 transactions?

21 A. No. Well, no, it would not. It would only indicate
22 situations where we successfully were able to dispense that
23 based on following the parameters that are in place with 3.6
24 grams or nine grams.

25 MS. PATTERSON: Mr. Guidry, thank you. Please

GREG GUIDRY - CROSS BY MR. MAULDIN

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1 answer any questions the defense attorney has.

2 CROSS EXAMINATION

3 BY MR. MAULDIN:

4 Q. Mr. Guidry, you were not present for either one of
5 these purchases, were you?

6 A. That is correct. I was not present.

7 Q. Although your store has policies and you strive to
8 maintain those, you are not there to verify they are accurate?
9 You just hope the employees follow the policies?

10 A. Can you repeat that again? I'm sorry.

11 Q. Although your store has policies and you strive your
12 best to ensure that they are enacted, you can't personally
13 monitor to make sure that they are followed?

14 A. That's correct. Not every single instance.

15 Q. And you have heard of identity fraud before? People
16 using other people's identities?

17 A. I have heard of it, yes.

18 Q. And people using fake ID's?

19 A. Of course I have heard of it.

20 MR. MAULDIN: No further question.

21 THE COURT: Any further questions of this witness?

22 MS. PATTERSON: No, Your Honor. We ask that this
23 witness be excused to return to work.

24 THE COURT: Any objection?

25 MR. MAULDIN: No objection.

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 THE COURT: Thank you, sir. You're free to go.

2 Call your next witness.

3 MS. DAVIS: The State calls agent Mike Merckle.

4 Thereupon,

5 MIKE MERCKLE

6 after having been first duly sworn, testified as follows,

7 THE CLERK: Please have a seat. After you're
8 seated, please state your full name spelling your last
9 name for the record.

10 THE WITNESS: I am Michael Merckle, M-e-r-c-k-l-e.

11 DIRECT EXAMINATION

12 BY MS. DAVIS:

13 Q. Agent Merckle, where do you work?

14 A. Lexington County Sheriff's Department.

15 Q. What do you do there?

16 A. I'm a narcotics agent.

17 Q. Okay. What are your duties as a narcotics agent?

18 A. Investigate narcotic crimes, dope dealing as well as
19 money laundering, prostitution. Anything you can think of
20 that your average road deputies don't. Long term cases.
21 Those types of things. I do undercover work as well buying
22 drugs from drug dealers, those such things.

23 Q. Do you all have a specific team set up for that at
24 the Sheriff's Department?

25 A. Yes, we do.

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 Q. What is that referred to?

2 A. It's called the NET Team, Narcotics Enforcement
3 Team.

4 Q. Tell the jury about your training and experience in
5 particular with methamphetamine?

6 A. Sure. I was able to go -- I was sent through the
7 department to the DEA Academy which is in Quantico, Virginia
8 where I studied to become a meth tech, certified meth
9 technician to locate and identify and safely handle meth labs
10 essentially.

11 Q. Do you teach any classes?

12 A. Yes, I do. I teach state and local law enforcement
13 the identification of methamphetamine labs and detection of
14 labs.

15 Q. So you teach other law enforcement officers about
16 this?

17 A. Yes, I do.

18 Q. About how many meth labs do you think you have
19 worked in your career?

20 A. Over a hundred.

21 Q. Have you testified in court before?

22 A. Yes, I have.

23 Q. About how many times?

24 A. General Sessions Court roughly 10, 12 times.
25 Magistrate's Court hundreds and hundreds of times. I have

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 been in law enforcement - i've been a certified law
2 enforcement officer coming up on 16 years, 11 years this June
3 with Lexington County Sheriff's Department.

4 Q. How many of those years are in particular to the NET
5 Team?

6 A. Five.

7 MS. DAVIS: Your Honor, at this time the State would
8 move Agent Merckle as an expert as to clandestine meth
9 labs and detection.

10 MR. MAULDIN: I object.

11 THE COURT: All right. Overruled. I'll allow it.

12 BY MS. DAVIS:

13 Q. Agent Merckle, you said that you are a certified
14 meth tech?

15 A. Yes, ma'am.

16 Q. And you would be familiar with which components are
17 used to manufacture methamphetamine?

18 A. Yes, ma'am.

19 Q. Were you working on the NET Team February 21st of
20 2014?

21 A. Yes, I was.

22 Q. Did you respond to a call at Siesta Cove?

23 A. Yes, ma'am, I did.

24 Q. What was the nature of that call?

25 A. We were -- I was called there to the report of a

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 possible methamphetamine lab located by a warrant division
2 deputy who works for us. He possibly located some items that
3 are associated with the manufacturing of meth therefore we
4 come in and inspect it.

5 Q. Is that typical policy for them to contact the NET
6 Team to come in whenever they think they might have stumbled
7 upon a meth lab?

8 A. Absolutely.

9 Q. Did anyone go with you Siesta Cove?

10 A. Yes.

11 Q. Who was that?

12 A. Agent Brian Berrell. He also works on the NET Team
13 with me.

14 Q. Do you recall the specific address that you had gone
15 to in Siesta Cove?

16 A. I do.

17 Q. What is that?

18 A. [REDACTED] John Long Road, lot [REDACTED].

19 Q. Is that in Lexington County?

20 A. It is.

21 Q. Do you recall what time you got there?

22 A. It was approximately 3:45 in the afternoon give or
23 take.

24 Q. Who was on scene when you arrived?

25 A. I showed up. DSS was on scene. Case workers from

1 DSS. Deputy Bair was in uniform. There was the female, Ms.
2 Norris, and three small children.

3 Q. Okay. Where were the children whenever you saw
4 them?

5 A. When we first pulled up, we saw the kids playing
6 outside. Everybody was just kind of corralling up and kind of
7 running around. The oldest of the three was having a big time
8 outside.

9 Q. Was anyone inside the camper when you arrived?

10 A. No, ma'am.

11 Q. They had already been moved out of the camper?

12 A. Yes, ma'am.

13 Q. Is that for safety reasons?

14 A. Absolutely. Yes, ma'am.

15 Q. Did you ask Ms. Norris for consent to search the
16 home?

17 A. I did.

18 Q. Were you given consent to search?

19 A. Yes.

20 Q. Tell me about Ms. Norris' demeanor whenever you got
21 there?

22 A. She appeared to be visibly upset. Obviously law
23 enforcement, DSS was there. She appeared to have been crying.
24 Just really down and upset is the best way I can describe
25 it.

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 Q. Okay. Let's tell the jury the procedure for making
2 methamphetamine. What type of ingredients are involved? Kind
3 of take them through that.

4 A. Okay. As many people know, meth can be manufactured
5 from going to Wal-Mart and you can get all, basically at a
6 Wal-Mart or a convenient, those types of stores, you can get
7 most of your ingredients there, if not all of them. You use
8 pseudoephedrine which is typically used which is broken down
9 in the process. 99.9 percent of the labs that we see here are
10 what they call shake-n-bake or one pot methods that's usually
11 in a for lack of a better description of a bottle such as
12 this, a soda bottle, two liter bottle. You put all of your
13 ingredients in it. First of which most people will put in
14 your pseudoephedrine first. You can either grind it up or you
15 can just throw it in the bottle just like it is. On top of
16 that you put your ammonium nitrate.

17 I'm sure everybody has heard of the instant cold
18 packs that you get from Walgreens or any of these other
19 stores. If you've got a bump or bruise, you squeeze it and it
20 instantly gets cold. It has an endothermic reaction. You
21 open that package up and you take out the little white prills
22 that are inside and discard the water pack because that's what
23 activates it is the water. You pour those prills in there on
24 top of the pseudo, you put some lye in there, household drain
25 cleaner, crystal lye that you can get to unclog your drains.

1 You want to use an organic solvent. Most people use which is
2 readily available to them which would be Coleman camp fuel or
3 ether which you can buy again at Wal-Mart or at Advanced Auto
4 Parts, any of those types of stories.

5 The next thing you do is you get lithium metal which
6 is taken out of lithium batteries. Cut the battery open, peel
7 it apart. There's a thin membrane in there that has the
8 lithium on it. You just pull pieces off and throw it in the
9 mix. So now your bottle is filled with all of these different
10 chemicals. Add a little bit of water and that starts the
11 process.

12 During the process it's called rolling, if anybody
13 has ever watched it on TV or anything else where the bottle
14 will actually roll by itself inside. It will start bubbling.
15 It produces an ammonia gas which is created by adding the
16 water. It's an extremely dangerous process because everything
17 in that bottle is highly flammable and you're adding water to
18 lithium metal. Lithium metal does not like water at all. It
19 will spark. It will actually catch fire. You can actually
20 catch fire by just touching it with the oils on your hand or
21 in the atmosphere. Here in South Carolina it's very humid.
22 It could be just one of those bad days and you're splitting
23 the battery open and it catches fire in your hand, know you?
24 But now you're adding that into a bottle that's got Coleman
25 camp fuel or ether which is extremely flammable.

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1 The process builds pressure inside the bottle. You
2 have to hold the bottle and once the pressure equalizes in the
3 bottle, it will stop or it will explode. What you have to do
4 is you continue holding the bottle as it rolls and you release
5 that pressure ever so often so that it continues to build and
6 it continues to build. There is a reaction that happens with
7 the lithium, the pseudoephedrine and the ammonium nitrate and
8 the lye which causes the ammonia gas. Lots of ammonia gas is
9 produced and ammonia gas is highly dangerous to inhale.

10 During that process the lithium metal will start to
11 change colors. It will get greenish almost gray color. It
12 changes from a black color to a gray and then it will go back
13 to black and what they call copper beading forms on the top
14 layer. The very top layer. You will see it. It kind of
15 looks like copper BB's from a BB gun. That indicates that
16 methamphetamine is being produced. The reason methamphetamine
17 is produced is because all those chemicals break down the
18 pseudoephedrine and basically convert it into methamphetamine
19 and it's suspended inside the organic salt which is your
20 Coleman camp fuel or your starter fluid which is your ether.

21 Q. So these meth labs that you run into on the NET Team
22 aren't like on Breaking Bad?

23 A. No.

24 Q. These are things people have in their own houses?

25 A. Correct.

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 Q. You said that there's gas emitted. Is that
2 extremely hazardous?

3 A. Yes. Ammonia gas is very, very dangerous. If you
4 breathe too much of it in, it can kill you instantly. That's
5 the main gas that's produced along with heat and the sparks
6 and everything else that's going on in the bottle.

7 Q. And you said it is also very flammable?

8 A. Yes.

9 Q. It can explode at any time?

10 A. Yes, ma'am.

11 Q. So manufacturing methamphetamine in a camper with
12 children would be extremely dangerous?

13 A. Absolutely.

14 Q. Very harmful to the children?

15 A. Absolutely. You have put it now in a confined space
16 instead of, you now, you take a bigger house or this room, for
17 instance, if somebody is cooking or had something that smells
18 awful cooking -- Let's say you're in your house and you're
19 cooking fish in the kitchen, you may not smell it in the back
20 bedroom. But in that camper it's so enclosed if you're
21 cooking fish or meth in the kitchen, it's going to fill up the
22 entire camper and you can't get away from it especially being
23 a small child.

24 Q. And the same thing would apply in a van?

25 A. Absolutely. These are very mobile. That's one of

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 the reasons why they went from your giant labs that you see on
2 TV of the Breaking Bad show that everybody has watched to
3 these really compact readily accessible very easy to do and
4 you're basically holding a bomb in your hands. Its a 50-50
5 chance of whether or not it's actually going to explode.

6 Q. And you said on February 21st you actually did
7 search the house?

8 A. Yes.

9 Q. Or the camper?

10 A. Yes.

11 Q. I'll show you some exhibits. I'm going to show you
12 State's exhibit 1. Is this where you went that day --

13 A. Yes, ma'am.

14 Q. -- and searched. This would have been the camper at
15 Siesta Cove?

16 A. Yes, ma'am.

17 Q. I'll show you State's number 12. Tell us what this
18 is?

19 A. This appears to be a coffee filter inside of a red
20 funnel that's inside of a mason jar stacked on top of each
21 other.

22 Q. Is this something that would be used in the
23 manufacture of meth?

24 A. Yes.

25 Q. Would this be a dangerous part of the process?

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 A. Absolutely.

2 Q. Hazardous to children?

3 A. Yes, ma'am.

4 Q. What would have gone in the mason jar?

5 A. Basically the second step to manufacturing the meth;
6 once the cook is finished, in the bottle your meth is
7 suspended in what they call meth oil. It's the top layer and
8 it's all in liquid. You drain that liquid off and you create
9 another bottle that's your acid generator. Your acid
10 generator which usually has household grade drain opener but
11 it's a liquid drain opener that contains sulfuric acid and
12 salt. That creates the HCO gas. That gas is pumped into the
13 suspended liquid where the meth is suspended and it snows out.
14 If you can imagine a snow globe. When you shake a snow globe
15 and it all falls to the bottom, that's what it looks like.
16 Once the chemical reaction happens, it all falls to the bottom
17 so now what you have is a powdery substance in the liquid that
18 you have got to separate. So they use this type of homemade
19 contraption by using coffee filters because they are great for
20 filtering coffee as we all know and they pour it through
21 there. The powder stays inside of the coffee filter itself.
22 The rest of the flammable liquid, because it's still really
23 flammable because it's your organic salt which is your Coleman
24 camp fuel or your ether type product goes into that jar and
25 then you dry it out and you have your finished product.

MIKE MERCKLE - DIRECT BY MS. DAVIS

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1 Q. So this would be flammable?

2 A. Absolutely. Yes.

3 Q. I'll show you State's number 11. Can you tell us
4 what this is?

5 A. Yes. Two mason jars, one with a top, one without a
6 top that has two liquids in it.

7 Q. Did this concern you?

8 A. Yes.

9 Q. Why?

10 A. Because it was Coleman camp fuel and ether in either
11 one of those jars and from my training --

12 MR. MAULDIN: Objection, Your Honor, to that based
13 on my prior motion, Your Honor, testimony about the
14 contents of the jars.

15 MS. DAVIS: Your Honor, he's been qualified.

16 THE COURT: Overruled. You can question him.

17 BY MS. DAVIS:

18 Q. How did you know what was in these jars?

19 A. Through my training and experience dealing with this
20 stuff on a daily basis.

21 Q. Do they smell?

22 A. Absolutely. They have an odor. They actually, if
23 you take Coleman camp fuel and swish it around a little bit,
24 you can tell the viscosity of it it's not quite like water or
25 not quite like oil. It's just a little bit different. It's a

1 little tinted. It's hard to see in that picture because of
2 the picture, but it will have a tinted - a lot of times
3 Coleman camp fuel has a bluish green tint to it, but it's
4 very, very light, whereas your ether is always very clear.

5 What we come across here when you punch it out of an
6 ether can is what they do is take an ether can that's not been
7 used, punch a hole in the bottom and drain it out so that you
8 have the liquid. It doesn't atomize into a gas. You know,
9 like when you want to start a car that won't start, you spray
10 it into the carburetor to get it to start. So that concerned
11 me because it was there in residence open with the small
12 children running around, knock it over, pick it up, try to
13 drink it.

14 Q. And where was this located?

15 A. In the residence.

16 Q. Was it just sitting out?

17 A. Yes. In the kitchen area.

18 Q. In the kitchen area where the children's food is?

19 A. Yes, ma'am.

20 Q. Did you smell this to check to see if it was camp
21 fuel?

22 A. Yes. Absolutely. You could smell it.

23 Q. So you have no question that's what it was?

24 A. Correct.

25 Q. And State's number 10?

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1 A. That's a coffee bean grinder.

2 Q. Did this concern you in any way?

3 A. It did because what was in it what appeared to me
4 was pseudoephedrine that had been ground. We see that all the
5 time with these portable coffee grinders or the small coffee
6 bean grinders. What a lot of people don't know is that your
7 pseudoephedrine, a lot of your, almost all of your medications
8 have binders that keep them together in these tight little
9 pills. Well, these binders are worthless. In fact, it causes
10 the cook to take a lot longer. So what they try to do is they
11 try to separate those binders by grinding it up and let the
12 process go a lot faster. You can just throw the pills in
13 there as is. It takes a little bit longer for all the
14 chemicals to break it down to the point where it needs to do
15 what it needs to do to change it into methamphetamine from the
16 pseudo but most people grind it up before.

17 Q. So in your opinion in looking at this coffee grinder
18 you believed it was used for the manufacture of
19 methamphetamine?

20 A. Yes.

21 Q. Not for grinding coffee beans?

22 A. Absolutely not.

23 Q. Agent Merckle, did you take these things into
24 evidence?

25 A. No, ma'am.

1 Q. Why not?

2 A. All the chemicals that are used in this are very
3 dangerous. If you can imagine, we have to store our evidence
4 in an enclosed facility where there are people who aren't
5 certified to deal or handle this stuff. That's why the road
6 calls us when they find objects that they believe that they
7 have been trained by me or other agents that work with me the
8 identification of methamphetamine labs or items used or
9 associated with that, we come in and we will determine whether
10 or not it something that can be taken as evidence or something
11 that needs to be destroyed. 99 percent of the time it has to
12 be destroyed because the chemicals involved are very
13 corrosive, they can hurt you, they can burn your skin as well
14 as contaminate other items around it. I'm sure everybody has
15 cleaned their bathroom at one point in time and you put a
16 little too much Clorox or ammonia in there and, wow, it will
17 overtake you. That's exactly what this stuff does.

18 Q. Did you destroy the chemicals that you found at
19 Siesta Cove?

20 A. Yes, ma'am.

21 Q. When you are dismantling a meth lab, what do you
22 wear? Do you wear a suit like that?

23 A. No.

24 Q. What do you wear?

25 A. No. When we come across an active meth lab or a

MIKE MERCKLE - DIRECT BY MS. DAVIS.

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1 meth lab that we believe to be active, we completely gear up
2 from head to toe. We wear a gas mask. I wear a special fire
3 suit that was provided to me from the DEA. Thankfully it's
4 chemical and fire proof because these things do explode and it
5 would be just our luck that's the moment I'm dealing with it
6 and trying to remediate it so it can be safely transported and
7 disposed of so we wear gloves, fire proof suits, chemical
8 proof suits, the works to protect us.

9 Q. So you take this very seriously --

10 A. Absolutely.

11 Q. -- when dealing with a meth lab?

12 A. Yes, ma'am. Absolutely.

13 Q. For methamphetamine to be found in your system do
14 you have to actually smoke it?

15 A. No, ma'am.

16 Q. So if you are around someone who has smoked it, can
17 you have it in your system?

18 MR. MAULDIN: Objection, Your Honor. I think that's
19 outside the area which he's qualified.

20 THE COURT: Sustained.

21 BY MS. DAVIS:

22 Q. If someone has been smoking meth in an enclosed
23 area, would you be able to smell that?

24 A. Absolutely.

25 Q. Could you breathe it in?

MIKE MERCKLE - CROSS BY MR. MAULDIN

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1 A. Yes.

2 Q. How about in a van?

3 A. Absolutely.

4 Q. Agent Merckle, is manufacturing methamphetamine a
5 dangerous process?

6 A. Yes. Very dangerous.

7 Q. And having small children around that, is that a
8 risk of harm to them?

9 A. Absolutely.

10 MS. DAVIS: That's all the questions I have for you,
11 Agent Merckle. Answer any questions that Mr. Mauldin
12 has.

13 CROSS EXAMINATION

14 BY MR. MAULDIN:

15 Q. Agent Merckle, you testified you have been in law
16 enforcement about 16 years; is that right?

17 A. Yes, sir. Working on it. A few months.

18 Q. 15?

19 A. 15 and some change.

20 Q. And you were with Lexington for 11 years?

21 A. This June will be 11 years, yes, sir.

22 Q. And you have been on the NET Team for about five
23 years?

24 A. Yes, sir.

25 Q. And you say you have testified in General Sessions

MIKE MERCKLE - CROSS BY MR. MAULDIN

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1 Court about a dozen times and hundreds of times down in
2 Magistrate Court?

3 A. Yes, sir.

4 Q. And you went through all the steps to become a law
5 enforcement officer going through the training at the
6 academy?

7 A. Yes, sir.

8 Q. And you do follow up training all the time?

9 A. Absolutely. Yes, sir. In fact, with
10 methamphetamine we certify every year. We recertify on our
11 certification.

12 Q. Part of the training is the documentation of your
13 investigation; is that correct?

14 A. Yes, sir.

15 Q. As far as writing reports and that kind of thing?

16 A. Sure.

17 Q. They want you to be as detailed and complete as
18 possible?

19 A. Yes, sir.

20 Q. Because you may be having to recall an event that
21 may have happened a couple years earlier and you might need
22 that to refresh your recollection?

23 A. Yes, sir.

24 Q. And you did prepare a report in this case; is that
25 correct?

1 A. I did a supplemental report, yes, sir.

2 Q. In that report you mentioned going to the residence
3 and looking through the residence; is that correct?

4 A. Yes, sir.

5 Q. And when you said you checked the residence, you
6 located the two mason jars and you were unable to locate any
7 other items used to manufacture meth; isn't that correct?

8 A. Yes, sir.

9 Q. So you didn't mention any kind of funnel?

10 A. No, sir.

11 Q. Any kind of filter?

12 A. No, sir.

13 Q. Any kind of industrial acid?

14 A. No, sir.

15 Q. I don't think you mentioned any kind of industrial
16 acid in the recipe cited to make it, correct?

17 A. When I was talking about the second phase when you
18 add your sulfuric acid, that's the industrial acid. That's
19 the liquid drain opener. That's what that is.

20 Q. You didn't mention finding any of that in your
21 report?

22 A. No, sir, I didn't.

23 Q. You didn't mentioned finding the grinder either?

24 A. Yes, sir. She showed me the picture.

25 Q. In your report?

MIKE MERCKLE - CROSS BY MR. MAULDIN

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1 A. Oh, no. No, sir.

2 Q. You said you looked through the residence --

3 A. Yes, sir. Absolutely.

4 Q. -- and the only two things you found were these two
5 mason jars?

6 A. Yes.

7 Q. Now, I understand that you say some of these items
8 are volatile and need to be destroyed. In the past you have
9 taken samples from a liquid suspension?

10 A. Absolutely. Yes, sir.

11 Q. And you didn't do that in this case?

12 A. No, sir.

13 Q. And you didn't have the grinder tested to see the
14 presence of any pseudoephedrine?

15 A. No, sir.

16 Q. And you didn't have the coffee filter tested to see
17 if there was the presence of any methamphetamine?

18 A. There wasn't anything in the coffee filter which is
19 why I didn't take it and destroy it.

20 Q. Is that why you didn't even mention it in your
21 report?

22 A. Yes, sir. It's not illegal to have a coffee filter
23 or a funnel.

24 Q. You're saying a coffee filter is used in the
25 manufacture of meth, right?

1 A. It can be. Absolutely. Yes.

2 Q. But in your report you said other than the two mason
3 jars you were unable locate any other items?

4 A. Correct.

5 MR. MAULDIN: No further questions.

6 THE COURT: Anything further?

7 REDIRECT EXAMINATION

8 BY MS. DAVIS:

9 Q. Agent Merckle, at Lexington County do you all test
10 for the presence of pseudoephedrine? Does your lab do that?

11 A. No.

12 Q. Is that why you wouldn't have taken a sample of
13 it?

14 A. Correct. They test four scheduled narcotics
15 basically. Pseudoephedrine is not a scheduled narcotic at
16 this time at our center.

17 Q. So they would test to see if it had meth, but not
18 test to see if it had pseudoephedrine?

19 A. Correct.

20 Q. So you didn't feel it was necessary to take a sample
21 of that?

22 A. Correct.

23 Q. When I showed you the pictures, did you have any
24 problem identifying those as components for manufacturing
25 meth?

MIKE MERCKLE - RECROSS BY MR. MAULDIN

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1 A. No, ma'am..

2 Q. You just failed to document that in your report?

3 A. Right.

4 Q. You said there wasn't anything in the coffee
5 filter?

6 A. Right.

7 Q. Was there any coffee in it?..

8 A. No. It was empty. The whole thing was empty.

9 MS. DAVIS: No further questions.

10 THE COURT: Anything further?

11 RECROSS EXAMINATION

12 BY MR. MAULDIN:

13 Q. Your lab tests items other than narcotics?

14 Prescription pills that officers find people have and other
15 scheduled substances. They do test for prescriptions, don't
16 they?

17 A. Prescriptions?

18 Q. Yes.

19 A. Oh, yes. Certainly. Pseudoephedrine isn't
20 prescribed. It's not a prescription.

21 Q. I understand it's not prescribed, but it is a lab.
22 It does have testing. You don't do the testing?

23 A. No, sir. No, sir.

24 MR. MAULDIN: All right. No further questions.

25 THE COURT: All right. Thank you very much, sir.

1 You may step down.

2 MS. PATTERSON: You Honor, may we approach?

3 THE COURT: Yes, ma'am.

4 (Side bar off the record.)

5 THE COURT: Folks we are going to take a short
6 break. Don't discuss the case. If you need anything,
7 let the bailiff know and we'll get you back out here
8 shortly, okay?

9 (Whereupon, the jury went into the jury room.)

10 THE COURT: All right. We will be at ease then for
11 a few minutes.

12 (Short recess.)

13 THE COURT: You ready, guys?

14 MS. PATTERSON: Yes, Your Honor.

15 THE COURT: All right. Let's bring the jury back in
16 please.

17 (Whereupon, the jury returned to the courtroom.)

18 THE COURT: All right. Ladies and gentlemen, we are
19 ready to proceed. Recognize the State for your next
20 witness.

21 MS. PATTERSON: Thank you, Your Honor. The State
22 calls Investigator Sandra Black.

23 Thereupon,

24 SANDRA BLACK

25 after having been first duly sworn, testified as follows,

SANDRA BLACK - DIRECT BY MS. PATTERSON

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1 THE CLERK: Please have a seat. After you're
2 seated, please state your full name spelling your last
3 name for the record.

4 THE WITNESS: My name is Sandra Black, B-l-a-c-k.

5 DIRECT EXAMINATION

6 BY MS. PATTERSON:

7 Q. Investigator Black, where are you employed?

8 A. Lexington County Sheriff's Department.

9 Q. How long have you been employed at Lexington County
10 Sheriff's Department?

11 A. 18 years.

12 Q. How long have you been an investigator?

13 A. Four years.

14 Q. What are some of the crimes that you investigate as
15 an investigator?

16 A. Sexual assaults, domestic violence, murders,
17 robberies, child abuse.

18 Q. How did you come to be involved in the case against
19 Johnny Sexton The Second?

20 A. I was assigned the report.

21 Q. What date were you assigned the report?

22 A. On February 24th of 2014 I was assigned the
23 report.

24 Q. What was the incident date associated with this
25 case?

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 A. February 21st, 2014.

2 Q. Is that normal for you to get assigned a case a few
3 days after the incident occurred?

4 A. Yes, ma'am. The 21st was actually a Friday so I
5 wasn't working that weekend so I got it that Monday when I
6 came into work.

7 Q. When you got the case, what was one of the first
8 things that you did?

9 A. I read the report to include all the supplementals
10 that were done, looked at the photographs that were associated
11 with the case, read any statements that were associated with
12 the report as well, called DSS, talked to them and saw where
13 they were with their investigation and asked for any of the
14 reports and stuff that they had from their investigation.

15 Q. Who was your contact person at DSS?

16 A. Olivia Sinclair. I believe her last name is Woods
17 now.

18 Q. Did you stay in contact with Ms. Sinclair about her
19 investigation?

20 A. Yes, ma'am.

21 Q. Did you find out who the parties were involved in
22 this case?

23 A. Yes, ma'am.

24 Q. Who were those people?

25 A. Johnny Sexton and Jamie Norris and their three

SANDRA BLACK - DIRECT BY MS. PATTERSON

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1 children.

2 Q. Did you find out where they had been living?

3 A. Yes, ma'am. They were living at [REDACTED] John Long Road,
4 lot [REDACTED] which is in the Gilbert area of South Carolina.

5 Q. Did you find out the ages of the children?

6 A. Yes, ma'am. At the time the two youngest were one
7 year old. They were twins and they had a two year old son as
8 well.

9 Q. After you found out about the people involved in the
10 case, what did you do next?

11 A. I made contact with Ms. Norris.

12 Q. Did you actually speak to Ms. Norris?

13 A. Yes, ma'am, I did.

14 Q. How did you make that contact with her?

15 A. Over the phone.

16 Q. Did she talk to you?

17 A. Yes, ma'am, she did.

18 Q. Without saying what she told you, did she give you
19 information about your investigation?

20 A. Yes, ma'am.

21 Q. Did it help your investigation?

22 A. Yes, ma'am.

23 Q. Have you worked with DSS before?

24 A. Yes, ma'am.

25 Q. Does it sometimes take a while for you to get their

1 reports?

2 A. Yes, ma'am. But sometimes it takes us a while to
3 get them stuff to so...

4 Q. Was it concerning to you that it was taking a while
5 to get their information based on their investigation?

6 A. No, ma'am.

7 Q. Why didn't it concern you?

8 A. Because I knew the children were out of the home.
9 They were in a place that was safe and where they could be
10 cared for.

11 Q. Did you ultimately receive the information from DSS
12 based on their investigation?

13 A. Yes, ma'am, I did.

14 Q. And did you include that in the information that you
15 had already reviewed when you got assigned to the case?

16 A. Yes, ma'am.

17 Q. After you got all that information together, what
18 did you do next?

19 A. I obtained warrants for unlawful conduct toward
20 children for both Ms. Norris and Mr. Sexton.

21 Q. Did you make the arrest of either Ms. Norris or Mr.
22 Sexton?

23 A. No, ma'am, I did not.

24 Q. Did you attempt to locate them?

25 A. Yes, ma'am. I attempted to locate them throughout

SANDRA BLACK - DIRECT BY MS. PATTERSON

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1 the investigation. I couldn't locate Mr. Sexton and after a
2 while Ms. Norris disappeared on me as well.

3 Q. And after you couldn't find them, what is the next
4 step that you do?

5 A. I placed them on NCIC which is a database that
6 allows other agencies outside of Lexington County and actually
7 throughout the United States to know that they are wanted and
8 what they are wanted for and whether or not we'll extradite
9 them back, bring them back to our county from where ever they
10 are.

11 Q. Did you ultimate receive information that they both
12 had been arrested on warrants?

13 A. Yes, ma'am.

14 Q. I'm going to show you the photographs that have been
15 admitted into evidence already and ask you to take a look at
16 these. Were those the photographs that you used in reviewing
17 the case once it was assigned to you?

18 A. Yes, ma'am.

19 Q. Was it anything in those pictures that was
20 concerning to you?

21 A. The condition of the house. It was just very messy.
22 They had dirty dishes piled up in the sink past the spigot
23 there. The refrigerator was pretty much empty. I think it
24 had a carton of eggs and some milk and very few other things
25 in there. There was the clear bottles, the two clear bottles

1 of the white -- I'm sorry. The two jars of the clear liquid
2 stuff.

3 Q. And when you read the report of the officers, do you
4 remember whose reports that you read?

5 A. I read Officer Bair's and I read Officer
6 Merckle's.

7 Q. And then the reports you got from DSS, you read
8 those, too?

9 A. Yes, ma'am.

10 Q. In speaking with Ms. Norris, you said you used her
11 information as well to help you in your investigation?

12 A. Yes, ma'am.

13 Q. With all of that information you were concerned
14 about - were you ever concerned about the safety of the
15 children?

16 A. Living in that environment, yes, ma'am.

17 Q. Is that why you got those warrants?

18 A. Yes, ma'am.

19 Q. Did you get the address of where this home was
20 located?

21 A. Which home?

22 Q. The home that --

23 A. In the photographs?

24 Q. Yes, ma'am.

25 A. Yes, ma'am.

SANDRA BLACK - CROSS BY MR. MAULDIN

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1 Q. What was the location?

2 A. That was [REDACTED] John Long Road, apartment [REDACTED] or lot
3 [REDACTED] in Gilbert.

4 Q. Is Gilbert in Lexington County?

5 A. Yes, ma'am.

6 MS. PATTERSON: Please answer any questions the
7 defense may have.

8 CROSS EXAMINATION

9 BY MR. MAULDIN:

10 Q. The warrant is just a means by which you arrest
11 somebody; is that correct?

12 A. I'm sorry. What?

13 Q. A warrant is just a means by which you arrest
14 someone; is that correct?

15 A. Yes, sir.

16 Q. And basically you reviewed the information other
17 people provided you. You talked to Ms. Norris and you decided
18 to get warrants; is that correct?

19 A. I'm sorry. I can't really hear you.

20 Q. I'm sorry. So basically you reviewed the
21 information provided to you by other people. You made a phone
22 call to Ms. Norris and you decided to get some warrants; is
23 that correct?

24 A. Yes, sir.

25 MR. MAULDIN: I have no further questions.

EVERETT SMITH - DIRECT BY MS. DAVIS

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1 THE COURT: Anything further of this witness?

2 MS. PATTERSON: No, sir, Your Honor.

3 THE COURT: Thank you, ma'am. You may step down.

4 Call your next witness.

5 MS. DAVIS: Thank you, Your Honor. The State calls

6 Investigator Everett Smith.

7 Thereupon,

8 EVERETT SMITH

9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. After you're
11 seated, please state your full name spelling your last
12 name for the record.

13 THE WITNESS: Everett Smith, S-m-i-t-h.

14 DIRECT EXAMINATION

15 BY MS. DAVIS:

16 Q. Good afternoon, Investigator Smith.

17 A. Good afternoon.

18 Q. I see you're law enforcement and in uniform. Where
19 do you work?

20 A. Lexington County Sheriff's Department.

21 Q. What do you do there?

22 A. I'm a fugitive investigator.

23 Q. What does that mean?

24 A. I receive warrants and go after people that are
25 wanted.

EVERETT SMITH - DIRECT BY MS. DAVIS

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1 Q. Were you working in that capacity on May 28th of
2 2014?

3 A. Yes, I was.

4 Q. Were you working for Warrant Division then?

5 A. I'm a part of the U.S. Marshal's Task Force that's
6 assigned to the Marshal Service in downtown and I was working
7 with them, but the case was adopted by them because it dealt
8 with unlawful neglect toward children.

9 Q. So your job at that time was to attempt to serve an
10 arrest warrant?

11 A. Yes, ma'am.

12 Q. Okay. At that time did you go to [REDACTED] Frank Dale
13 Road?

14 A. Yes, we did.

15 Q. Why did you go there?

16 A. That was the only address that we had to locate
17 Jamie Norris and Johnny Sexton so that's the first place we
18 tried.

19 Q. You say "we". Who went with you?

20 A. The Marshal Task Force. Members of the Marshal Task
21 Force.

22 Q. About how many of you all were there?

23 A. Eight of us I believe.

24 Q. Do you know whose residence that would been that
25 you went to?

EVERETT SMITH - DIRECT BY MS. DAVIS

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1 A. She identified herself as the aunt of Johnny
2 Sexton.

3 MR. MAULDIN: Objection, Your Honor. Hearsay.

4 THE COURT: Sustained as to any hearsay.

5 BY THE WITNESS:

6 A. No. I do not know whose residence that was until we
7 went there.

8 BY MS. DAVIS:

9 Q. When you arrived at the residence, was anyone
10 home?

11 A. Yes. A lady was home.

12 Q. Is that who answered the door whenever you got
13 there?

14 A. Yes.

15 Q. What did you ask her?

16 A. I asked her was Johnny Sexton or Jamie Norris
17 there.

18 Q. Okay. Without telling us what she said, were they
19 present at the house?

20 A. Jamie was. Johnny was not.

21 Q. Were they present inside the house? Did you go
22 inside and search for them?

23 A. We searched inside the house. They were not located
24 in the residence. We located Jamie in a van parked in the
25 yard.

EVERETT SMITH - DIRECT BY MS. DAVIS

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1 Q. Where was she in the van?

2 A. She was in the passenger seat asleep and it appeared
3 to everyone on the team that they were sleeping in the van.

4 Q. Did you get to look inside the van?

5 A. Yes, I did.

6 Q. Was there a bunch of stuff in there?

7 A. Clothes thrown all over it. It looked like they
8 were living in the van to me.

9 Q. The lady that answered the door, did she show you a
10 room that was being stayed in by Mr. Sexton in the house?

11 A. No. She did not. Not inside the house. There was
12 not a room.

13 Q. So it seemed to you by what you saw that they were
14 living in the van?

15 A. That's correct.

16 Q. You said that Jamie was in there, but Johnny was
17 not?

18 A. That's correct.

19 Q. Did you have information that he had previously been
20 at the house or at the property?

21 MR. MAULDIN: Objection, Your Honor. Hearsay.

22 BY THE WITNESS:

23 A. No.

24 THE COURT: What was the question?

25 MS. DAVIS: I said did he have information that the

1 Defendant had previously been at the property?

2 THE COURT: That's not hearsay whether or not he had
3 information.

4 BY THE WITNESS:

5 A. Yes.

6 BY MS. DAVIS:

7 Q. And while you were there, did you all look for Mr.
8 Sexton?

9 A. We did. We spent 30 to 40 minutes walking the woods
10 behind there looking for him.

11 Q. Is this a heavily wooded area?

12 A. Yes, it is.

13 Q. And how long did you spend looking for him?

14 A. 30 to 45 minutes.

15 Q. All eight of you all?

16 A. Yes.

17 Q. Were you able to find him?

18 A. Well, except me. I was still with Jamie. She was
19 under arrest at that time.

20 Q. So you took Jamie into arrest at that time?

21 A. Yes.

22 Q. For the unlawful conduct charges?

23 A. Yes.

24 Q. But you were unable to find the Defendant at that
25 time?

OLIVIA WOODS - DIRECT BY MS. DAVIS

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1 A. At that time, no:

2 MS. DAVIS: I have no further questions. Please
3 answer any the defense has.

4 MR. MAULDIN: I have no questions for this witness,
5 Your Honor.

6 THE COURT: Thank you, sir. You may step down.

7 MS. DAVIS: Your Honor, may he be excused please?

8 MR. MAULDIN: No objection.

9 THE COURT: Without objection. You may call your
10 next witness.

11 MS. DAVIS: The State calls Olivia Woods.

12 Thereupon,

13 OLIVIA WOODS

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. After you're
16 seated, please state your full name spelling your last
17 name for the record.

18 THE WITNESS:: Olivia Woods, W-o-o-d-s.

19 DIRECT EXAMINATION

20 BY MS. DAVIS:

21 Q. Olivia, have you been Woods very long?

22 A. No, ma'am.

23 Q. What was your maiden name?

24 A. Sinclair.

25 Q. So when Investigator Bair was testifying before he

1 was with Ms. Sinclair, was that you?

2 A. Yes, ma'am.

3 Q. But you're Woods now?

4 A. Correct.

5 Q. Where do you work?

6 A. At Lexington County DSS.

7 Q. What do you do there?

8 A. I'm a child abuse and neglect investigator.

9 Q. What are your duties as a child abuse and neglect
10 investigator?

11 A. We receive reports of abuse and neglect and I go out
12 and investigate whether there was abuse or neglect that has
13 occurred.

14 Q. How long have you been in that position?

15 A. October will be seven years.

16 Q. Tell the jury about your educational background.

17 A. I have a Bachelor's Degree in social work from
18 Columbia College.

19 Q. When did you get that degree?

20 A. In 2008.

21 Q. Have you been at DSS ever since then?

22 A. Yes, ma'am.

23 Q. Were you working at DSS in the same capacity
24 February 21st, 2014?

25 A. Yes, ma'am.

OLIVIA WOODS - DIRECT BY MS. DAVIS

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1 Q. Did you receive a report of alleged abuse or neglect
2 of the Sexton children?

3 A. Yes, ma'am.

4 Q. Was that involving Ms. Jamie Norris and the
5 Defendant Johnny Sexton?

6 A. That's correct.

7 Q. And how does the process of reporting work?

8 A. We have an intake office and if we receive
9 information regarding possible alleged abuse or neglect, a
10 report is set up if that meets our criteria. It's then given
11 to an investigator. We go out and make initial contact and
12 start our investigation.

13 Q. Is that what happened in this situation?

14 A. Yes, ma'am.

15 Q. So you were assigned the case and then what did you
16 do?

17 A. I went out to the address that I had of record to
18 make contact with the family.

19 Q. Whose address of record would that have been?

20 A. Ms. Norris and Mr. Sexton's.

21 Q. Do you recall what that address was?

22 A. It was [REDACTED] John Long Road, lot [REDACTED] in Gilbert.

23 MR. MAULDIN: Your Honor, may we approach?

24 THE COURT: Yes.

25 (Side bar off the record.)

1 THE COURT: All right. You may proceed.

2 BY MS. DAVIS:

3 Q. Now, Ms. Woods, was that the property that we have
4 been discussing in Siesta Cove?

5 A. Yes, ma'am.

6 Q. And what did you do when you got on scene there?

7 A. I arrived on scene. Actually I drove around to try
8 and locate the lot. I was not able to locate it, but then I
9 saw Officer Bair who was also there looking for the same lot.
10 Made contact with him and we both went to the lot.

11 Q. Was it coincidence that you all were there at the
12 same time?

13 A. Yes, ma'am.

14 Q. What was he there to do?

15 A. He was there to serve an eviction notice.

16 Q. So that had nothing to do with DSS?

17 A. No, ma'am.

18 Q. And this is State's number 1. Is this the property
19 that you went to?

20 A. Yes, ma'am.

21 Q. That camper?

22 A. Yes, ma'am.

23 Q. Did it look like this while you were there?

24 A. Yes, ma'am.

25 Q. When you got to the camper, who all else was on

OLIVIA WOODS - DIRECT BY MS. DAVIS

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1 scene at the time besides Investigator Bair?

2 A. Just Ms. Norris and the three minor children.

3 Q. What did you do once you got there?

4 A. We approached the door, knocked on the door. Ms.
5 Norris came to the door. We introduced ourselves. Told her
6 why we were there and began to interview her.

7 Q. What did you tell her you were there to do?

8 A. I told her I was there because I received a report
9 regarding concerns of the children and that I needed to speak
10 with her and check on the safety and well-being of the
11 children.

12 Q. Without saying anything that she said, how did she
13 respond to that?

14 A. She broke down crying and became very upset. Just
15 broke down crying. Sat down and just started sobbing. But
16 she also kind of calmed down and was able to answer our
17 questions.

18 Q. So you were able to talk to her about the
19 situation?

20 A. Yes, ma'am.

21 Q. Did you ever get to go inside of the camper?

22 A. I did.

23 Q. Who gave you permission to do that?

24 A. Ms. Norris.

25 Q. When you got inside, what did you see?

1 A. It was very cluttered. There was clothes, household
2 items, trash just kind of strewn throughout the camper. There
3 were different items and ends like drop cords. There was like
4 a laundry basket. There was a baby gate in the kitchen.
5 There was very little, little to no food in the home. There
6 was very little space in the camper as well. They were all
7 just kind of cluttered, or crouched together on the couch.

8 Q. Did it look like there was anywhere for the children
9 to sleep?

10 A. No, ma'am.

11 Q. Did this cause you any concern?

12 A. Yes, ma'am.

13 Q. Why?

14 A. Due to the deplorable conditions of the home and the
15 children being so small they weren't able to protect
16 themselves and it just was a hazard for the children.

17 Q. Do you recall how old these children were?

18 A. They were two. The oldest one was two and the two
19 twins were one.

20 Q. I'm going to show you what is State's number 15 and
21 State's number 17. Are these the children that were there
22 that day?

23 A. Yes, ma'am.

24 Q. These are the Sexton children?

25 A. Yes, ma'am.

OLIVIA WOODS - DIRECT BY MS. DAVIS

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1 Q. Is this how they appeared?

2 A. They were.

3 Q. Is this how they were dressed when you got there?

4 A. Yes, ma'am.

5 Q. What were they doing when you got there?

6 A. They were actually just sitting on the couch with
7 Ms. Sexton. I believe they were eating cereal maybe out of a
8 box.

9 Q. I'm going to show you some photographs that have not
10 been entered into evidence yet. This is 16, 13, 18, and 14.

11 MR. MAULDIN: I have no objection to these photos.

12 MS. DAVIS: The State would move them into evidence,
13 16, 13, 18, 14.

14 THE COURT: Those are entered without objection.

15 BY MS. DAVIS:

16 Q. If you will look at those. What are these
17 photographs of?

18 A. The inside and outside of the camper.

19 Q. Is that how it was when you were there that day?

20 A. Yes, ma'am.

21 Q. How would you describe the conditions of the
22 camper?

23 A. Deplorable conditions.

24 Q. Was it anywhere safe for small children to be
25 living?

1 A. No, ma'am.

2 Q. Could these children walk or crawl?

3 A. Yes. The oldest one was able to walk and the
4 younger two were able to crawl.

5 Q. Did it cause you any concern with all the things on
6 the floor?

7 A. Yes, ma'am.

8 Q. And you stated that there didn't seem to be a lot of
9 food in the house; is that right?

10 A. Yes, ma'am.

11 Q. I'm going to show you State's 6 and 3 that are
12 already in evidence. Take a look at these. Was this the food
13 that you found in the kitchen in the camper?

14 A. That's correct. Yes, ma'am.

15 Q. Is that all that there was?

16 A. Yes, ma'am.

17 Q. Did this cause you any concern?

18 A. Yes, ma'am.

19 Q. Why?

20 A. Due to the fact that there is three young children
21 and there was pretty much nothing there for them to eat.

22 Q. And they wouldn't be able to get it themselves?

23 A. No. No, ma'am.

24 Q. Tell me about the appearance of the children. We
25 saw them. Were they clean?

OLIVIA WOODS - DIRECT BY MS. DAVIS

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1 A. They were minimally clean. They did have a foul
2 like body odor to them which appeared that they hadn't had a
3 bath in a couple days and they were just wearing a T-shirt and
4 the two youngest ones were wearing a diaper.

5 Q. Did you take some of the pictures that we see here
6 today?

7 A. Yes, ma'am.

8 Q. How long do you think that you were on scene at that
9 house?

10 A. I believe anywhere from three to four hours maybe.

11 Q. So you were there for some time?

12 A. Yes, ma'am.

13 Q. Were you there the entire time law enforcement was
14 there?

15 A. With Officer Bair, yes, and then I believe once the
16 NET Team arrived, I was there for maybe an hour after that and
17 then we transported the children.

18 Q. Did Mr. Sexton ever show up on the property while
19 you were there?

20 A. He did not.

21 Q. And Ms. Norris was there the entire time?

22 A. Correct.

23 Q. Was she cooperative with you?

24 A. Very cooperative.

25 Q. She answered all your questions?

1 A. Yes, ma'am.

2 Q. Now, you said until you transported the children.
3 Did you remove them that day?

4 A. Law enforcement actually placed them into emergency
5 protective custody that day.

6 Q. What does that mean?

7 A. That means there were no alternative homes with like
8 family members or other care givers for the children to be
9 placed with therefore due to the conditions of the home they
10 were placed in DSS custody.

11 Q. Are children removed or EPC'd every time you go out
12 for an investigation?

13 A. No, ma'am.

14 Q. So this would have been an extreme circumstance?

15 A. Correct.

16 Q. Did you believe that the children were at a risk of
17 harm in that camper?

18 A. I did.

19 Q. Have you had additional hearings involving the
20 custody of the children?

21 A. Yes, ma'am, we have.

22 Q. Has Ms. Norris shown up to those?

23 A. Yes, ma'am.

24 Q. Even though she's at SCDC?

25 A. Yes, ma'am.

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1 Q. Has Mr. Sexton shown up to any of them?

2 A. Not one single one.

3 Q. Has he shown any interest in getting his children
4 back?

5 A. No, ma'am.

6 MR. MAULDIN: Objection, Your Honor. I have a
7 motion to take up outside the presence of the jury.

8 THE COURT: All right. Ladies and gentlemen, let me
9 get you to step back into the jury room. Please have no
10 conversation about the case.

11 (Whereupon, the jury entered the jury room.)

12 THE COURT: Yes, sir.

13 MR. MAULDIN: Thank you. Again, Your Honor,
14 referencing the indictments, they are alleging wrongdoing
15 between the dates of the November 1st, 2013 and February
16 2014. Here they are going into events subsequent to that
17 talking about Mr. Sexton not showing up to DSS hearings
18 or not interested in getting custody of his children
19 back. We think that's improper bad act evidence that
20 should not have been elicited and we would move for a
21 mistrial.

22 MS. DAVIS: Your Honor, the reason that that
23 testimony was brought out is because in opening and based
24 on the questions that Mr. Mauldin asked Ms. Norris, one
25 of their defenses seems to be that this was all on Jamie

1 and that the Defendant was coming to get the children
2 because he wanted to take care of them and this is just
3 information to counteract that. He has had no interest
4 in these children. So we were using that to counteract
5 what Mr. Mauldin has argued as a defense.

6 THE COURT: I'm going to deny your motion for
7 mistrial. It's hard to call it reply type testimony, but
8 there was the argument in opening and it's replying to
9 that even though that's not evidence. But I think it's
10 appropriate.

11 MR. MAULDIN: I just say that I think it is improper
12 and take exception to your ruling.

13 THE COURT: All right, sir. All right. Does anyone
14 need a short break while the jury is out?

15 MR. MAULDIN: No, Your Honor.

16 MS. DAVIS: No, Your Honor.

17 THE COURT: Well, I do. We'll start back in just a
18 second.

19 (Short recess.)

20 THE COURT: All right. Let's bring the jury back
21 in.

22 (Whereupon, the jury returned to the courtroom.)

23 THE COURT: All right. Ms. Davis, you may continue
24 with your examination.

25 MS. DAVIS: Thank you, Your Honor.

OLIVIA WOODS - DIRECT BY MS. DAVIS

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1 BY MS. DAVIS:

2 Q. Now, Ms. Woods, on the day that these children were
3 removed by DSS, did you believe that they were at a risk of
4 harm?

5 A. Yes, ma'am.

6 Q. In the conditions that they were living in?

7 A. Yes, ma'am.

8 Q. Did you believe that they could be hurt living in
9 the camper the way it was?

10 A. I did.

11 Q. Did you believe that they were properly being taken
12 care of?

13 A. No, ma'am.

14 MR. MAULDIN: Object to the opinion evidence, Your
15 Honor.

16 THE COURT: Sustained.

17 MR. MAULDIN: Move to strike.

18 THE COURT: All right. Sustained. Strike that
19 response. The question and response.

20 BY MS. DAVIS:

21 Q. Why were these children removed by DSS?

22 A. Due to the conditions of the home they were living
23 in and a lack of food. It appeared that they were not getting
24 the care that they needed to be getting.

25 Q. Ms. Woods, was another reason that you had the

1 children removed that day because of their potential exposure
2 to drugs?

3 A. That's correct.

4 MS. DAVIS: That's all the questions I have. Please
5 answer any of the defense.

6 MR. MAULDIN: I have no questions for this witness,
7 Your Honor.

8 THE COURT: Thank you, ma'am. You may step down.
9 Call your next witness.

10 MS. PATTERSON: Your Honor, at this time the State
11 rests.

12 THE COURT: All right. Let me get you all to step
13 up here real quick.

14 (Side bar off the record.)

15 THE COURT: Ladies and gentlemen, I just wanted to
16 get an idea for scheduling purposes. The State has
17 rested their case. Procedurally now I have to take up
18 legal matters at the close of the State's case.
19 Typically what I would do is I would send you out, I
20 would take up those matters which doesn't take terribly
21 long, and then we would bring you back in and we would
22 continue. But it's already after 4:00. We try not to
23 keep you here past 5:00 if we can avoid that so we can
24 avoid that by letting you go home now. I'll take up the
25 motions at the close of the State's case and then what

1 we'll do is we'll start back in the morning bright and
2 early and proceed, okay?

3 So now, let's see. We started this case this
4 morning?

5 MS. DAVIS: Yes, sir. We picked the jury
6 yesterday.

7 THE COURT: I talked to the other jury yesterday. I
8 haven't talked to you all yet about this. I'm going to
9 send you all home with some instructions and, folks, it
10 all boils down to what we talked about from the get go
11 and that is protecting your ability to be fair and
12 impartial and I did talk to you all about that.

13 MS. DAVIS: Yes, sir, you did.

14 THE COURT: Getting much older and my memory is just
15 getting to be a lot more like my dad as he got older.
16 I'm going to ask you to continue to adhere to those
17 instructions this evening. Now, you can tell your
18 family, friends and loved ones that the case is still
19 pending. You have to be back in the morning so you are
20 still not allowed to talk about it, but I anticipate that
21 tomorrow we'll conclude this case. You will have your
22 opportunity to deliberate and you can probably tell them
23 all they want to hear about it at some point tomorrow.
24 So just ask them if they are curious, to continue to be
25 patient for one more evening. I'm going to ask you, if

1 you would, to please be in the jury room at 9:30 and
2 we'll get started at 9:30 once everyone has returned and
3 have a good evening. Everyone stay seated except the
4 members of the jury and we'll see you back at 9:30 in the
5 morning.

6 (Whereupon, the jury was excused for the evening.)

7 THE COURT: All right. At this time I'll take up
8 any motions at the close of the State's case.

9 MR. MAULDIN: Thank you, Your Honor. At this time
10 on behalf of Mr. Sexton I would make a motion for
11 directed verdict taking the evidence in a light most
12 favorable to the State. At this stage they haven't
13 presented a case to submit to the trier of fact, a
14 sufficient case to submit to the trier of fact and also I
15 base that on all my prior motions and objections.

16 THE COURT: All right. We'll note those prior
17 motions and objections and I'm going to respectfully deny
18 the motion for directed verdict. I think it's a fact
19 issue. I think there has been testimony depending on how
20 the jury views it, they might could find depending on how
21 they view the evidence and so I'm going to respectfully
22 deny that motion.

23 Now, what we'll do is, I guess, David, is we'll give
24 you an opportunity to see if you can reach Mr. Sexton
25 this afternoon or this evening and so we'll just await

1 any question, me asking you with regards to what the
2 defense intends to do because it may change depending on
3 what you find out.

4 MR. MAULDIN: Yes, sir.

5 THE COURT: But we'll address that then in the
6 morning before we get started. Let's us be ready to go
7 at 9:15 or so so we can cover that and we'll see where we
8 go from there.

9 MR. MAULDIN: Yes, Your Honor.

10 THE COURT: Okay. All right, folks. If there's not
11 anything else, we'll then be in recess until about 9:15
12 morning.

13 MS. PATTERSON: Thank you.

14 MS. DAVIS: Thank you, Your Honor.

15 (Whereupon, court adjourned for the day at 4:15
16 p.m.)

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1 April 17, 2015

2 BAILIFF: All rise. Court is now in session.

3 THE COURT: Thank you, folks. Have a seat. Have
4 you heard anything from your client, David?

5 MR. MAULDIN: I think there was some intent, but
6 he's not here so...

7 THE COURT: Were you able to talk to him at all?

8 MR. MAULDIN: Via text messages.

9 THE COURT: Okay. And you just informed, let him
10 know that --

11 MR. MAULDIN: He was supposed to be in my office
12 earlier today.

13 THE COURT: Okay. You haven't heard from him since
14 your last text?

15 MR. MAULDIN: Well, at 8:34 we got something, but we
16 told him to be at the courthouse at 9:00 and here we are
17 now it's 9:25.

18 THE COURT: Let's do this. What I'll do is, let me,
19 I want to go ahead and proceed as though he's not here.
20 If he shows up before we bring the jury out and we get
21 started, we can go back and revisit whether or not the
22 defense wants to put up anything, okay? But
23 at this point does the defense have anything to put up?

24 MR. MAULDIN: If he doesn't show, we do not intend
25 to put on anything.

1 THE COURT: Okay. Let me do this. Let me go ahead
2 and take up motions at the close of all the evidence with
3 the understanding, because we still have to talk about
4 the charge and I still want you all to review what I have
5 prepared, so in that interim if he shows up and intends
6 to testify, we'll allow it. We'll just proceed
7 at that point because the jury is not out and we haven't
8 started closing arguments. So if he arrives at any time
9 prior to that event, we certainly, and he wants to
10 testify, we'll revisit that and allow the defense to put
11 up a case, okay?

12 MR. MAULDIN: Yes, sir.

13 MS. DAVIS: Your Honor, I just wanted to ask for the
14 bond paperwork to be made a Court's exhibit because it
15 also states in addition to our letter that they have a
16 right and obligation to be present at trial. Should I
17 fail to attend, the trial will proceed in my absence. We
18 just wanted to make that a Court's exhibit as well.

19 THE COURT: Sure. That's fine. Okay. This will be
20 Court's 2.

21 (Whereupon, Court's Exhibit #2 marked for
22 Identification.)

23 MS. DAVIS: And along with that is an affidavit of
24 surrender by the bonds company and then their withdrawal
25 of that just to keep it altogether to show that they are

1 still on the bond.

2 THE COURT: That will be Court's 2 as a package.

3 MS. DAVIS: Yes, sir.

4 THE COURT: So at this time I'm going to go ahead
5 and take up motions at the close of the evidence with the
6 understanding that if Mr. Sexton were to show up prior to
7 closing argument and wishes to present a case, the Court
8 certainly would allow that. Mr. Mauldin.

9 MR. MAULDIN: Your Honor, at this time I renew my
10 motions for directed verdict based on the grounds
11 previously stated yesterday at close of the evidence and
12 my prior motions and objections.

13 THE COURT: Absolutely. Renew all those prior
14 motions, objections and exceptions. I'm going to
15 respectfully deny the motion at this point. Again I
16 think it's a factual issue for the jury and would be
17 appropriate for their consideration. Now, let me address
18 a couple of things with regards to the charge. I got
19 y'all's requested charge and I think you both as far as
20 the statute itself have requested essentially the same
21 thing, but there were some additional requests that Mr.
22 Mauldin had made. Y'all got a copy of those; is that
23 correct?

24 MS. DAVIS: Yes, sir.

25 THE COURT: With regards to those additional

1 requests, does the State wish to be heard on those?

2 MS. PATTERSON: Yes, Your Honor. With regards to
3 mere presence, Your Honor, if Your Honor, in fact,
4 charges that, we would ask that the hand of one hand of
5 all charge be charged as well.

6 THE COURT: Okay. I don't mind sharing with you
7 that I don't see this as a mere presence case. Under
8 this case, under this statute a person, depending on how
9 the jury views the evidence, can be found guilty of
10 actions which would constitute unlawful conduct, but also
11 omissions. So I think mere presence just doesn't work
12 here because the law places upon every parent an
13 obligation to act and to prevent or to not expose a child
14 to harm and omitting to do those things could very well
15 be considered. So you could be present and just not --
16 Basically, what am I looking for? You could be guilty of
17 this statute if you ignore your children and don't
18 provide the things that they need and all those different
19 aspects of exposing someone to harm and so therefore I
20 just don't think mere presence is appropriate in this
21 case. I'll hear from you, Mr. Mauldin, if you want.

22 MR. MAULDIN: Your Honor, I would object to that
23 ruling. I do think it may be appropriate. The only
24 testimony regarding Mr. Sexton's activity around the
25 children was based on Ms. Norris. The only other

1 witnesses testified that he may have been present at the
2 location at certain points in time, but not that he
3 engaged in any kind of activity; that he may have been
4 present that morning.

5 THE COURT: Hold on. Did I miss something? Because
6 I thought there was testimony that he was engaged in all
7 kind of activities.

8 MR. MAULDIN: By Ms. Norris.

9 THE COURT: Correct. But I'm saying there is
10 testimony. It wasn't just testimony that he was there.

11 MR. MAULDIN: I understand that, Your Honor, but I
12 still think that it's an appropriate charge based on the
13 testimony.

14 THE COURT: All right. Well, I disagree with you
15 and I'll note your exception to that. Anything else from
16 the State? Any issue you have with the spoilage of
17 evidence charge that Mr. Mauldin submitted?

18 MS. PATTERSON: Yes, sir, Your Honor. We would ask
19 that that not be charged, Your Honor. The evidence in
20 this case was that it was documented that the gas was
21 found in the mason jars, Your Honor, and it was destroyed
22 just for safety reasons. It wasn't that the State or law
23 enforcement was hiding that knowledge from the defense
24 attorney or the Defendant in his discovery, Your Honor.
25 We think that this is if something like a video or

1 something like that or maybe the drugs which none were.
2 actually found in this case were destroyed. We don't
3 think it refers to the destroying of the gasoline which
4 was done for safety purposes, Your Honor, and again that
5 was well documented in the report and law enforcement
6 testified about that and that that is the policy and
7 procedure when getting rid of evidence, chemical evidence
8 and things of that nature.

9 THE COURT: Mr. Mauldin.

10 MR. MAULDIN: Well, they destroyed the contents of
11 the jars and the jars themselves. They were not sent off
12 to be tested. He's given some reasons why that is, but
13 nonetheless they were destroyed without being tested.
14 And also the mason jars I would argue could have been
15 fingerprinted and they didn't preserve them to do that to
16 see if he actually touched those jars or handled those
17 jars engaged in the meth making process.

18 THE COURT: Yeah. I think I agree with Mr. Mauldin.
19 I think it's appropriate to charge it. Now, that doesn't
20 preclude you obviously from addressing that in your
21 closing as far as your thoughts and opinions as to that
22 evidence and what it shows and all that. But I think
23 because what you have is those chemicals whatever they
24 were. The allegation is those are chemicals that are
25 used to cook meth. Without them being tested, without

1 there being any forensics done on them, just simply that
2 the officer smelled them and based on his experience and
3 his education he knew it to be what it was and then they
4 just tossed it, they could have taken a sample of it in a
5 vial and preserved that for testing as Mr. Mauldin points
6 out. The containers weren't dusted for prints. Of
7 course, I don't know if that's - that would be no
8 different than if they just didn't dust them for prints
9 so I don't know that that applies as much. But I do
10 think that in a case where evidence like this was
11 disposed of without preserving any - without testing it
12 or preserving it I think it's an appropriate charge, but
13 you certainly can argue whatever it is you need to argue
14 in your closing so I would charge spoliation of evidence
15 as he's put it here. Do you have that in here?

16 LAW CLERK: Yes.

17 THE COURT: Anything else other than what you have
18 submitted and what we have talked about here? Why don't
19 I do this. Lauren has printed out a copy for each of you
20 of a draft. Let me get you all to review that and if we
21 need to have any further discussions on it, we can.

22 (Short recess.)

23 THE COURT: All right. I have given you all a copy
24 of the draft. Does the State have anything they want to
25 add to, take away from or whatever with regards to what I

1 submitted to you?

2 MS. PATTERSON: No, sir, Your Honor. We are okay.

3 THE COURT: And, Mr. Mauldin, I know you obviously
4 are preserving your objection to the mere presence charge
5 not being charged. Other than that objection which is
6 certainly noted for the record, is there anything else
7 about the charge that we need to do?

8 MR. MAULDIN: Other than that, no, Your Honor.

9 THE COURT: Okay. All right. Is the State ready to
10 proceed then to closing arguments?

11 MS. PATTERSON: Yes, Your Honor.

12 THE COURT: Defense ready?

13 MR. MAULDIN: Yes, sir.

14 THE COURT: All right. Let's bring the jury in,
15 please. I need Mr. Timothy Graves to be the last one in.

16 (Whereupon, the jury returned to the courtroom at
17 9:50 a.m.)

18 THE COURT: Mr. Graves, I'm going to ask if you
19 would be so kind to serve as foreman of the jury and I'll
20 explain briefly what that entails, folks. Any time you
21 have a group of folks that you're dealing with, it's just
22 easier, we have found over time it's just easier to deal
23 with one person on behalf of the group so the foreperson
24 is basically the contact person between the jury panel
25 and the Court so that if at any time during the course of

1 the trial or during the course of your deliberations you
2 have any questions about anything, if anybody has any
3 questions about anything, then the foreperson would write
4 that question out and pass it to the Court. Depending on
5 the question, I may just write my response back and send
6 it back to you or I may just bring you back out as a
7 panel and respond to that question.

8 But being the communicator or the liaison between
9 the panel and the Court is really the main role of the
10 foreperson. You may have heard some people refer to that
11 once your deliberations begin, the foreperson presides
12 over the deliberations. Kind of and kind of not. In
13 other words, let me just explain. In this case as well
14 any case that we try in this courtroom the jury's verdict
15 must be unanimous. You must all agree on the verdict
16 whatever it may be. So what that tells you is that you
17 are all equal members of the jury. No one person's
18 opinion or thoughts carry any more weight than anyone
19 else. You are all equal. But somebody needs to get the
20 ball rolling so to speak. And the reason I say that, so
21 usually it would be the foreperson. But that's not the
22 requirement. I have talked to juries before and except
23 for on one occasion, I did have one occasion where they
24 said that when the Judge told them it was appropriate to
25 begin their deliberations, they all sat down at the table

1 and just stared at each other. No one was speaking. But
2 that was on one occasion. The other times I have talked
3 to juries every one of them say as soon as the Judge
4 gives them the green light, the conversation just begins
5 and the deliberations proceed.

6 So if you were to have that situation here where
7 everybody is just staring at each other, Mr. Graves, I
8 would ask you to at least get the ball rolling as the
9 foreperson. Also the foreperson would ask that all
10 deliberations cease if anyone is not present. For
11 example, if someone needs to use the restroom and excuses
12 themselves to the restroom, then you would stop your
13 deliberations while that person was away and when they
14 return, then you resume. Of course, the obvious reason
15 for that is is that everyone needs to have the benefit of
16 the discussions.

17 As I said, your verdict must be unanimous. The
18 foreperson's opinion carries no more weight than anyone
19 else. I tell juries all the time everyone should enter
20 into deliberations with an open mind listening to each
21 other, your thoughts and opinions, weighing other
22 people's thoughts and opinions against your own, and just
23 whatever verdict you arrive at is a collective decision
24 of the jury. So no one person really steers or guides
25 that. It's just a function of the twelve of you. So

1 anyway, thank you, Mr. Graves, for your willingness to do
2 that.

3 And now let me, when we broke yesterday, the State
4 had rested their case and I had matters of law to take up
5 at the close of the State's case. We have done that and
6 so now we are ready to proceed. I recognize Mr.
7 Mauldin.

8 MR. MAULDIN: Your Honor, at this time the defense
9 would rest.

10 THE COURT: All right. Thank you, sir. Folks, the
11 law provides that at the close of the State's case I have
12 to take up matters of law which we did yesterday. I'm
13 also required to take up matters of law at the close of
14 all the evidence. Now, Mr. Mauldin was kind enough to
15 let me know this morning that the defense intended to
16 rest their case and so rather than bring you out,
17 recognize Mr. Mauldin, have him rest on the record and
18 then have to send you back out and take up those matters
19 of law at the close of all the evidence, he was kind
20 enough to let me know that the defense would be resting
21 so we went ahead and took up those matters. So we have
22 done that.

23 So now we have reached the point of the trial where
24 the attorneys are going to have an opportunity to address
25 you with what is commonly referred to as closing

1 arguments. Sometime it's referred to as final summation.
2 It is their opportunity to address you with what they
3 believe the evidence in this case has shown.

4 Now, remember when we started this case, I told you
5 in regards to their opening statements that what they
6 share with you in their opening statements is not
7 evidence. Well, that same comment applies to their
8 closing arguments. The evidence in this case is closed.
9 It's the testimony that you heard from the witness stand
10 as well as any exhibits which came in during the course
11 of the trial and you will have those exhibits back in the
12 jury room with you when you retire to deliberate.

13 So as I said earlier with the opening statements,
14 they are not under oath. They are not testifying in this
15 case. The evidence is closed. But it is important that
16 you listen carefully because this is their opportunity to
17 talk to you about what they believe has transpired
18 through the course of this trial and what that evidence
19 is and what it means. It's their position and they are
20 entitled to share that with you.

21 Once they have concluded their closing remarks, I
22 will then give you the charge on the law and once you
23 have that, you will have everything you need to then
24 begin your deliberations. So if you would, please,
25 listen carefully and give the attorneys your undivided

1 attention as they address you with their closing
2 arguments. Ms. Patterson.

3 MS. PATTERSON: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, ma'am.

6 MS. PATTERSON: Children are a gift. They should be
7 loved, cherished and protected at all cost especially by
8 their own parents. They should not be made to live in
9 filth and they certainly shouldn't be exposed to a deadly
10 drug. A drug that's so harmful that a clandestine agent
11 must wear a biohazardous suit to handle it. A suit
12 that's issued by the DEA to handle such drugs. When
13 parents expose their children to such living conditions
14 and making and using methamphetamine in the presence of
15 their children, they must pay. They must be held
16 accountable.

17 Johnny Sexton the Second is charged with three
18 counts of unlawful conduct towards a child for each one
19 of his boys, Minor1 age three, Minor2 and Minor3 , a set of
20 twins age one. He made them live in deplorable living
21 conditions in that small camper. He also exposed them to
22 his making of methamphetamine in the van that they rode
23 in and in the camper that they lived in. And he also
24 used these drugs in front of them emitting the smoke and
25 chemicals around their little bodies.

1 Now, the Judge will charge you later on with
2 unlawful conduct towards a child and what the State must
3 prove in order to meet the elements. And I submit to
4 you, ladies and gentlemen, we have met our burden of
5 proof. And it is a burden of beyond reasonable doubt.
6 Now, that's not beyond all doubt because there are very
7 few things that we know beyond all doubt, but you must be
8 firmly convinced that Johnny Sexton knew his children
9 were living like this. He knew what his children were
10 exposed to. And I submit to you that we have provided
11 testimony and proof that he had knowledge of this, that
12 he participated in this and he knew how those children
13 were living. He just didn't care.

14 Now, I know you have listened carefully and I thank
15 you for that. I appreciate that. And this is a very
16 important case, but I just have to take this time and I
17 might speak a little too much and again I apologize
18 because I won't get to talk to you once I take that seat.
19 This will be my last opportunity to present to you and to
20 talk to you so I'm going to go over the testimony that
21 you heard, the sworn testimony that you heard from that
22 witness stand from each witness that we put up.

23 And let's start with Jaime Norris. You saw how
24 Jamie Norris looked that day and you saw how she looked
25 when she testified on that stand. And we tried to get

1 here this morning, but we had a miscommunication because
2 she wanted to be here. She's wanted to be here for
3 everything. You heard from Olivia Woods. She said she's
4 been at every court appearance and interested even being
5 incarcerated. This is the way she looked. She knew this
6 wasn't healthy. She knew this wasn't right. She knew
7 this wasn't safe to be around her kids. And so after she
8 was charged, what did she do? She came and pled guilty.
9 Owned up to it. Making steps to make her wrongs right
10 and she pled guilty to two counts. And I know you're
11 thinking, well, she was charged with three counts and it
12 went to two. That's just policy in our office when
13 someone pleads guilty.

14 But still she pled straight up. Then it's up to the
15 judge. She got four years. Four years in prison. She
16 talked to me about coming here testifying against Johnny.
17 Not once did we even talk about her case, her charges.
18 She never asked me what could I do for her. Again, she's
19 just trying to right her wrong by her children. She took
20 that stand, agreed to testify truthfully and she told you
21 about her involvement. She said, yeah. I knew a couple
22 of things about how meth is made because I've seen Johnny
23 make it because I use it. I went and purchased
24 pseudoephedrine. We both did because I used it. But
25 it's funny what she said. Even she admitted to using it,

1 she said she would take her kids away while he was making
2 it. At least she still, even though she was addicted to
3 this drug, she still had a maternal instinct about her
4 that she didn't want her children around it while that
5 strong smell was present. So she would take them away
6 because she knew it wasn't safe.

7 And Jamie told you they would go from pharmacy to
8 pharmacy all through the midlands to find the
9 pseudoephedrine. And she admitted she purchased some and
10 Johnny did as well as you heard from the two
11 representatives from the pharmacies. We'll talk about
12 that later.

13 Jamie also talked about how Johnny got in touch with
14 the Siesta Cove people and got them living in that
15 campground with their camper and they lived there.
16 Johnny lived there. He might have been in and out
17 because he was here and there making meth, but he lived
18 there. He lived there with Jamie and those boys. He had
19 things there. He was there when Stephen Bair served the
20 rule to show cause because they had been in the camper.
21 He opened the door. Mr. Swalgreen saw him there and Mr.
22 Swalgreen talked to him there several times about failure
23 to pay lot rent. Not once did he ever tell Mr. Swalgreen
24 I don't live here. You need to go talk to Jamie about
25 that. He never did that. He would also say the money is

1 coming. Just work with me. The money is coming.

2 So Jamie told you they lived there together. They
3 used meth there together. Johnny would make meth there
4 together. But Jamie also told you about the morning when
5 they came in and everything just fell apart. She told
6 you what happened that morning. Her and Johnny got in a
7 fight. He had stayed out all night making meth and she
8 accused him of cheating on her and he put that scar on
9 her face. Fresh injury. Mr. Swalgreen, he supported
10 that. He confirmed that. He heard them arguing. He
11 even saw Johnny there that morning and he called law
12 enforcement.

13 Jamie ain't out to get Johnny. She ain't making all
14 this up because it was strictly her and Johnny had
15 nothing to do with it. She ain't doing that. Jamie is
16 righting her life. She's trying to do right by her boys
17 who by the way live now live in Texas with her sister.

18 DSS came out. Deputy Bair just happened to be there
19 to serve that writ of ejectment. She cooperated there
20 with them. She ain't tried to hide nothing from them.
21 Come on in the house. She invited them in. She talked
22 to them. She told them what was going on. Again she
23 never tried to hide what she was doing. She told the
24 whole story. She talked to Agent Merckle when he came
25 there from the NET Team. She talked to Investigator

1 Black on the phone about what was going on. She worked
2 with DSS again never missing a court appearance even
3 though she is incarcerated.

4 Then she agreed to talk to me. I'm her prosecutor.
5 I should probably be one of the last persons she would
6 want to talk to. And then she came and took that stand.
7 And y'all, that wasn't easy for her to get up there and
8 talk about what a bad mother she is and how she let this
9 happen to her three little baby boys. Those were her
10 boys.. Little babies. That ain't easy to admit. I
11 didn't clean up. I didn't feed them properly. I did
12 drugs in front of them. And again she still has that
13 motherly instinct about her. She said but they was in
14 another room with the door shut. Y'all, that didn't
15 matter. Y'all seen the pictures. They were still
16 exposed. They were still exposed. These were babies.
17 One could walk, but the other two they were crawling.
18 Nobody is out to get Johnny. She is just here telling
19 the truth.

20 Now, let's talk about Mr. Swalgreen. He's retired
21 from Chicago. Moved to South Carolina because of the
22 weather. The Judge will instruct you about credibility
23 of witnesses. You can believe some of what they say.
24 None of what they say, or some of what they say, you
25 know. He will explain all that to you. But basically

1 what does he have to gain or lose by coming up here and
2 testifying? He's a retired man. He want to be out there
3 doing something other than sitting in court. But again,
4 he agreed to come up here and testify and he told you
5 November 2nd, 2013 Johnny Sexton filled out this
6 information sheet because he wanted a lot space in Siesta
7 Cove. He told you that again he always communicated with
8 Johnny when lot rent wasn't paid which also included the
9 electricity because I know you're wondering why they was
10 looking for \$843.00. Mr. Swalgreen said they moved in
11 shortly after this was filled out which was on November
12 2nd, 2013.

13 He always talked to Johnny. Johnny, when are we
14 getting the rent? The money is coming. Not once did
15 Johnny say I don't live there. Go talk to Jamie. Never
16 paid, so Mr. Swalgreen went to the Magistrate Court and
17 filled out the paperwork to have them ejected from the
18 lot rent. Deputy Bair personally served Johnny the
19 paperwork on January 23rd, 2014 about 6:20 in the
20 evening. Knocked on the door. Who answered? Johnny.
21 Because he lived there. He ain't say nothing to Deputy
22 Bair about what you give me these papers for? I don't
23 live here. No. Because he lived there.

24 Then it just so happened on February 21st when
25 Deputy Bair went back out there and Johnny wasn't there,

1 Mr. Swalgreen saw him there that morning. Heard him
2 there. Heard him threatening to kill Jamie just like she
3 testified to. She's been truthful through all this. So
4 he calls the police and then he's contacted by us. But
5 he did say that they moved the camper shortly thereafter.

6 Deputy Bair again he just went to serve the papers
7 and then all of this happened. See, he's still a law
8 enforcement officer still trained about what to see and
9 about methamphetamine and the ingredients to use so when
10 he was met there by Olivia Sinclair who is now Olivia
11 Woods, they saw the conditions of the home. They weren't
12 really that concerned at first about the outside
13 appearance of the home, but Ms. Sinclair Woods was
14 because she works with DSS. She is a child abuse and
15 neglect investigator.

16 Again Jamie cooperated. Come on in. Deputy Bair
17 said he immediately starts seeing things. Things that
18 caused him concern enough to call the NET Team because
19 maybe something is going on here that ain't quite right
20 because I know about the ingredients that's commonly used
21 to make methamphetamine. Toxic, deadly drug. So he saw
22 the bucket of acid. He saw the fuel. The pill grinder.
23 The funnel. You guys will have all of these pictures
24 back in the jury room during your deliberations to look
25 at carefully. And he saw this stuff right there in the

1 kitchen. And I know the defense attorney might get up
2 and say, well, everybody has that stuff in their house.
3 Everybody has acid, coffee filters, Coleman fuel, pill
4 grinders, coffee makers.

5 But it just so happens that all of this stuff was in
6 close proximity to each other because they were used
7 together. That's why they were there. That's why they
8 were concerned. If these things were scattered and
9 spaced throughout, it probably wouldn't have caused them
10 any concern. But they were there together. So a light
11 went off. He calls the NET Team because something may be
12 up. And then what did he do? He got everybody back. He
13 got them a distance back because he knew if something was
14 going on, it could explode. It could be deadly. It
15 could cause the risk of harm to these children.

16 So the NET Team, they come out. Agent Merckle comes
17 out, who is just not a certified meth tech, but he was
18 qualified as an expert in clandestine meth lab detection
19 and identification. He has training in Quantico,
20 Virginia. Yearly updates. He puts out hundreds of meth
21 labs a year. So he comes out. He sees this thing and in
22 his experience he knows it's not an active meth lab, but
23 he does see these things and he takes them away and he
24 destroys them. And the defense attorney is going to say,
25 well, he destroyed the gas. They didn't test it. They

1 didn't fingerprint it. There was no need to do that
2 stuff. Not only in his experience and training did he
3 know that was gas, but his common sense, he could smell
4 it. It was gas. But he also explained to you Lexington
5 County Sheriff's Department policy and procedure when it
6 comes to preserving the evidence and they get rid of
7 those chemicals because the people in the lab, they are
8 not trained and experienced to handle those chemicals so
9 the NET Team people, they destroy them for safety
10 reasons.

11 But he talked about, yeah, he seen these items when
12 Ms. Davis asked him in the pictures and he admitted he
13 failed to document it in his report about some of the
14 things. But when he saw the pictures, his mind was
15 jogged and it refreshed his memory. Yeah, I saw those
16 things. So the defense attorney may talk about that, but
17 I just say that that's just a red herring. He just wants
18 to give you something. But he knew by his experience,
19 training and common sense that that was gas. And it was
20 in the home of Johnny Sexton and Jamie Norris.

21 Now, he also explained to you how meth is made
22 because hopefully none of you really know about that. It
23 doesn't have to take place in a sophisticated laboratory.
24 It could be mobile as he explained. You do it in a
25 bottle. You can put all the ingredients in a bottle and

1 you can just shake it. That's what makes it so
2 dangerous. And that's what Johnny did. He made it
3 mobily in that van where those little boys rode. He made
4 it in that home where those little boys lived, played,
5 slept. Again he explained about dismantling a meth lab,
6 having to wear a fire proof suit, gloves, gas mask. The
7 smell is that bad they have to wear a gas mask.

8 Investigator Black, she got assigned the case after
9 a weekend. Came in that Monday. She read her reports.
10 She looked at all these pictures. She read the
11 statement. She talked to Jamie. Again Jamie agreed to
12 talk to her and tell her what was going on. Then she got
13 in touch with DSS and she was like look, I need your
14 reports when you finish your investigation because that's
15 what DSS do. They work with these families. When she
16 got the information from their reports, she got the
17 warrants. She talked to Jamie again. Couldn't locate
18 Johnny. No Johnny. She tried to serve the warrants.
19 She couldn't find either so she put them in NCIC which is
20 their procedure when they can't find a suspect because we
21 have a special team called the Fugitive Task Force Team
22 and they go out and look for people that have warrants.

23 And that's what you heard from Everett Smith. He's
24 on that team. So he went out to that location. He
25 looked for Jamie. He looked for Johnny. Talked to the

1 lady at that house. Searched and cleared that house. No
2 Johnny. Went out to that van. Found Jamie sleeping in
3 the passenger seat. No Johnny. But Jamie said Johnny
4 was there. What did she say from the witness stand?
5 Johnny saw the police coming. He said, oh, shit, the
6 police is coming and he took off. And she told them
7 that. That's why they searched that wooded area for 30
8 to 45 minutes looking for Johnny. A man who is supposed
9 to be so concerned for his kids that he threatened to
10 call DSS? Bull. Don't believe that.

11 Never found Johnny. But it was signs there that
12 they had been living in that van and Everett Smith was
13 told by that lady at that house that, yeah, they had been
14 living on that property in that van. Jamie told you who
15 that lady was. That was Johnny's aunt.

16 Then you heard from Olivia Sinclair who is now
17 Olivia Sinclair Woods. Seven year child abuse and
18 neglect investigator for the Department of Social
19 Services. She said she received a complaint about the
20 children on both Jamie and Johnny. Well, Johnny ain't
21 made that call. She also told you that when she went out
22 there, you know, she met with Deputy Bair. Just a
23 coincidence. Everybody was there at the same time so
24 they were actually able to work together and she talked
25 to Jamie. Jamie invited her in. She saw these things,

1 too, because they have to be trained on drugs and
2 detection, too, because they go inside homes so much and
3 these things concerned her and she took her own
4 photographs of the things that concerned her. The filth.
5 The clutter.

6 She also says she was concerned because the babies
7 were little, sitting on the couch and she said they
8 eating cereal out of the box. Limited food in the house.
9 So these are things that she is concerned about as a
10 child abuse and neglect investigator when she sees little
11 kids with just this amount of food. Well, I don't know
12 why Johnny and Jamie wouldn't buy food. They were
13 certainly buying pseudoephedrine.

14 You heard from the representatives from the
15 pharmacies. You just heard from two. You heard from
16 Walgreens and Wal-Mart. We didn't bring CVS and Rite Aid
17 and Target and Publix. We didn't bring all those in, but
18 you heard Jamie say they went all over buying them
19 because you get the point. He was buying pseudoephedrine
20 from these places as much as he could and these reports
21 show the purchases. They don't show the blocks. Because
22 they were blocked because some of the purchases exceeded
23 the amount that they could buy. Ain't nobody's allergies
24 this bad that they needed that much pseudoephedrine. I
25 have allergies, too. That's why I'm wearing glasses

1 today.

2 When Olivia saw all this stuff, she too was alerted.
3 So she worked with Jamie. She worked with law
4 enforcement. She provided them their reports. She
5 stated there was little, there was limited food or no
6 food. Nowhere for them to really walk or crawl or play
7 and get the activity that little kids need. And she also
8 told you that sometimes when she would go in these homes
9 and it's like this, they don't always remove the kids
10 because again they try to work with these people and she
11 tried to work with Jamie, but Jamie had an addiction.
12 She couldn't work with Johnny because she couldn't find
13 Johnny. Johnny has never come to any of these court
14 hearings.

15 Again, the kids are not always removed, but they
16 were in this situation because it caused them concern.
17 She was concerned about the risk of harm and the safety
18 of these children.

19 Ladies and gentlemen, I submit to you that we have
20 proved our case beyond a reasonable doubt. We have
21 proved that these are Johnny Sexton's children. He was a
22 parent of Minor1, Minor2 and Minor3. He lived in this
23 home. He knew they were living like this. He exposed
24 them to the making of methamphetamine. The using of
25 methamphetamine. And Jamie also explained to you when

1 they would smoke it, fumes would emit. You could smell
2 it. She didn't feel like cooking, cleaning up. Johnny
3 didn't either. It ain't always a woman's job to clean
4 up. Johnny didn't care either. She didn't care at that
5 time, but again she's trying to right her wrong by doing
6 all the right things now. But the filth was enough that
7 they were living in. But I submit to you that we have
8 provided you more than enough evidence that it wasn't
9 just the filth. It was the filth and the exposure to
10 drug activity.

11 We have met our burden of proof. Don't let the
12 defense try to blind side you or cloud the issues. You
13 know it. Use your good common sense. Remember the
14 people you heard from this stand. Take these pictures
15 back, these documents back, review everything.

16 Now, Ms. Davis opened up for the State and she
17 talked about how little boys look up to their daddies.
18 They see them as strong, defenseful, Superman. The only
19 "S" on Johnny Sexton's chest stands for sorry. He's a
20 sorry excuse for a daddy. He's a sorry excuse for a man,
21 and I ask you to help him pay for his sorriness by
22 finding him guilty of unlawful conduct towards a child
23 three counts. Thank you.

24 THE COURT: Thank you, Ms. Patterson. Mr.
25 Mauldin.

1 MR. MAULDIN: Thank you, Your Honor.

2 The only evidence that you heard that Johnny Sexton
3 put these children in any kind of risk of harm was from
4 Jamie Norris. And she had a grudge against him. She had
5 a grudge against him because she thought he was cheating
6 on her. She had a grudge against him because they got
7 into a fight. And she's got a grudge against him because
8 soon after he leaves all of a sudden DSS and the police
9 are coming so she thinks that he called DSS. She knows
10 she's going down so she's going to take him down with
11 her. Throw him under the bus.

12 And what have they shown to corroborate any of this?
13 There's a landlord that comes in. Former law enforcement
14 with vague recollections. He didn't testify about any
15 days that he saw them there. He filled out the eviction
16 papers in January. He didn't testify that he saw
17 Mr. Sexton there any time other than January except for
18 the day of this incident. His recollections were vague.
19 He wasn't there to fill out the paperwork. He says he
20 called the police about this threat, but the police
21 weren't dispatched because of any threat. There's no
22 documentation of that. They didn't provide any of that.
23 They came out supposedly because of the second eviction
24 notice. There is no complaint of threat.

25 It's reasonable to believe that Mr. Sexton might

1 have moved out of there sometime in January maybe because
2 there were problems with Jamie. And what have they done
3 to show that he was still living in the trailer at the
4 time they came and they found these items? They don't
5 talk about finding any of these items in November or
6 December. The only time they find any kind of items is
7 February. Police and DSS come and they never said who
8 called DSS. They went through that house. They looked
9 through every nook and cranny. Nobody from the police or
10 DSS testified they found any kind of items to show that
11 Johnny Sexton was living there. They didn't testify they
12 found any of his clothes. Any kind of documents.
13 Anything to show that he was still residing at the
14 residence. They went and they took pictures of every
15 nook and cranny of that house. Not a single witness on
16 that stand pointed and said, well, that's Johnny's.
17 That's Johnny's. That's Johnny's. That's Johnny's.
18 Nothing to show that he was there in that camper on that
19 day. And nothing to show that he might have been there
20 any time before January when they served that first
21 eviction notice.

22 And they collected the mason jars and they destroyed
23 the mason jars and he said he kind of knew it was camp
24 fuel, but couldn't they have tested those mason jars for
25 his fingerprints so they could help prove beyond a

1 reasonable doubt that he was there, that he had touched
2 those items and that he had been using those items? They
3 did not do that as well.

4 And the children. You haven't heard about any kind
5 of drug tests performed on them to show that they had
6 been exposed to methamphetamine. You haven't heard any
7 doctor come in and say they were malnourished or in bad
8 health. Their physical condition was deteriorating
9 because if anything, much less of anything that
10 Mr. Sexton might have done, the only thing they have is
11 Ms. Norris. She has got a grudge against Mr. Sexton
12 cheating on her, hit her, called DSS on her. She knows
13 she's in trouble. And you heard she got ten years
14 suspended to four year. Two charges run together. She
15 was looking at a lot more than that obviously. And she's
16 coming back and she's hoping to get her sentence cut.

17 Now, they say that we're not going to promise you
18 anything and that, but you don't know what kind of
19 backdoor things are going on. You just have the
20 Solicitor's word and her word for that.

21 There's a real possibility that Mr. Sexton didn't
22 participate in any of these events. You should not be
23 firmly convinced based on Ms. Norris' testimony that he
24 engaged in any of these activities to expose his children
25 to risk and you should find him not guilty.

1 THE COURT: Thank you, Mr. Mauldin.

2 Ladies and gentlemen, when we started this trial, as
3 I told you when we started, you were the judges of the
4 facts of this case and so while the attorneys have
5 presented to you the evidence, it's been appropriate for
6 me to be up there on the bench out of the way and allow
7 that process to take place. But we have now reached the
8 portion of this trial where you and I are in this
9 together. You as the judges of the facts and me as the
10 judge of the law and so I come down to be with you to
11 give you the charge on the law. I'm going to read this
12 verbatim so that I don't misquote anything or leave
13 anything out.

14 Mr. Foreman and members of the jury, you have heard
15 the evidence and the arguments of both parties and I'm
16 now going to explain to you the law which applies to this
17 action.

18 The indictments charge the Defendant Johnny Neal
19 Sexton the Second with three counts of unlawful conduct
20 towards a child. I remind you that the fact that the
21 Defendant was arrested, charged and indicted in this case
22 is not evidence in this case and it cannot be considered
23 by you as evidence of guilt in this case. Nor does it
24 create any presumption or inference of guilt. As I told
25 you earlier, the indictments are simply the formal

1 written instruments which contain the charges made
2 against the Defendant. They are the formal documents by
3 which this case is brought into this court.

4 Now, I'm going to give you a copy of these
5 instructions to have with you in written form in the jury
6 room. During your deliberations you may refer to these
7 instructions to guide you in your decision making. You
8 must, however, consider these instructions as a whole and
9 not follow some parts and ignore others.

10 Now, the Defendant, as I said, pled not guilty to
11 these indictments and that plea puts the burden on the
12 State to prove the Defendant guilty. A person charged
13 with committing a criminal offense in South Carolina is
14 never required to prove him or herself innocent. I
15 charge you that it is an important rule of law that the
16 Defendant in a criminal trial no matter what the
17 seriousness of the charge may be will always be presumed
18 to be innocent of the crime for which the indictment was
19 issued unless guilt has been proven by evidence
20 satisfying you of that guilt beyond a reasonable doubt.
21 This presumption on innocence not end when you begin your
22 deliberations, but it accompanies the Defendant
23 throughout the trial until you reach a verdict of guilt
24 based on evidence satisfying you of that guilt beyond a
25 reasonable doubt.

1 The presumption of innocence is not a mere legal
2 theory. It's not just a legal phrase, but it is a
3 substantial right to which every Defendant is entitled
4 unless you the jury are satisfied from the evidence of
5 the defendant's guilt beyond a reasonable doubt.

6 So what is a reasonable doubt in the law? Some of
7 you may have served as jurors in civil cases where you
8 were told that it is only necessary to prove that a fact
9 is more likely true than not true such as by the greater
10 weight or the preponderance of the evidence.

11 In criminal cases the State's proof must be more
12 powerful than that. It must be beyond a reasonable
13 doubt. Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the Defendant's guilt.

15 Now, there are very few things in this world that we
16 know with absolute certainty and in criminal cases the
17 law does not require proof that overcomes every possible
18 doubt. If based on your consideration of the evidence
19 you are firmly convinced that the Defendant is guilty of
20 the crime charged, you must find the Defendant guilty.
21 If on the other hand you think there's a real possibility
22 that the Defendant is not guilty, then you must give the
23 Defendant the benefit of that doubt and find him not
24 guilty.

25 I remind you that during this trial you and I have

1 certain duties to perform. As the trial Judge it is my
2 responsibility to preside over the trial of this case and
3 I also have the duty to rule on the admissibility of the
4 evidence offered during the trial. I have the additional
5 duty to charge you the law that is applicable to this
6 case. It is your duty as jurors to accept and to apply
7 the law as I now state it to you. If you already have
8 any idea as to what the law is or what the law ought to
9 be and it does not agree with what I now tell you the law
10 is, you must abandon your idea because you are sworn to
11 accept the law and apply the law exactly as I state it to
12 you.

13 As I told you at the start of this case, the jury is
14 the sole and the exclusive judge of the facts. The law
15 does not allow me to have an opinion about the facts in
16 this case. This is a matter solely for you the jury to
17 determine. As jurors it is your duty to determine the
18 effect, value, weight and truth of the evidence presented
19 during the course of this trial.

20 Now, to determine the facts in this case you're
21 going to have to evaluate the credibility or the
22 believability of the witnesses. And credibility simply
23 means that. It means believability. It becomes your
24 duty as jurors to analyze and to evaluate the evidence
25 and determine which evidence convinces you of its truth.

1 You the jury can believe as much or as little of each
2 witnesses' testimony as you think is proper. You should
3 assess the credibility of each witness. You may consider
4 whether any witness has exhibited to you any interest,
5 bias, prejudice or other motive in this case. You may
6 also consider the appearance and the manner of a witness
7 while on the witness stand. You do not determine any
8 issue merely by counting the number of witnesses
9 presented by each side.

10 Now, there are two types of evidence which are
11 generally presented during the course of a trial. There
12 is direct evidence and there is circumstantial evidence.
13 Direct evidence is the testimony of a person who claims
14 to have actual knowledge of a fact such as an eyewitness.
15 Circumstantial evidence is proof of a chain of facts and
16 circumstances indicating the existence of a fact. The
17 law makes absolutely no distinction between the weight or
18 the value to be given to either direct or circumstantial
19 evidence. Nor is there a greater degree of certainty
20 required of circumstantial evidence than of direct
21 evidence. You should weigh all of the evidence in this
22 case. If after weighing all of the evidence you are not
23 convinced of the guilt of the Defendant beyond a
24 reasonable doubt, then you must find the Defendant not
25 guilty. If, however, after weighing all of the evidence

1 you are convinced of the Defendant's guilt beyond a
2 reasonable doubt, then you must find the Defendant
3 guilty.

4 Now, in this case there are allegations of
5 spoliation or destruction of evidence. The State not
6 only has the burden of proof of guilt but also has the
7 burden of producing evidence which could establish the
8 innocence of the Defendant. If you find first that
9 evidence was spoiled or destroyed and if you further find
10 that that evidence could help establish the innocence of
11 the Defendant, you may then consider those facts in
12 determining whether or not the State has met its burden
13 of proof.

14 Now, the Rules of Evidence ordinarily do not permit
15 witnesses to testify to their opinions or conclusions.
16 There is an exception to this rule that exists for
17 witnesses that we call expert witnesses. A witness who
18 by education and experience has become an expert in some
19 art, science, profession or calling may state an opinion
20 as to any relevant or material matter in which that
21 witness claims to be an expert and may also state the
22 reasons for that opinion. You should consider any expert
23 opinion received into evidence in this case and like any
24 other evidence give it the weight that you think it
25 deserves. An expert witness' testimony is to be given no

1 greater weight than that of any other witness simply
2 because that witness is an expert.

3 Furthermore, you are not required to accept an
4 expert's opinion even though it's not contradicted.

5 Now, under the laws of this state a Defendant may be
6 tried even if the Defendant does not attend the trial.
7 But the fact that the Defendant is not present may not be
8 considered against the Defendant in any manner. You are
9 to draw no inferences whatsoever because the Defendant is
10 not present. There is no requirement that a Defendant
11 must be present at a trial.

12 Now, I instruct you and I emphasize the fact that
13 Defendant Johnny Neal Sexton the Second did not testify
14 in this case is not a factor to be considered by you in
15 any way in your deliberations and in your consideration
16 on the question of guilt or innocence. It must not be
17 considered by you in any manner whatsoever. A Defendant
18 has the constitutional right to remain silent and the
19 assertion of this right must not be considered by you in
20 your deliberations. I repeat, under your oath you are to
21 draw no conclusion whatsoever from the fact that
22 Mr. Sexton did not testify in this case. The fact that
23 Mr. Sexton did not testify should not even be discussed
24 in the jury room. The burden of proof as I have stated
25 to you is on the State. The Defendant is not required to

1 prove his or her innocence and the burden of proof
2 remains on the State to prove guilt beyond a reasonable
3 doubt.

4 Now, the Defendant is charged with three counts
5 unlawful conduct toward a child. The State must first
6 prove beyond a reasonable doubt that the Defendant was
7 the parent of the child. The State must also prove
8 beyond a reasonable doubt that the Defendant placed the
9 child at unreasonable risk of harm affecting the child's
10 life, physical or mental health or safety. And a child
11 under South Carolina law means a person who is under the
12 age of 18.

13 Mr. Foreman and ladies and gentlemen of the jury, as
14 you retire to begin your deliberations I wish to express
15 to you the hope that each of you will be mindful of the
16 importance of your responsibility. As the presiding
17 officer of this court I am vitally concerned that
18 whatever verdict you find will be the result of your
19 going into the jury room and confining your consideration
20 to the evidence and to the law that you have heard in
21 this courtroom weighing it fairly and impartially as I
22 have every confidence you will do. Your verdict in this
23 case cannot be based on sympathy, compassion, prejudice
24 or emotion or any other consideration that's not found in
25 the evidence.

1 Remember as I told you earlier your verdict in this
2 case must be unanimous.

3 Now, Mr. Graves, this notebook will be in the jury
4 room with you. In the front cover is the verdict forms.
5 Now, as I told you earlier when we started this case,
6 Mr. Sexton is charged under three indictments each
7 involving unlawful conduct towards a child and there are
8 three children involved. There's Minor 2 , Minor 1
9 and Minor 3 . And so there are three
10 separate verdict forms. You would consider each of these
11 indictments on its own merit. And the verdict forms are
12 simple. It will just reflect whatever your verdict
13 may be whether he's guilty or not guilty you will check
14 the appropriate selection that reflects the jury's
15 decision and then you will just sign as the foreperson.

16 When you have reached a unanimous verdict on the
17 three indictments, if you will let the bailiff know that
18 you have reached a verdict and then we'll bring you out
19 and receive your verdict.

20 Now, as I send you back into the jury room at least
21 for a moment do not begin your deliberations. I'm going
22 to confer with the attorneys to make sure that I have
23 charged everything that needs to be charged. If there is
24 anything else that I need to deal with with regard to the
25 charge, I'll bring you out and do that. But if it's fine

1 as is, we'll collect the exhibits that came in during the
2 course of the trial and this notebook and when you
3 receive those exhibits and this notebook, that's your cue
4 to begin your deliberations, all right? So if you will,
5 please, step back into the jury room and await these
6 items.

7 (Whereupon, the jury entered the jury room.)

8 THE COURT: Any exceptions or objections to the
9 charge from the State?

10 MS. PATTERSON: No, sir.

11 THE COURT: From the defense?

12 MR. MAULDIN: I continue my objection to the non
13 inclusion of the mere presence charge.

14 THE COURT: Yes, sir. Other than that anything
15 further?

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: All right. It's certainly noted.
18 Folks, if you all will get with the court reporter and go
19 over the exhibits to make sure that everything that's
20 supposed to be there is there.

21 (Whereupon, the exhibits were sent into the jury
22 room and the jury began their deliberations at 10:48
23 a.m.)

24 * * * * *

25

* * * * *

1

2

BAILIFF: All rise. Court is now in session.

3

THE COURT: Please keep your seats. All right.

4

It's my understanding that we have a verdict. Is the

5

State ready to receive the verdict?

6

MS. PATTERSON: Yes, sir, Your Honor.

7

THE COURT: Is the defense ready?

8

MR. MAULDIN: Yes, Your Honor.

9

THE COURT: Let's bring the jury in.

10

(Whereupon, the jury returns to open court to report

11

its verdict at 12:10 p.m.)

12

THE COURT: Ladies and gentlemen, I want to

13

apologize to you just briefly. I got the message that

14

you had arrived at a verdict, but I was in the middle of

15

doing a bond hearing on a murder charge that is before

16

the Court and I was hearing from the defense and the

17

victim's family and I didn't want to interrupt that so we

18

completed that hearing so I apologize for not bringing

19

you right out.

20

Mr. Foreman, has the jury reached a unanimous

21

verdict, sir?

22

THE FOREMAN: Yes, sir, we have.

23

THE COURT: Please, pass those up to the Court.

24

(Whereupon, the foreman hands the verdict to the bailiff.

25

who hands them to the Clerk who hands them to the Court

1 to review them and who hands them back to the Clerk.)

2 THE COURT: Proceed.

3 THE CLERK: Okay. Indictment 2015-GS-32-989, 990
4 and 991, the State of South Carolina versus Johnny Neal
5 Sexton the Second, indicted for unlawful conduct toward a
6 child, we the jury find the Defendant guilty of unlawful
7 conduct toward a child on all counts. So signed by the
8 foreperson dated April 17th, 2015. Mr. Foreman, ladies
9 and gentlemen of the jury, if this is your verdicts,
10 please indicate each of you by raising your right hand.

11 (Whereupon, all hands raised by the jury.)

12 THE CLERK: All hands raised, Your Honor.

13 THE COURT: Thank you, ladies and gentlemen.
14 Anything further of this jury from the defense?

15 MR. MAULDIN: No, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, I want
17 to thank you for your service this week. You have been
18 wonderful folks to work with and I don't just say that
19 because you're sitting there. You really would be
20 surprised how many times we'll try cases and the Court
21 will ask the jury to be back at 2:00 or 2:30 and
22 sometimes they'll stroll in at a quarter to three or
23 something like that and I can understand it sometimes
24 because I believe almost every time I have asked you to
25 be here at a certain time we have always started later.

1 So sometimes people get, they say, well, I don't have to
2 be there at 2:00. He's not going to start at 2:00. You
3 guys were always here on time and always punctual. When
4 I'm up here at the bench presiding over a case, there are
5 certain things that I'm attending to as well as the trial
6 itself, but I do notice the jury. You were all very
7 attentive listening to the witnesses and paying close
8 attention. I didn't see anybody look disinterested or
9 nodding off or whatever and so I really appreciate your
10 work.

11 You have earned that exemption that I told you about
12 on Monday. If you receive a summons for jury service for
13 the balance of this year or 2016 or 2017, if you do
14 receive a jury summons from this Court you may exercise
15 that exemption and be excused if you choose to. I do say
16 to people all the time though it's just an exemption. It
17 does not mean that you are not qualified to serve. If
18 you would like to serve again and you receive that
19 summons, I would encourage you to do that.

20 I'm going to be 60 years old in two weeks and I have
21 never been summoned for jury duty but once in my life and
22 it was during the term of court that I was presiding over
23 so I have never had the opportunity to do what you have
24 been able to do this week. And I don't know how many of
25 you have received jury notices before. Some of you may

1 have gotten them and this is your second or third time.
2 Others of you, this may be your only time and you may
3 never get another one the rest of your life. So it just
4 depends on the luck of the draw. But I will tell you
5 that it's a high service that you have given to your
6 community by being present and able to serve.

7 That concludes your service obviously.

8 If you would, make sure your badges are dumped in the
9 bucket here as you leave and if there is nothing further,
10 if you don't have any questions about anything. You may
11 have some question as to the fact that Mr. Sexton is not
12 present. What we'll do is the Court will, I'll hear from
13 the State and I'll hear from the defense and then I'll
14 impose sentence and then that will be sealed and then
15 we'll issue a warrant for Mr. Sexton and then whenever
16 he's brought in, then that sentence will be unsealed and
17 will be imposed at that time.

18 Normally if the Defendant is present, we would then
19 proceed to sentencing and I always give the jury an
20 opportunity to be present for that if you want to be, but
21 this is a little bit of a different situation. As I told
22 you when we started the case and it is true, that a
23 person is not required to be present for a trial because
24 the defense, there's no burden on the defense to do
25 anything. We live in a country fortunately that allows

1 us to remain silent and stand on our presumption of
2 innocence.

3 It's the burden of the State to prove guilt. We
4 don't have to prove ourselves innocent and so because of
5 that there is no requirement that a Defendant be present
6 and so for whatever reason Mr. Sexton was not here and is
7 not here so we won't proceed normally to the regular
8 sentencing phase as we normally would so there's really
9 nothing else here for you to have to participate in so
10 you're free to go. If everyone else will remain seated.
11 Ladies and gentlemen, I think -- Mr. Graves, the Clerk
12 would ask you to - I just need you to sign the
13 indictments. All right, folks, thank you very much.

14 (Whereupon, the jury was excused.)

15 THE COURT: All right. At this time I'll entertain
16 any motions from the defense.

17 MR. MAULDIN: Thank you, Your Honor. At this on
18 behalf of Mr. Sexton I would request a new trial based on
19 all my prior objections, motions and exceptions to Your
20 Honor's rulings.

21 THE COURT: All right. Thank you, Mr. Mauldin. I
22 respectfully deny that. I think it was a factual issue
23 for the jury to decide. I don't think their verdict was
24 outside the evidence and so I will respectfully deny that
25 motion. Does the State wish to be heard with regard to

1 sentencing? I don't know if Mr. Sexton has any prior
2 record or what.

3 MS. PATTERSON: He does, Your Honor. From 1995 he
4 has a possession of marijuana. 2003 possession of
5 marijuana. 2008 driving under suspension. From
6 Virginia, 2005 possession of a controlled substance which
7 looks like it was a misdemeanor. There was a 30 day
8 penalty imposed. And also May 11th of 2006 in Virginia
9 he had a possession of a controlled substance, however,
10 Your Honor, he got a three year sentence on that
11 charge.

12 THE COURT: All right. That was when now?

13 MS. PATTERSON: In 2006 in Virginia.

14 THE COURT: All right. Anything further from the
15 State?

16 MS. PATTERSON: No, sir, Your Honor.

17 THE COURT: All right. Mr. Mauldin, I'll be happy
18 to hear from you, sir.

19 MR. MAULDIN: I think actually it says that that
20 three years was suspended but...

21 THE COURT: All right.

22 MR. MAULDIN. Mr. Sexton will be 37, Your Honor. I
23 have spoken with his aunt Debbie Wright who was listed on
24 the witness list and I have spoken with him as well about
25 his background. His aunt provided this. He was raised

1 by his stepfather and his mother. Apparently his
2 stepfather died in a drowning accident. Mr. Sexton was
3 near the location when he was 11 years old and then his
4 mother ended up dying when he was 13 years old of ovarian
5 cancer and he went to live with her and her father for a
6 period of time until he was a late teenager, I guess. He
7 went through eleventh grade. He's mainly done some
8 construction work with an uncle through most of his life.
9 Doing flooring work. He's done that about seven and a
10 half years. More recently he did, a friend of his that
11 he worked with doing flooring work and construction.
12 Besides the children mentioned in this case, Your Honor,
13 he does have three older children from another
14 relationship 14, 13 and 6 at least last year and he has
15 been in jail originally on his arrest for 61 days and
16 then there was a time he was recommitted by the bonding
17 company. I think the Solicitor mentioned that they have
18 the paperwork and there was another ten days on that so
19 he does have 71 days credit.

20 THE COURT: Okay.

21 MR. MAULDIN: Obviously Your Honor has heard the
22 facts. You have heard his prior record. It does exist
23 and there are some drug issues. There's been no prior
24 methamphetamine involvement and I understand that the
25 children involved in this are a concern to the Court, but

1 we would ask you to extend whatever leniency you can.

2 THE COURT: All right. Thank you, Mr. Mauldin. Did
3 you all prepare any sentencing sheets?

4 MS. PATTERSON: Yes.

5 THE COURT: Before I forget, I'll fill these out and
6 impose sentence, but I'm also going to issue a bench
7 warrant for Mr. Sexton and would ask that that be passed
8 over to the Warrant Division to pick him up. I'm going
9 to go ahead and seal this and whenever he's taken into
10 custody, he can be brought in for that.

11 MS. PATTERSON: Yes, sir. Thank you, Your Honor.

12 MS. DAVIS: Thank you, Your Honor.

13 THE COURT: All right. Guys, with regard to this
14 case, of course, we are concluded.

15 END OF PROCEEDINGS.
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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Court Reporter for the Eleventh Judicial Circuit
7 in and for the State of South Carolina, do hereby certify that
8 I reported the proceedings in the before captioned case in the
9 Court of General Sessions in and for the State of South
10 Carolina on the 15th day of April through the 17th day of
11 April, 2015.

12 I FURTHER CERTIFY that the forgoing 267 pages
13 constitute a true and accurate transcript of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 30th day of June, 2015.

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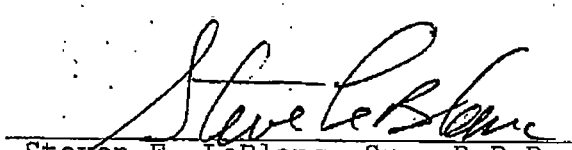
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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

1 State of South Carolina Court of General Sessions
2 County of Lexington

3
4
5 State)
6)
7 v.) Transcript of Record
8 Johnny Neal Sexton) 15-GS-32-0989 - 0991
9 Defendant.)

10
11 May 6, 2015
12 Lexington, South Carolina

13 B E F O R E:

14 The Honorable R. Keith Kelly, Judge.
15

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

17 Rhonda W. Patterson, Assist. Solicitor
18 Attorney for the State

19 David M. Mauldin, Assist. Public Defender
20 Attorney for the Defendant

21

22

23

24

25

Stacy L. Sheppard, RPR
Circuit Court Reporter

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on May
2 6, 2015.)

3 **THE COURT:** Okay, Solicitor.

4 **MS. PATTERSON:** Yes, sir. Your Honor, this is
5 Johnny Sexton. Ms. Davis from my office, she and I,
6 we tried Mr. Sexton on the -- the trial started on
7 April 15th. It went through April 17th in front of
8 Judge Russo. Mr. Mauldin represented Mr. Sexton,
9 Your Honor.

10 Mr. Sexton failed to show up after being
11 properly notified, Your Honor, and Judge Russo
12 allowed us to try Mr. Sexton in his absence. On
13 April 17th, the jury came back guilty on three
14 counts of unlawful conduct towards a child.

15 **THE COURT:** Okay.

16 **MS. PATTERSON:** And Judge Russo ordered a bench
17 warrant from the bench, Your Honor. And Mr. Sexton
18 was picked up, I think, Monday afternoon by the
19 fugitive task force.

20 **THE COURT:** Okay. Mr. Sexton, I'm holding in
21 my hand -- I'm sure the sentencing sheets are
22 contained in here. We're going to find out in a
23 minute. I want you to see that it is sealed.
24 There's tape across there. And Judge Russo, whom I
25 know and know his signature, that's his -- I think

1 that's his signature across that. We're going to
2 open that.

3 Sir, on indictment 2015-GS-32-0989, sentence of
4 the Court is you are confined to the State
5 Department of Corrections for a period of eight
6 years. It is consecutive to indictment
7 2015-GS-32-990 and 991. You were given credit for
8 24 days of time served. Signed Judge Tommy Russo.
9 2141 is his judge code. That sentencing date is
10 April 17 of 2015.

11 2015-GS-32-0990, you are confined to the State
12 Department of Corrections for a period of eight
13 years. That sentence is consecutive to indictments
14 2015-GS-32-989 and 991. Credit given for 24 days
15 time served, signed Judge Tommy Russo, 2141.
16 Sentencing date, April 17, 2015.

17 And, finally, 2015-GS-32-0991, you're confined
18 to the State Department of Corrections for a period
19 of eight years. That sentence is consecutive to
20 2015-GS-32-989 and 990. Credit for 23 days of time
21 served, signed Judge Tommy Russo, code number 2141.
22 Sentencing date, April 17 of 2015.

23 **MR. MAULDIN:** Thank you, Your Honor. At the
24 time before Judge Russo wrote down the sentencing,
25 we did have a mitigation presentation. And I, at

1 that time as well, I moved for a new trial, but
2 since Mr. Sexton has formally been sentenced now, I
3 would again move for a new trial in this case and I
4 would base that on all of my prior motions and
5 objections.

6 **THE COURT:** Okay. And that motion is denied
7 based on Judge Russo's rulings.

8 Sir, you have ten days to appeal your sentence
9 of the Court. If you choose to appeal your
10 sentence, you must do that by filing it in writing
11 with the Clerk of Court. Do you understand that?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** And we'll vacate the bench warrant.

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15 END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 6th of May, 2015.

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

May 22, 2015

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

ORIGINAL
RECEIVED

JUL 29 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHNNY NEAL SEXTON

APPELLANT

APPELLATE CASE NO. 2015-001055

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the court erred in allowing Agent Mike Merckle to give his opinion that the substances in two mason jars were Coleman fuel and ether, both necessary ingredients for making "meth," when the substances were never tested in Appellant's case although Agent Merckle had tested similar substances in prior cases; therefore, the opinion was not reliable as shown by the judge instructing the jury on the spoliation of the evidence; thus, the judge failed to fulfill his role as gatekeeper of the reliability of the evidence
2. Whether the court erred by ruling admissible the testimony that Appellant did not attend the subsequent DSS legal hearings on his three children, which were outside the time period stated in the indictments, and therefore irrelevant to the crime of unlawful conduct towards a child, as well as the witness's testimony that Appellant did not show interest in getting his children back, since this testimony was a gratuitous attack and highly prejudicial?

STATEMENT OF THE CASE

In April 2015, the Lexington County Grand Jury indicted Johnny Neal Sexton on three counts of unlawful conduct towards a child. The three counts were against Sexton's three young children for exposing them to drug activity and deplorable living conditions. See Indictments R.274-275, R. 277-278, and R. 280-281. On April 15-17, 2015, Sexton's trial proceeded in his absence before the Honorable Thomas A. Russo and a jury. R. 1; R. 7, ll.13 – R. 8, ll. 6. Sexton was represented by David M. Mauldin, and the state was represented by Rhonda Patterson and Shannon Davis. R. 1. The jury found Sexton guilty of three counts of unlawful conduct towards a child as indicted. R. 261, ll. 3 – 13. Judge Russo sealed the sentence and issued a bench warrant for Sexton. R. 267, ll. 5 – 14.

On May 6, 2015, Sexton appeared before the Honorable R. Keith Kelly for sentencing. Sexton was again represented by David Mauldin, and the state was represented by Rhonda Patterson. May 6, 2015, R. 268. Judge Kelly opened the sentence sealed by Judge Russo. May 6, 2015 R. 270, ll 20 – R. 271, ll. 2. Judge Kelly sentenced Sexton according to the sentence handed down by Judge Russo which was eight years on each count with each sentence consecutive to the other for a total of twenty-four years incarceration. May 6, 2015 R. 271, ll. 1 – 22. Sexton's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

In January 2014, Johnny Sexton and Jamie Norris were living in a small camper in a rented space in a campground near the lake in Lexington. With them were their three small children: the oldest was two years of age and the twins were one year of age. R. 124, ll. 1 – R. 125, ll. 14; R. 128, ll. 1 – R. 130, ll. 2; R. 208, ll. 1 – 19. On January 23, 2014, Deputy Stephen Bair served a rule to vacate on Sexton at the camper. R. 110, ll. 11 – R. 112, ll. 20. The landlord, Norman Swalgreen, had taken out an “eviction notice” on Sexton in January 2014 for not paying the rent. Swalgreen also obtained the eviction notice because of complaints from other people at the campground about loud arguments occurring at Sexton’s property. R. 123, ll. 18 – 25; R. 124, ll. 25 – R. 125, ll. 14; R. 128, ll. 1 – 25; R. 130, ll. 19 – R. 131, ll. 25.

On February 21, 2014, Deputy Bair served a writ of ejectment on Jamie Norris at the camper. Sexton was not present. R. 113, ll. 9 – 23. Swalgreen, the landlord, had called law enforcement that same day when he heard Sexton threatening to kill the woman living with him. R. 135, ll. 1 – R. 136, ll. 5.

Deputy Bair had gone to the camper alone on February 21, but as he was attempting to locate the property, he met the worker from the Department of Social Services (DSS), Olivia Sinclair Woods, who was also looking for the property. R. 114, ll. 1 – 25. When they arrived at the camper, Ms. Sinclair Woods told Norris that DSS had received a report of alleged abuse or neglect of the Sexton children. Norris became very upset and broke down crying. Norris was finally able to talk with them and gave permission for them to enter the camper. R. 203, ll. 11 – R. 204, ll. 13; R. 207, ll. 2 – 25.

Once inside, Ms. Woods described the conditions as "deplorable." There was "little to no food" in the home; trash was strewn throughout, and there was very little space. They were "crouched together on the couch." The children were minimally clean. She believed the children were "at a risk of harm in the camper." They were too young to protect themselves. The children were removed that day and transported as law enforcement placed them in emergency protective custody. R. 208, ll. 1 - 212, ll. 18.

When Deputy Bair entered the home after Norris gave them permission, he saw open mason jars in the kitchen, a funnel, filter, and other items that he believed could possibly be used in the manufacture of methamphetamine based on his training. He immediately removed everyone from the camper or RV to a safer place outside. He contacted the narcotics unit of the Lexington County Sheriff's Department, to have them come out and check if there was an active lab. R. 115, ll. 24 - R. 117, ll. 15.

Agent Mike Merckle responded and went to the camper. He obtained consent to search the home from Norris. R. 168, ll. 5 - 25; R. 170, ll. 13 - R. 172, ll. 23. Agent Merckle had been trained through the Drug Enforcement Agency (DEA) to be a certified methamphetamine technician to enable him to locate, identify, and safely handle methamphetamine labs. R. 169, ll. 1 - 17.

In the Sexton home, Agent Merckle found items that he said would be used in the manufacture of methamphetamine. These items included household items such as ammonia, coffee filters inside a red funnel, two mason jars with liquids in them which Agent Merckle said, based on his training and experience, were Coleman camp fuel and ether. Defense counsel objected to this testimony about the content of the jars which was overruled. Agent Merckle described the fuel as having an odor and had a viscosity different from water or oil.

He did smell the liquid and believed it was camp fuel. There was also a coffee bean grinder.

R. 175, ll. 1 – R. 181, ll. 22.

Agent Merckle did not take these items into evidence because he said the chemicals used in the process were extremely dangerous. It was necessary for law enforcement to destroy the chemicals found in the camper. It was a "very dangerous process." If a person were in an enclosed area where someone was smoking meth, someone could breathe it in. "Having small children around that was a risk of harm to them." R. 181, ll. 23 – R. 184, ll. 9.

In a pretrial motion, defense counsel moved that Agent Merckle not be able to testify as to what the liquid was in the mason jars. It would be pure speculation that the liquids were Coleman fuel and ether because the liquids were not tested before they were destroyed. The state argued that Agent Merckle was a certified methamphetamine technician, and could say what the liquids were based on his training and experience. R. 66, ll. 1-18. The judge then said:

Court: You're going to have him qualified as an expert?

Ms. Davis: I can, I can attempt to.

Court: I think you have to if he's going to give an opinion.

Ms. Davis: I think so.

R. 66, ll. 19 – 25.

The judge then said that he would let the state go through the qualifications and defense counsel could cross - examine as to whether he can qualify as an expert. The judge decided they would revisit that at the "appropriate" time. R. 67, ll 1 – 14.

At trial, the state went through Agent Merckle's qualifications. Agent Merckle testified that he had been through training offered by the DEA Academy to become a

certified methamphetamine technician to locate, identify and safely handle methamphetamine labs. He said he taught other law enforcement officers about "meth labs." He had testified in court before. There were no questions about his publications nor how many times had had been qualified as an expert. The state then offered him as an "expert as to clandestine meth labs and detection." R. 168, ll. 5 – R. 170, ll. 9.

Defense counsel objected. The judge then ruled:

All right. Overruled. I'll allow it.

R. 170, ll. 10 – 11.

When Agent Merckle testified that the liquid in the two mason jars were Coleman fuel and ether which were used in making meth, defense counsel objected. Counsel Stated:

Objection, Your Honor, to that based on my prior motion, Your Honor, testimony about the contents of the jars.

R. 179, ll. 1-25.

Agent Merckle testified that they did not take the items they found into evidence because they were dangerous and had to be destroyed 99% of the time. R. 181, ll. 23 – R. 183, ll. 12.

During cross examination, Agent Merckle admitted that he had taken samples from liquid suspensions in the past. However, he did not take samples from the liquids in the two mason jars found in the Sexton camper. In his report, Agent Merckle wrote that these two jars were the only items found. R. 187, ll. 1 – 23; R. 188, ll. 1 – 5.

At the close of the state's case, defense counsel made a directed verdict motion and renewed all his prior motions and objections which the judge denied. R. 218, ll. 6 – 22. The following day of trial, when Appellant Sexton did not appear for trial, the judge decided that he would take up the motions at the close of all the evidence. If Sexton appeared for trial and

wanted to testify, that he would allow it. Defense counsel then renewed all of his prior motions and objections which the judge again denied. R. 220, ll. 1 – R. 222, ll. 24.

Jamie Norris testified at trial for the state. She had pled guilty to two counts of unlawful conduct towards a child, and was incarcerated at the Department of Corrections (DOC) at the time of trial. She told of becoming addicted to methamphetamine. She and Sexton lived together five years and had the three boys. She started taking “meth” because she had been taking adderall but no longer had health insurance and could not see a doctor. Sexton had suggested she try “meth” to see if it would help. She became addicted. R. 81, ll. 1 – R. 85, ll. 8.

On cross-examination, Norris admitted that she pled guilty to only two counts of unlawful conduct towards a child and received ten years suspended to only four years in prison and two years of probation. She admitted that she would be released from prison the next year. R. 106, ll. 1- R. 107, ll. 5.

Norris then testified that she and Sexton had an argument on the morning of February 21, 2014 because he had been out all night and she thought he had been cheating on her. Sexton began hitting her and kicking her. Then he left. She admitted that she was upset with him because he got “physical” with her. R. 108, ll. 14 – R. 109, ll. 25.

Sexton used “meth” also, and learned to cook it. Norris used the drug multiple times a day. Sexton usually cooked the drug in the van but sometimes did in the camper. She had her own truck and would take the children to a friend’s house or just ride around when Sexton cooked “meth” in the camper. When they smoked the drug, the children would be in the other room. It was a small camper with two rooms and a kitchen. She sometimes bought the Sudafed and batteries and the Coleman fuel for the cooking. When she smoked, she

would be "high" six to eight hours. She would take care of the children during that time also. R. 90, l. 1 – R. 94, ll. 4.

When law enforcement and DSS came to her house on February 21, 2014, Norris admitted that she gave them permission to search the camper. She also admitted that she nor Sexton did not clean the camper, and did not protect their children. R. 94, ll. 5 – R. 96, ll. 25.

Olivia Woods, the DSS worker, testified that there were additional hearings involving the custody of the children after they were placed in emergency protective custody. Even though she was incarcerated in DOC, Norris came to the hearings. Sexton did not appear at any of the subsequent hearings. She said that Sexton did not show any interest in getting his children back. R. 212, ll. 1 – R. 213, ll. 5.

Defense counsel then told the judge that he had a motion he needed to take up outside the presence of the jury. The judge excused the jury. Counsel moved for a mistrial because the state brought up improper bad act evidence that was outside the dates of the indictment. The indictment alleged wrong doing by Sexton between November 1, 2013 and February 2014. The state just went into events subsequent to the dates in the indictments when they introduced testimony that he did not attend the hearings about his children and was not interested in getting them back. R. 213, ll. 6 – 21.

The state argued that based on the questions asked by the defense of Norris, it appeared that one defense of Sexton was that the blame was all on Norris and that Sexton was coming to get his children. This testimony was allegedly brought out to counteract that defense. R. 213, ll. 22 – R. 214, ll. 5.

The judge denied defense counsel's motion for a mistrial and said that the testimony at issue was replying to counsel's argument in opening. Even though the opening was not

evidence, he thought the testimony was "appropriate." Defense replied: "I just say that I think it is improper and take exception to your ruling." R. 214, ll. 6-14.

The judge agreed to give the charge on the spoliation of evidence requested by defense counsel. The state asked that it not be given. The judge agreed with defense counsel.

The judge ruled:

I think I agree with Mr. Mauldin. I think it's appropriate to charge it.....But I think because what you have is those chemicals whatever they were.. The allegation is those chemicals that are used to cook meth. Without them being tested, without there being any forensics done on them, just simply that the officer smelled them and based on his experience and his education he knew it to be what it was and then they just tossed it. They could have taken a sample of it in a vial and preserved that for testing as Mr. Mauldin points out. The containers weren't dusted for prints. But I do think that in a case where evidence like this was disposed of without preserving any---without testing it or preserving it, I think it's an appropriate charge, but you can argue whatever it is you need to argue in your closing.

R. 225, ll. 18 - R. 226, ll. 15.

ARGUMENT

I

The trial court erred in allowing Agent Mike Merckle to give his opinion that the substances in two mason jars were Coleman fuel and ether, both necessary ingredients for making "meth," when the substances were never tested in Appellant's case although Agent Merckle had tested similar substances in prior cases; therefore, the opinion was not reliable as shown by the judge instructing the jury on the spoliation of the evidence; thus, the judge failed to fulfill his role as gatekeeper of the reliability of the evidence

All expert testimony must meet the requirements of Rule 702, SCRE regardless of whether it is scientific, technical, or otherwise. The trial judge has a duty to serve the gatekeeper function in assuring the reliability of expert testimony. State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). This also applies to non-scientific evidence. See State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009).

In State v. White, *id.*, two prongs must be met: (1) the qualifications of the expert must be sufficient; and (2) there must be a determination that the expert's testimony will be reliable.

Agent Merckle's opinion was not reliable. The state presented no evidence of his publications nor if he had ever been qualified as an expert in court prior to Sexton's trial. The state did not present sufficient evidence of Agent Merckle's qualifications to meet the requirements of Rule 702, SCRE.

In State v. Council, *supra*, the Supreme Court wrote that before expert evidence is admitted, the trial court must determine it is reliable. In State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 818 (2001), the Supreme Court held that reliability is a "central feature of

Rule 702 admissibility.” The Supreme Court ruled in State v. White, *supra*, that this reliability standard applied to non-scientific evidence as well.

The trial judge abrogated his role of gatekeeper of the evidence to ensure its reliability. The judge admitted, when he agreed to give the spoliation charge, that the liquids should have been tested before they were destroyed. This was admitting that the evidence was not reliable. The judge should not have allowed the testimony about the liquids to be admitted because there was no reliability that the liquids were what Agent Merckle said they were. The only evidence that the liquids were Coleman fuel and ether was the smell by Agent Merckle and the way the liquids looked. This was not sufficient to ensure reliability.

Agent Merckle admitted that he had taken samples of similar liquids in other cases and had it tested, but he did not in Sexton’s case. The evidence was destroyed before it could be tested.

Jamie Norris’ testimony was the main evidence against Appellant Sexton. Defense counsel indicted this in his opening:

 Their whole case relies on Jamie Norris, her testimony. Whether they were together at the time. How long they had been together. Whether they were living there. Whether they had not been living there. Whether they had been making meth. Whether he was responsible for the condition of that. It’s entirely on her.

R. 80, ll. 4 – 10.

However, Norris’ credibility was questionable. Not only had she been addicted to meth, she had reason to lie against Sexton. She admitted that she thought he was cheating on her, and he became physically abusive to her. In addition, she received only four years of active prison time when Sexton received twenty-four years.

ARGUMENT

II

The court erred by ruling admissible the testimony that Appellant did not attend the subsequent DSS legal hearings on his three children, which were outside the time period stated in the indictments, and therefore irrelevant to the crime of unlawful conduct towards a child, as well as the witness's testimony that Appellant did not show interest in getting his children back, since this testimony was a gratuitous attack and highly prejudicial.

Olivia Woods, the DSS worker, testified that there were additional hearings involving the custody of the children after they were placed in emergency protective custody. Even though she was incarcerated in DOC, Norris came to the hearings. Sexton did not appear at any of the subsequent hearings. Ms. Woods said that Sexton did not show any interest in getting his children back. R. 212, ll. 1 – R. 213, ll. 5.

Defense counsel objected as this testimony of appellant's alleged "bad conduct" was outside the scope of the indictments (and therefore irrelevant), and counsel moved for a mistrial. The judge ruled that this testimony was proper and admissible. The mistrial motion at that point was moot. R. 213, ll. 6 – R. 214, ll. 14.

Rule 401, SCRE, provides that relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402, SCRE, provides that evidence which is not relevant is not admissible.

Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of

the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Whether Sexton attended the hearings for his children was totally irrelevant to the charge of unlawful conduct towards a child. When defense counsel argued that the subsequent hearings were outside the scope of the indictment, he was arguing that the subsequent hearings were not relevant. Therefore, that testimony should not have been admitted because the bad act evidence was a gratuitous attack on Sexton's character. It had nothing to do with what happened in that camper between November 1, 2013 and February 21, 2014. It had nothing to do with the charge of unlawful conduct towards a child. The state brought out this testimony just to make Sexton look bad and that he was guilty because he did not care about his children. This evidence was highly prejudicial to Sexton.

The hearings had to have occurred after the time period stated in the indictments because the indictments were concerned with the time period that the children were living with Sexton and Norris. These hearings had nothing to do with the charge as alleged in the indictments.

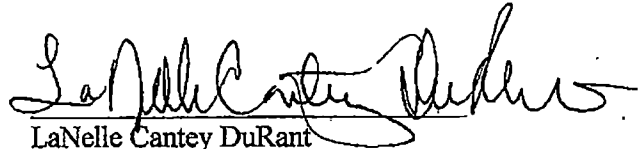
Rule 404(b), SCRE, provides that evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

The judge admitted the testimony because he said it was in reply to the defense counsel's opening remarks. R. 214, ll. 6 – 10. However, defense counsel made no argument in his opening that Norris was to blame for all of the unlawful conduct towards a child.

CONCLUSION

Based on the above, Appellant's convictions and sentences should be vacated, and his case remanded for a new trial.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

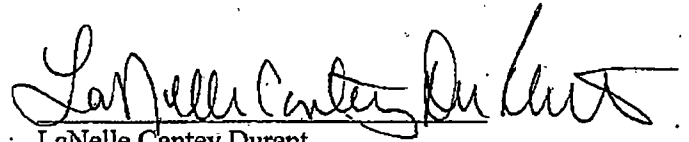
ATTORNEY FOR APPELLANT

This 29th day of July, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 29th, 2016



LaNelle Cantey Durant
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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JUL 29 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County

JUL 29 2016

Thomas A. Russo, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

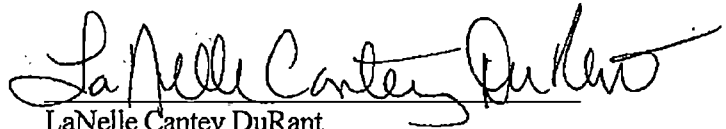
JOHNNY NEAL SEXTON

APPELLANT

APPELLATE CASE #2015-001055

CERTIFICATE OF SERVICE

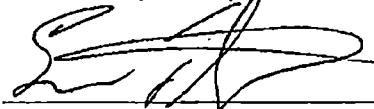
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of July 2016.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of July, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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AUG 03 2016

SC Court of Appeals

Appeal from Lexington County
 The Honorable Thomas A. Russo, Circuit Court Judge
 Appellate Case No. 2015-001055

THE STATE,

Respondent,

v.

JOHNNY NEAL SEXTON, II

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case No. 2015-001055

THE STATE,

Respondent,

v.

JOHNNY NEAL SEXTON, II

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court properly allowed the State's expert to testify regarding the contents of two mason jars found in Appellant's residence because he was a certified methamphetamine lab technician, who was qualified as an expert on clandestine methamphetamine labs, and based on his knowledge, training and experience, including his investigations of over a hundred methamphetamine labs, he was able to identify the liquids in the jars by their smell and appearance.

II. Appellant's counsel opened the door to testimony regarding Appellant's failure to attend custody hearings involving his children during cross-examination of a State's witness when counsel asked the witness if Appellant had moved out of the residence a month before law enforcement found items related to the manufacturing of methamphetamine, and if he came to the residence to confront the witness about her drug use and take the children away.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On April 13, 2015, the Lexington County Grand Jury indicted Appellant Johnny Neal Sexton, III, on three counts of unlawful conduct toward a child. The case was called for a jury trial on April 15, 2015, before the Honorable Thomas A. Russo, Circuit Court Judge. Appellant did not appear for trial, and the case proceeded *in absentia*.

The State presented testimony establishing Appellant was the children's father, and the family, including the three children, lived in a small camper between November 1, 2013, and February 21, 2014. The children's mother testified Appellant manufactured methamphetamine in the camper and his van during that time, and she and Appellant smoked methamphetamine inside the camper while the children were present. During cross-examination, Appellant implied the mother testified against him because he left her in January 2013, and prior to the arrival of law enforcement on February 21, 2014, he confronted her about her drug use and threatened to take the children away from her, all of which the mother denied. (Trial Transcript [TT], pp. 80-110; Record on Appeal [R.], pp. 80-110).

A Lexington County Deputy testified he went to the camper in January 2014, and served eviction paperwork on Appellant personally. When he went back to the camper in February 2014 to eject the family, he met a Department of Social Services caseworker who was going to the camper as well. Appellant was not at the camper when they arrived, and the deputy served the writ of ejectment on the mother, who consented to the deputy and caseworker entering the camper. The children were sitting inside the camper, and the deputy saw items he believed may be related to manufacturing methamphetamine sitting in the kitchen area, so he immediately got everyone outside and contacted narcotics investigators. (TT, pp. 110-123; R., pp. 110-123).

Agent Michael Merckle of the Lexington County Sheriff's Department testified he had sixteen years experience in law enforcement, he had worked with the Department's Narcotics Enforcement Team for five years, and had received specialized training in the identification and detection of methamphetamine labs. He attended federal training and was certified as a methamphetamine technician to locate, identify, and safely handle methamphetamine. As of the date of trial, he had worked over a hundred methamphetamine labs, and testified ten to twelve times in General Sessions Court. Over Appellant's general objection, the court qualified Agent Merckle as an expert regarding clandestine methamphetamine labs. (TT, pp. 168-170; R., pp. 168-170).

Agent Merckle testified he responded to the camper location in February 2014, to investigate the possibility of a methamphetamine lab. After describing the different types of methamphetamine labs, he stated the chemicals required to manufacture methamphetamine are very toxic and flammable, and having them around children, especially in a small, confined space like the camper, would be extremely dangerous. (TT, pp. 170-177; R., pp. 170-177).

The camper contained items associated with a methamphetamine lab, including mason jars containing liquid substances, coffee filters and a coffee grinder containing what appeared to be ground pseudoephedrine, which is a central ingredient in methamphetamine. Over Appellant's objection, Agent Merckle testified, based on his training and experience, the mason jars contained Coleman camp fuel and ether, which he identified by the smell and appearance. He further testified the chemicals in the jars were destroyed because they are potentially harmful, and cannot be stored in an enclosed evidence storage facility to be handled by personnel who are not specifically trained to do so. (TT, pp. 177-184; R., pp. 177-184).

The caseworker who was present at the camper in February, 2014, testified she was there to investigate an allegation of child abuse or neglect received by the Department of Social Services.. She stated there was little food inside the camper, and the children were only "minimally clean." The children were placed in emergency protective custody that day due to the circumstances and risk of harm to them. There were several subsequent hearings regarding the children' custody, and the mother, who was incarcerated, attended each one. (TT, pp. 203-212; R., pp. 203-212).

The State then asked the caseworker if Appellant had attended any of the hearings or shown any interest in getting his children back, and she replied "no." Appellant objected, arguing all the custody hearings occurred outside the dates included in the indictments and the State's question elicited "improper bad act evidence," and moved for a mistrial. The State responded that the question related to Appellant's allegation he came to get the children in February 2014, because he wanted to take care of them because of the mother's drug use, and showed he had no interest in the children. The court denied the mistrial motion, finding the question was an appropriate response to Appellant's allegations. (TT, pp. 213-216; R., pp. 213-216).

The jury convicted Appellant on all charges, and the court sentenced him to three consecutive eight year terms of incarceration, for a total sentence of twenty-four years. (May 6, 2015 Hearing Transcript, Sentencing Sheets dated April 17, 2015; R., pp. 268-273, 274-282). This appeal followed.

ARGUMENT

I. The circuit court properly allowed the State's expert to testify regarding the contents of two mason jars found in Appellant's residence because he was a certified methamphetamine lab technician, who was qualified as an expert on clandestine methamphetamine labs, and based on his knowledge, training and experience, including his investigations of over a hundred methamphetamine labs, he was able to identify the liquids in the jars by their smell and appearance.

Appellant contends the circuit court erred in allowing Agent Merckle to testify regarding the liquids in the two mason jars found in Appellant's residence because he should not have been qualified as an expert, and his testimony was "not reliable" because the liquids were not tested before they were destroyed. As a threshold matter, any issue regarding Agent Merckle's qualification as an expert was not properly preserved for appellate review. Further, the failure to test the liquids prior to destruction went to the weight of his testimony rather than its admissibility.

A. Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Johnson, 413 S.C. 458, 776 S.E.2d 367, 371 (2015). "The admission or exclusion of evidence rests in the sound discretion of the trial judge, and will not be reversed on appeal absent an abuse of discretion," which occurs "when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Id.* (citations omitted). The trial court's discretion includes admission of expert testimony. State v. Barrett, 416 S.C. 124, 785 S.E.2d 387, 389 (Ct. App. 2016).

B. Issue Preservation

In order to preserve an issue for appellate review, the issue must have been raised to and ruled upon by the trial court. State v. Thompson, 413 S.C. 590, 776 S.E.2d 413, 422 (Ct. App.

2015). While the party need not use the exact name of a legal doctrine, the objection must be sufficiently specific to make the point clear to the trial court. *Id.*

Appellant did not contest Agent Merckle's qualifications pre-trial, and when the State offered him as an expert, Appellant merely stated "I object," but cited no basis for the objection. Therefore, the issue of whether the circuit court erred in qualifying Agent Merckle as an expert is not preserved for review.

Even if preserved for review, however, it is clear the circuit court properly qualified Agent Merckle under Rule 702, SCRE, as an expert in clandestine methamphetamine labs. Agent Merckle had sixteen years law enforcement experience, with five specifically in narcotics investigations. He attended federal training by the Drug Enforcement Agency, was certified as a methamphetamine lab technician, with recertification annually, and had investigated over a hundred such labs during his five years in narcotics. He had testified in multiple General Sessions cases, and hundreds of magistrate court cases. Thus, he had the specialized knowledge, training and experience required by Rule 702. *See* Rule 702, SCRE.

C. Admissibility of Testimony

Finally, Appellant argues Agent Merckle's testimony identifying the liquids in mason jars found in the camper was "unreliable," and therefore inadmissible, because the liquids were not tested before they were destroyed. This argument conflates the admissibility of evidence, which is a court function, with determination of the evidence's credibility, which is inherently a jury function.

As with all witnesses testifying at trial, the jury gives such weight and credibility to an expert's testimony as it deems appropriate, and the jury is free to accept or reject the testimony of an expert witness. *See State v. White*, 382 S.C. 265, 676 S.E.2d 684, 686-687 (2009) (the trial

court properly instructed the jury that they were to give expert dog handler's testimony such weight and credibility as they deemed appropriate as with any and all witnesses testifying at trial); State v. Commander, 384 S.C. 66, 74-75, 681 S.E.2d 31, 35 (Ct. App. 2009); State v. Commander, 384 S.C. 66, 681 S.E.2d 31, 35 (Ct. App. 2009) (same). In this case, the circuit court charged the jury it had to determine the credibility of the expert's testimony, which was to be given no more weight than any other witness' testimony, and the jurors were not required to accept the expert's opinion, even if it was uncontradicted. (TT, pp. 255-256; R., pp. 255-256). Accordingly, based on the evidence and jury charge, the jurors knew Agent Merckle's opinion regarding the mason jars' contents was premised on the smell and appearance of the liquids, the liquids were destroyed without any forensic testing, and they could completely disregard Agent Merckle's testimony.

Appellant's reliance on the circuit court's observations regarding the propriety of a spoliation charge as indicating the court questioned the reliability of Agent Merckle's opinion is misplaced. Rather than questioning the reliability of Agent Merckle's opinion, the court merely found the charge was appropriate because the liquids were destroyed without any forensic testing, and specifically stated the State was not precluded from addressing the destruction issue and what the evidence showed in closing argument. (TT, pp. 224-226; R., pp. 224-226). In short, the court properly recognized the ultimate credibility of Agent Merckle's opinion regarding the liquids was an issue for the jury.¹

¹Appellant's contentions regarding the mother's credibility based on her admitted drug use and purported motivation to testify against the Appellant are irrelevant to the issue regarding admissibility of Agent Merckle's testimony, and nothing more than a red herring. The jury heard all those allegations during the mother's testimony and Appellant's closing argument, and knew it had to determine her credibility.

The circuit court acted within its discretion in qualifying Agent Merckle as an expert and allowing his testimony regarding the mason jars' contents. Therefore, the circuit court's rulings should be affirmed.

II. Appellant's counsel opened the door to testimony regarding Appellant's failure to attend custody hearings involving his children during cross-examination of the children's mother by asking her if Appellant had moved out of the residence a month before law enforcement found items related to the manufacturing of methamphetamine, and if he came to the residence to confront the witness about her drug use and take the children away.

Appellant asserts the circuit court erred in allowing the Department of Social Services to testify Appellant had not attended any of the custody hearings after the children were removed from the home in February 2014. The testimony at issue was responsive to allegations Appellant raised during his cross-examination of the mother.

The defendant may open the door to otherwise inadmissible evidence through his own introduction of evidence or witness examination. State v. Culbreath, 377 S.C. 326, 333, 659 S.E.2d 268, 272 (Ct. App. 2008). A party cannot complain of prejudice from the admission of evidence to which he opened the door. State v. Robinson, 305 S.C. 469, 409 S.E.2d 404, 408 (1991); Culbreath, 659 S.E.2d at 272 (same).

The followed exchange took place during Appellant's cross-examination of the mother, whose testimony was admittedly crucial to the State's case:

Q. Ms. Norris, the police had actually been by the camper in Siesta Cove some time in January to serve an initial eviction notice, is that correct ?

A. That's what I have heard.

Q. And Johnny moved out of the camper some time in January to his aunt's house in Blythewood, didn't he?

A. No, sir.

Q. Because besides being behind in the rent and being evicted, you guys were having problems and he decided to leave and you didn't want to go to the aunt's house because you didn't get along with her, is that right?

A. No, sir.

Q. And he had been away for about a month and then he came that day in February to confront you because he had heard that you had been using drugs, isn't that correct?

A. No, sir.

Q. He came there to confront you because he heard you had been using drugs and you got into an argument because he wanted to take the kids away and you wouldn't let him?

A. No, sir.

Q. And then after he left, the police and DSS showed up and you thought that he had called DSS on you, didn't you?

A. No, sir.

Q. You thought he called DSS on you and you knew you were in trouble and so you decided to throw him under the bus, isn't that correct?

A. No, sir.

(TT, pp. 105-106; R., pp. 105-106) (emphasis added).

The clear intent of Appellant's questions was to allege he did not live at the camper in February 2014, he was so concerned about the children he tried to remove them from the mother's custody on the very same day law enforcement and the DSS caseworker came to the camper, and the mother testified against him only because she thought he was cheating on her and he called DSS. In response to Appellant's allegations, the State asked the DSS caseworker if Appellant had attended any of the hearings regarding the children's custody. (TT, p. 213; R., p. 213).

The context of the State's question is critical. The caseworker was the State's last witness, and the only one who could testify from first-hand knowledge of the custody proceedings. If the defense did not put up evidence, Appellant could then argue in closing he was so concerned for the children's safety he tried to remove them from the mother's custody,

and the State could not respond effectively.² (TT, pp. 62-65, 249; R., pp. 62-65, 249). The relevance and importance of the caseworker's testimony is amply demonstrated by the fact he did argue the mother testified because she had a grudge against him, but he did **not** argue he was so concerned about the children's safety he tried to remove them from her custody, which he could not argue with any credibility in light of the evidence he had shown absolutely no interest in their well-being after February 21, 2014. (TT, pp. 247-250; R., pp. 247-250).

Contrary to Appellant's contentions, the caseworker's testimony was not impermissible "bad act" evidence, and it had nothing to do with Appellant's character. Simply failing to attend custody hearings regarding your children is not the type of "bad act" evidence envisioned by Rule 404(b), SCRE, nor does it prove bad character. The testimony was relevant in light of the Appellant's attempt to create a scenario in which he was so concerned about the children's safety he tried to take them out of the mother's custody, it rebutted that attempt, and the State did not use it for any other purpose.

The circuit court did not abuse its discretion in admitting the caseworker's testimony. Appellant did not attend any of the custody hearings after the children were taken into protective custody. Therefore, the court's ruling and Appellant's convictions should be affirmed.

²The very real probability Appellant would undertake such a strategy is amply demonstrated by his pre-trial motion to exclude any reference to the children's drug tests, which were positive, and then arguing in closing the State failed to present any evidence drug tests were performed on the children to show they were exposed to methamphetamine. Defendants cannot raise issues during the State's case and then preclude the State's ability to present evidence relevant to those issues. Unlike defendants, the State does not get a "do-over" after an adverse verdict.

CONCLUSION

Based on the foregoing, the circuit court's rulings and Appellant's convictions should be affirmed.

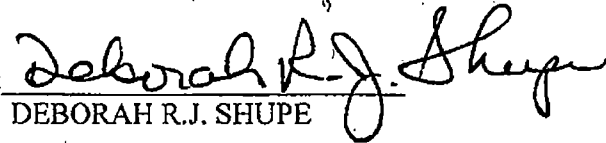
Respectfully submitted,

ALAN WILSON
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DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

By:


DEBORAH R.J. SHUPE

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ATTORNEYS FOR RESPONDENT

August 3, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County
The Honorable Thomas A. Russo, Circuit Court Judge
Appellate Case No. 2015-001055

THE STATE,

Respondent,

v.

JOHNNY NEAL SEXTON, II

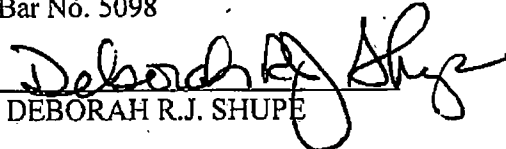
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

By: 

DEBORAH R.J. SHUPE

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ATTORNEYS FOR RESPONDENT

August 3, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From Richland County
The Honorable Robert E. Hood, Circuit Court Judge
Appellate Case No. 2014-001366

THE STATE,

Respondent,

v.

JOHNNY NEAL SEXTON,

Appellant.

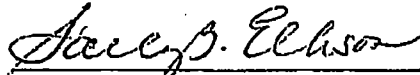
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

LaNelle Cantey Durant
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 3rd day of August, 2016


SALLY B. ELLISON
Legal Assistant

Office of Attorney General
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ALAN WILSON
ATTORNEY GENERAL

RECEIVED
AUG 03 2016
SC Court of Appeals

August 3, 2016

LaNelle Cantey DuRant
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

Re: The State v. Johnny Neal Sexton, II
Appellate Case No. 2015-001055

Dear Ms. DuRant:

Enclosed are two copies of the Final Brief of Respondent, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: ~~The~~ Honorable Jenny A. Kitchings (original and 10 copies enclosed)
Victim Services (with enclosure)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Johnny Neal Sexton, II, Appellant.

Appellate Case No. 2015-001055

Appeal From Lexington County
Thomas A. Russo, Circuit Court Judge

Unpublished Opinion No. 2017-UP-454
Heard October 4, 2017 – Filed December 6, 2017

AFFIRMED

Appellate Defender Lanelle Cantey Durant, of Columbia,
for Appellant.

Attorney General Alan Wilson and Senior Assistant
Deputy Attorney General Deborah R.J. Shupe, both of
Columbia, and Solicitor Donald V. Meyers, of
Lexington, all for Respondent.

PER CURIAM: In this criminal appeal, Johnny N. Sexton appeals his convictions of three counts of unlawful conduct toward a child and consecutive sentences of eight years' imprisonment for each conviction. Sexton argues the

circuit court erred in admitting the testimony of Officer Mike Merckle in violation of Rule 702, SCORE; and admitting the testimony of Olivia Woods, a Department of Social Services caseworker, in violation of Rules 403 and 404, SCORE.

We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (providing the admission of improper evidence is subject to a harmless error analysis); *State v. McLeod*, 362 S.C. 73, 82, 606 S.E.2d 215, 220 (Ct. App. 2004) ("Error is harmless whe[n] it could not reasonably have affected the result of the trial."); *id.* at 84–85, 606 S.E.2d at 221 (finding that even if the circuit court erred in admitting testimony, the error would be harmless given the overwhelming evidence against the defendant); *State v. Holder*, 382 S.C. 278, 289, 676 S.E.2d 690, 696 (2009) (holding the erroneous admission of evidence is harmless when, in view of the record as a whole, the impact of the evidence was minimal and it was cumulative to other evidence admitted without objection); *State v. Thompson*, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003) ("Whe[n] a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.").

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

FORM 5

ORIGINAL

317

SC

STATE OF SOUTH CAROLINA

County of LexingtonJohnny Neal Sexton II 363922

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2018 APR -3 AM 9:22
LISA M. COMER
CLERK OF COURT
LEXINGTON

FILED

2018CP3201143

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Trenton Correctional Institution / Lexington County Detention Center
2. Name and location of Court which imposed sentence Court of General Sessions Lexington County Lexington S.C.
3. Name(s) of co-defendant(s) (if any) Jaime Norris
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015GS3200989 unlawful neglect of child or helpless person(b) 2015GS3200990 unlawful neglect of child or helpless person

A TRUE COPY

1

Lex. Co. C.C.O.P., G.S. & F.C.

- (c) 2015GS 3200991 unlawful neglect of child or helpless person
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-17-2015 8 years Non-violent
- (b) 4-17-2015 8 years Non-violent
- (c) 4-17-2015 8 years Non-violent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. In the court of appeals In the State of S.C.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard October 4, 2017 Filed December 6, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

2018-CP-32-Q1143

SCANNED APR-04-2018

10. A. He was supposed to be investigating and preparing my case.

10. B. The preparation of my case.

10. C. Case settled in a matter that would have been to my best advantage.

10. D. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in *State v. Boyd*.

10. E. Knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.

10. F. Ineffective assistant counseling

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Let. CO. O.C.C.P., G.S. & F.O.

2018-CP-32-Q1143

11. A. weeks before my trial started.

11. B. behalf.

11. C. win and he said yes.

11. D. He never told me what the prosecution plan was.

11. E. I didn't understand what the laws were

11. F. I didn't have his full attention, and I fill like he could have done more for me.

A TRUE COPY

Lex. Co. C.C.P., G.S. & F.O.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Did not have my best interest in mind while
- (b) Neglected the necessary investigations and
- (c) My defense attorney did not try to have my
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Did not hear from him until about 2
- (b) Did not get anyone to testify on my
- (c) I asked him if I had a chance to
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Appeals court yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion to appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. State of S.C. Court appeals.
- ii. _____
- iii. _____
- iv. _____

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Lex. Co. C.C.Q.R. G.S. & F.C.

(c) the disposition thereof:

- i. Perfected
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. December 6, 2017
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. David Mauldin 407 W. Main Street
Lexington, S.C. 29072
 ii. Lanette Cantey Durant Division of Appellant Defense
P.O. Box 11589 Columbia, S.C. 29211
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. General Sessions
 ii. Appellant Court
 iii. _____

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Lex. Co. C.C.O.P., G.S. & F.C.

19. State clearly the relief you seek in filing this application:

A retrial or a sentence reduction or get
my sentences ran concurrent

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Johnny Neal Sexton II SCOC# 363922, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Johnny N. Sexton II 363922

SWORN to and subscribed before me this 29th
day of March 2018

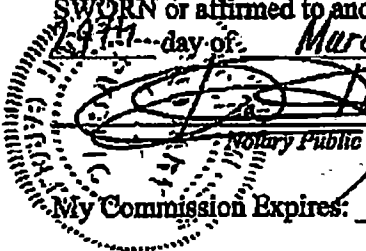
[Signature] (L.S.)
Notary Public
My Commission Expires: 10-7-2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Johnny Neal Sexton II SCOC# 363922, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Johnny M. Sexton II 363922
Applicant

SWORN or affirmed to and subscribed before me this
29th day of March, 2018.

 My Commission Expires: 10-7-2024

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Johnny Neal Sexton, II, #363922,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-32-01143

RETURN

Respondent, making its Return to the application for post-conviction relief filed on April 3, 2018, would respectfully show this Court:

I.

Johnny Neal Sexton, II, (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its April 2015 term, the Lexington County Grand Jury indicted Applicant for three counts of unlawful conduct towards a child (2015-GS-32-00989; -00990; -00991). Assistant Public Defender David M. Mauldin, of the Lexington County Public Defender's Office, represented Applicant on these charges. Assistant Solicitors Rhonda Patterson and Shannon Davis, both of the Eleventh Circuit Solicitor's Office, prosecuted the case. On April 15-17, 2015, Applicant proceeded to a jury trial before the Honorable Thomas A. Russo¹. On April 17, 2015, the jury convicted Applicant as indicted on all counts. Judge Russo imposed sentence, sealed it, and issued a bench warrant for Applicant's arrest. Thereafter, on May 6, 2015, Applicant appeared before the Honorable R. Keith

¹ Applicant was not present during the course of the trial. After Judge Russo found Applicant had notice that his case would be called and that Applicant's rights had been protected by his counsel, the trial proceeded in Applicant's absence.

Kelly for sentencing. Judge Kelly imposed the sentence of Judge Russo, sentencing Applicant to a term of imprisonment of eight years for each charge of unlawful conduct towards a child. All sentences were to be served consecutively.

Applicant filed a timely notice of appeal, and Appellate Defender LaNelle Cantey DuRant, of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected an appeal on Applicant's behalf. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Sexton*, Op. No. 2017-UP-454 (S.C. Ct. App. Filed Dec. 6, 2017). The Remittitur was issued on December 28, 2017.

II.

Applicant was the children's father, and the family, including the three children, lived in a small camper between November 1, 2013, and February 21, 2014. The children's mother testified Applicant manufactured methamphetamine in the camper and his van during that time, and she and Applicant smoked methamphetamine inside the camper while the children were present. During cross-examination, Applicant implied the mother testified against him because he left her in January 2013, and prior to the arrival of law enforcement on February 21, 2014, he confronted her about her drug use and threatened to take the children away from her, all of which the mother denied. Tr. pp. 80-110.

A Lexington County Deputy testified he went to the camper in January 2014, and served eviction paperwork on Applicant personally. When he went back to the camper in February 2014 to eject the family, he met a Department of Social Services caseworker who was going to the camper as well. Applicant was not at the camper when they arrived, and the deputy served the writ of ejectment on the mother, who consented to the deputy and caseworker entering the camper. The

children were sitting inside the camper, and the deputy saw items he believed may be related to manufacturing methamphetamine sitting in the kitchen area, so he immediately got everyone outside and contacted narcotics investigators. Tr. pp. 110-23.

Agent Michael Merckle of the Lexington County Sheriff's Department testified he had sixteen years' experience in law enforcement, he had worked with the Department's Narcotics Enforcement Team for five years, and had received specialized training in the identification and detection of methamphetamine labs. He attended federal training and was certified as a methamphetamine technician to locate, identify, and safely handle methamphetamine. As of the date of trial, he had worked over a hundred methamphetamine labs, and testified ten to twelve times in General Sessions Court. Over Applicant's general objection, the court qualified Agent Merckle as an expert regarding clandestine methamphetamine labs. Tr. pp. 168-70.

Agent Merckle testified he responded to the camper location in February 2014, to investigate the possibility of a methamphetamine lab. After describing the different types of methamphetamine labs, he stated the chemicals required to manufacture methamphetamine are very toxic and flammable, and having them around children, especially in a small, confined space like the camper, would be extremely dangerous. Tr. pp. 170-77.

The camper contained items associated with a methamphetamine lab, including mason jars containing liquid substances, coffee filters, and a coffee grinder containing what appeared to be ground pseudoephedrine, which is a central ingredient in methamphetamine. Over Applicant's objection, Agent Merckle testified based on his training and experience, the mason jars contained Coleman camp fuel and ether, which he identified by the smell and appearance. He further testified the chemicals in the jars were destroyed because they are potentially harmful, and cannot be stored

in an enclosed evidence storage facility to be handled by personnel who are not specifically trained to do so. Tr. pp. 177-84.

The caseworker who was present at the camper in February 2014, testified she was there to investigate an allegation of child abuse or neglect received by the Department of Social Services. She stated there was little food inside the camper, and the children were only "minimally clean." The children were placed in emergency protective custody that day due to the circumstances and risk of harm to them. There were several subsequent hearings regarding the children's custody, and the mother, who was incarcerated, attended each one. Tr. pp. 203-12.

The State then asked the caseworker if Applicant had attended any of the hearings or shown any interest in getting his children back, and she replied "no." Applicant objected, arguing all the custody hearings occurred outside the dates included in the indictments and the State's question elicited "improper bad act evidence," and moved for a mistrial. The State responded the question related to Applicant's allegation he came to get the children in February 2014, because he wanted to take care of them because of the mother's drug use, and showed he had no interest in the children. The court denied the mistrial motion, finding the question was an appropriate response to Applicant's allegations. Tr. pp. 213-16.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Ineffective assistance of counsel.
 - a. "Did not have my best interest in mind while he was supposed to be investigating and preparing my case;"
 - b. "Neglected the necessary investigations and the preparation of my case;"
 - c. "My defense attorney did not try to have my case settled in a matter that would have

- been to my best advantage;"
- d. "My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd;"
 - e. "Knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case;"
 - f. "Did not hear from him until about 2 weeks before my trial started;"
 - g. "Did not get anyone to testify on my behalf;"
 - h. "I asked him if I had a chance to win and he said yes;"
 - i. "He never told me what the prosecution plan was;"
 - j. "I didn't understand what the laws were;" and
 - k. "I didn't have his full attention, and I fill [sic] like he could have done more for me."

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcripts from Applicant's trial and sentencing hearing, Applicant's appellate records, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant's complete failure to list any facts to support his general allegations.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

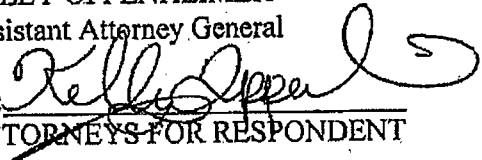
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 5, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

JOHNNY NEAL SEXTON, #363922)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)
_____)

IN THE COURT OF COMMON PLEAS

2018-CP-32-01143

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, SC 29169

DATED this the 5th day of July, 2018.

Camille Henry
 Camille Henry, Legal Assistant
 For Respondent

ORIGINAL

STATE OF SOUTH CAROLINA **FILED** COURT OF COMMON PLEAS
) FOR THE 11th JUDICIAL CIRCUIT
 COUNTY OF LEXINGTON 2019 JAN 24) AM 10:39 Case No.: 2018-CP-32-01143

Johnny Neal Sexton, #363922, LISA M. CORDER
 CLERK OF COURT
 LEXINGTON, SC

Applicant,)

**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

v.)

State of South Carolina.)
 _____)

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 3, 2018, to add the following:

1. Ineffective Assistance of Counsel –
 - a. Counsel failed to file a motion to reconsider the sentence.
 - b. Counsel failed to call Applicant's aunt, Deborah Wright, as a witness on his behalf at the trial.
 - c. Counsel informed the Applicant that he had a good chance of winning if he went to trial.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE
 MAC | VANCE ATTORNEYS, LLC
 PO Box 5501
 West Columbia, SC 29171
 803-219-1110
 ashley@macvance.com
 SC Bar No. 71676
 ATTORNEY FOR APPLICANT

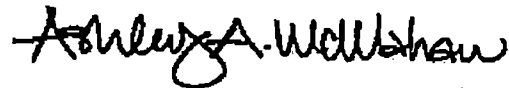
January 20, 2019

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Kelly Oppenheimer
Assistant Attorney General
koppenheimer@scag.gov

This 20th Day of January, 2019.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

LISA M. COLE
CLERK OF COURT
LEXINGTON SC

2019 JAN 24 AM 10:59

FILED



MAC | VANCE ATTORNEYS, LLC

FILED

2019 JAN 24 AM 10:59

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

January 24, 2019

VIA HAND DELIVERY

Lisa M. Comer
Lexington County Clerk of Court
ATTN: PCRs
205 East Main Street, Suite 128
Lexington, SC 29072

Re: Johnny Neal Sexton, #363922 vs. State of South Carolina
2018-CP-32-01143

Dear Ms. Comer:

Please find enclosed an Amended Post-Conviction Relief Application and Certificate of Service as well as a Motion for Funds for the above-referenced matter. Kindly file this document.

Should you have any questions, I can be reached at the number listed below or at ashley@macvance.com.

Best Regards,

ASHLEY A. MCMAHAN
ATTORNEY AT LAW

AAM
Enclosures

cc: Johnny Neal Sexton
AAG Kelly Oppenheimer

1 State of South Carolina
2 County of Lexington
3
4

Court of Common Pleas

5 Johnny Neal Sexton, II)
6 Applicant,) Transcript of Record
7 v.) 2018-CP-32-1143
8 State of South Carolina)
9 Respondent.)

10
11 January 24, 2019
12 Lexington, South Carolina

13 B E F O R E:

14 The Honorable Walton J. McLeod, IV, Judge.
15

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

17 Ashley McMahan, Esquire
18 Attorney for the Applicant

19 Kelly Oppenheimer, Esquire
20 Attorney for the Respondent

21

22

23

24

25

Bethanie K. Creppon
Circuit Court Reporter

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1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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1 P R O C E E D I N G S

2 * * *

3 MS. OPPENHEIMER: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. OPPENHEIMER: This is Johnny Neal Sexton,
6 II vs. The State of South Carolina; Docket
7 No. 2018-CP-32-1143. During its April 2015 term,
8 the Lexington County Grand Jury indicted Applicant
9 for three counts of unlawful conduct towards a
10 child. Assistant Public Defender David M. Mauldin
11 represented Applicant on these charges.

12 On April 15th through the 17th of 2015,
13 Applicant proceeded to a jury trial before the
14 Honorable Thomas A. Russo. Applicant was not
15 present at the trial, so he was tried in his
16 absence. Following deliberations, the jury
17 convicted Applicant as indicted on all counts.

18 Judge Russo sentenced Applicant to consecutive
19 terms of imprisonment for eight years for each
20 charge, sealed the sentence, and issued a bench
21 warrant for his arrest. And thereafter, on May 6th
22 of 2015, Applicant appeared before the Honorable R.
23 Keith Kelly for sentence, and Judge Kelly imposed
24 Judge Russo's sentence.

25 Applicant filed a timely notice of appeal and

1 appellate defender LaNelle Cantey DuRant perfected
2 an appeal on Applicant's behalf. She raised two
3 issues, which are in the briefs provided in your
4 packet.

5 Following briefing and oral argument, the South
6 Carolina Court of Appeals confirmed Applicant's
7 conviction and sentence by unpublished opinion on
8 December 6th, 2017, and the remittitur was issued on
9 December 28th, 2017. On April 3rd, 2018, Applicant
10 filed this current application for post-conviction
11 relief alleging ineffective assistance of counsel,
12 due process violation, and prosecutorial misconduct.

13 The State made its return on July 5th, 2018,
14 requesting an evidentiary hearing be held. And an
15 amended application was filed by the applicant
16 through his counsel, Ashley McMahan, on January
17 20th, 2019. Both the applicant and Ms. McMahan are
18 present today, and I'll turn it over to Ms. McMahan.

19 MS. MCMAHAN: Yes, Your Honor. The State
20 calls -- I mean, not the State. Applicant calls
21 Mr. Sexton.

22 THE COURT: Okay. Are you going to ask him
23 questions about the -- understanding the risks or if
24 he gets relief and --

25 MS. MCMAHAN: Yes. I'm happy to do that.

1 THE COURT: Thank you.

2 JOHNNY NEAL SEXTON, II

3 being first duly sworn, testified as follows:

4 THE APPLICANT: Yes, ma'am.

5 THE CLERK: Have a seat and state your name for
6 the record.

7 THE APPLICANT: Johnny Sexton.

8 MS. MCMAHAN: And, Your Honor, just before we
9 begin, we concede that we don't have Ms. Debra
10 Wright here, so we would not be able to go forward
11 on that allegation. But all the other allegations,
12 inasmuch as they're all related to ineffective
13 assistance of counsel, most of the stuff written in
14 his application we are going to go forward on and
15 I'll question him about that.

16 THE COURT: Okay.

17 DIRECT EXAMINATION

18 BY MS. MCMAHAN:

19 Q. Mr. Sexton, as the Judge alluded to earlier,
20 remember we've had conversations about how if you
21 win today, you start over from the beginning? Is
22 that still your wish to do that?

23 A. Yes, ma'am.

24 Q. Okay. Do you understand the risks of starting
25 over from the beginning?

1 MS. MCMAHAN: Is that adequate, Your Honor?

2 THE COURT: Yes. And just to be clear, the
3 risk would be you may be sentenced to something
4 worse.

5 THE APPLICANT: Yes, sir.

6 THE COURT: All right. I just want to make
7 sure you understand that. Thank you.

8 BY MS. MCMAHAN:

9 Q. Okay. Mr. Sexton, I'm looking at your
10 application. Did you file this?

11 A. Yes, ma'am.

12 Q. And so one of your issues -- you have several
13 issues with Mr. Mauldin. But walk me through
14 your -- how many times you guys met and what you
15 guys talked about.

16 A. Once or twice.

17 Q. And where did you meet him?

18 A. At his office.

19 Q. And were you out on bond at the time?

20 A. Yes, ma'am.

21 Q. And do you remember what you guys talked about?

22 A. Not a lot.

23 Q. Did you talk about that you had a trial coming
24 up?

25 A. Yes, ma'am.

1 Q. And what did he tell you about that?

2 A. Just talking about wanting a trial and asked me
3 if I had any evidence to give him.

4 Q. And what did you tell him about that?

5 A. My aunt was the only witness that I had.

6 Q. What was the defense that you had for your
7 case?

8 A. That I wasn't there when it happened.

9 Q. Is that how your aunt comes into play?

10 A. Yes, ma'am.

11 Q. And when he told you about the risks of going
12 to trial, what did he tell you about that?

13 A. I really don't recall.

14 Q. Did he tell you you had a good --

15 MS. OPPENHEIMER: Your Honor --

16 A. He told me I had a chance to win. Yes.

17 THE COURT: She's made an objection.

18 MS. OPPENHEIMER: Can he just speak up a little
19 bit?

20 THE COURT: Okay.

21 MS. OPPENHEIMER: I'm having trouble hearing.

22 THE COURT: Yeah. Mr. Sexton, I'm next to you,
23 so I can hear you okay. The court reporter is right
24 in front of you, she's taking down everything that
25 you're saying. But, actually, we need to make sure

1 everyone in the courtroom can hear you too. There
2 should be a microphone there. It doesn't appear
3 there is. Here, put this in front of you. That
4 might help.

5 BY MS. MCMAHAN:

6 Q. Okay. So back to Mr. Mauldin. So you guys met
7 twice. Do you remember how long of a period of time
8 y'all met?

9 A. Maybe 30, 45 minutes.

10 Q. And did he talk about what charges you had
11 pending?

12 A. Yes, ma'am.

13 Q. And do you remember what he said about that?

14 A. I was facing ten years.

15 Q. Okay. Did he talk about concurrent versus
16 consecutive charges?

17 A. I don't recall that.

18 Q. What did he tell you about trial, how that
19 worked?

20 A. Just told me that I would go in front of a
21 jury.

22 Q. Okay. And did you go to that trial?

23 A. No, ma'am.

24 Q. Why didn't you go to that trial?

25 A. Stupid.

1 Q. Were you scared?

2 A. Yes.

3 Q. And how did you end up getting sentenced? Did
4 you turn yourself in?

5 A. They picked me up. Yeah.

6 Q. And what happened at sentencing?

7 A. I can't remember the judge's name. He just
8 read me my sentence.

9 Q. Okay. And did Mr. Mauldin tell you about
10 anything he would do afterwards?

11 A. Yeah. When they talked about my appeal and the
12 sentence reconsideration, he told me he'd take care
13 of everything.

14 Q. So what did you take that to mean? Did you
15 take that to mean he was going to file a motion to
16 reconsider?

17 A. I thought he was going to file everything.
18 Yes.

19 Q. Did he file a motion to reconsider on your
20 case?

21 A. I don't know.

22 Q. Did you go back to court for a resentencing
23 hearing or anything like that?

24 A. No, ma'am.

25 Q. Did he file an appeal for you?

1 A. Yes, ma'am.

2 Q. Did you ever tell him about your aunt?

3 A. Yes, ma'am.

4 Q. And it's in the record, right, about your

5 aunt --

6 A. Yes, ma'am.

7 Q. -- where he talks about your aunt is listed as

8 one of the witnesses?

9 A. Yes, ma'am.

10 Q. So what do you think he could have done

11 differently or done to help you prepare for trial?

12 A. Call my aunt up as a witness. He didn't even

13 call her as a witness.

14 Q. And that's because you read the transcript and

15 you saw that?

16 A. Yes.

17 Q. Did he go over the different elements that they

18 have to prove on this case?

19 A. I'm not sure.

20 Q. And you were convicted of unlawful neglect,

21 correct?

22 A. Yes, ma'am.

23 Q. So did he go over what you have to show that

24 you were neglecting your children or child?

25 A. Not that I recall.

1 Q. Do you remember any of the conversations you
2 had with him?

3 A. Not a lot of it.

4 Q. Is there anything else you want the Judge to
5 know about your case today?

6 A. No, ma'am.

7 Q. Okay. Answer any questions Ms. Oppenheimer
8 has.

9 A. Yes, ma'am.

10 MS. OPPENHEIMER: May it please the Court, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MS. OPPENHEIMER:

15 Q. So you did not show up for your trial, correct?

16 A. No, ma'am.

17 Q. And that's because you kept giving excuses,
18 right?

19 A. Yeah.

20 Q. And some of those excuses were that you were at
21 work in another --

22 A. Well, I was.

23 Q. Okay. So you were at work in another town.
24 But then the next day when Mr. Mauldin called you,
25 you said that your driveway had been washed away.

1 A. Yeah.

2 Q. And do you recall Mr. Mauldin offering to pick
3 you up for trial?

4 A. I'm not sure. I don't.

5 Q. Do you recall refusing for him to pick you up?

6 A. No.

7 Q. And the State basically alleged that you were
8 cooking meth around your children, correct?

9 A. Yes, ma'am.

10 Q. And that was in a very small trailer or camper
11 in Lexington County?

12 A. Yes, ma'am.

13 Q. And the lease was in your name, correct?

14 A. I'm not sure.

15 Q. Well, you made the payments, correct?

16 A. No, I didn't.

17 Q. If there was testimony presented at your trial
18 that the landlord only dealt with you, would that be
19 a contradiction in your testimony today?

20 A. I never dealt with a landlord.

21 Q. But you didn't show up to trial to dispute that
22 testimony, correct?

23 A. No, I didn't.

24 Q. And do you recall -- the police, I believe,
25 found your wife or girlfriend on your aunt and

1 uncle's property, correct?

2 A. Yes, ma'am.

3 Q. In the van that y'all had been staying in?

4 A. Wasn't staying in a van.

5 Q. Weren't you cooking meth for your aunt at that
6 time?

7 A. No, I wasn't.

8 Q. Do you recall if your aunt even showed up for
9 trial?

10 A. I wasn't there.

11 Q. You weren't there, so you don't know?

12 A. Yes, ma'am.

13 Q. You didn't talk to her afterwards?

14 A. No, ma'am.

15 Q. Other than your aunt, did you give Mr. Mauldin
16 any additional leads or witnesses to investigate?

17 A. No, ma'am.

18 Q. And you said that your defense would have been
19 that you were not there, correct?

20 A. Yes, ma'am.

21 Q. But the jury, again, was not able to hear your
22 side of the story because you were not there?

23 A. Yes, ma'am.

24 MS. OPPENHEIMER: Your Honor, I have no further
25 questions.

1 THE COURT: Any redirect?

2 MS. MCMAHAN: Nothing, Your Honor.

3 THE COURT: You may step down, sir.

4 MS. MCMAHAN: The applicant rests.

5 THE COURT: All right.

6 The State's first witness?

7 MS. OPPENHEIMER: State calls David Mauldin.

8 DAVID MAULDIN

9 being first duly sworn, testified as follows:

10 THE WITNESS: Yes'm.

11 THE CLERK: Have a seat and state your name for
12 the record.

13 THE WITNESS: My name is David Mauldin,
14 M-A-U-L-D-I-N.

15 DIRECT EXAMINATION

16 BY MS. OPPENHEIMER:

17 Q. Good morning, Mr. Mauldin. How are you?

18 A. Doing fine. How about you?

19 Q. Doing all right. How long have you been
20 practicing law?

21 A. I was admitted to the Bar in 1997. I worked
22 for a personal injury firm for a little while and
23 then I started doing public defender work, criminal
24 defense, in spring of 1999.

25 Q. So since 1999, all of your legal practice has

1 been criminal defense?

2 A. That's correct.

3 Q. And do you recall how you came to represent
4 Mr. Sexton?

5 A. He was arrested in July of '14 and appointed to
6 the office shortly thereafter.

7 Q. And how many times did you meet with him?

8 A. It's hard to say. I initially met with him at
9 the jail on August 5th of '14. We got discovery and
10 sent it to him on August 27th of '14. I met with
11 him again in jail September 4th of '14 to discuss
12 discovery and the fact that the codefendant had
13 pled. I discussed the case with the solicitor. I
14 met with him in the jail again on September 11th of
15 '14 and discussed a plea offer -- which he had three
16 charges -- and that was drop two and plead to one.

17 We had a preliminary hearing on September 12th
18 of '14. He came to two appearances, I think, in
19 October, after he bonded out in October, and
20 November of '14. He said he did not want to take
21 the plea offer. At the last appearance he was, they
22 said that a potential trial would be in April. I
23 got up with him near the end of March and brought
24 him into the office and reviewed everything with him
25 again.

1 We got some more evidence to include these
2 meth-watch records where he had been purchasing
3 Sudafed or they had records of him purchasing
4 Sudafed. And I had to bring him in the office and
5 go over that again. So it's about five or six
6 times, I think, I met with him.

7 Q. And you went over a little bit of what y'all
8 discussed. But can you go into a little more
9 detail? What would you explain to him about the
10 trial, about the charges?

11 A. Well, the initial meeting, I always explain
12 what they're charged with, elements, and the
13 penalty. He had three counts of unlawful conduct
14 toward a child that carried ten years apiece. He's
15 facing a possible 30 years in prison. You know, the
16 elements of that would be, you know, he is a parent
17 of the child and that hits one of the elements, and
18 that he put them in some risk of harm, either their
19 physical or mental health.

20 And the specific allegations was -- is that he
21 and his wife were cooking meth around the children,
22 and that possibly could affect their physical
23 health.

24 Q. And you said that the State had some
25 pseudoephedrine records?

1 A. Yes'm.

2 Q. What did those show?

3 A. They had showed that he had made purchases of
4 the pseudoephedrine on or about the incident date
5 that was alleged in the indictments. And
6 pseudoephedrine is an ingredient used in
7 manufacturing methamphetamine.

8 Q. All right. And did you and Mr. Sexton discuss
9 his version of the facts?

10 A. Yes'm.

11 Q. What did he say happened?

12 A. He said that they had had some issues and that
13 he had moved out and he had been staying with an
14 aunt by the name of Debbie Wright for the period of
15 time.

16 Q. So did you develop a potential defense based on
17 that?

18 A. Well, it would be based on his testimony. I
19 did speak with Ms. Wright and she was -- she said
20 that he did live with her, but she was unable to
21 account for his whereabouts during the period of
22 time. She said that we would go out during the day
23 and then come back at night, and that sometimes he
24 would spend the night with his wife.

25 So it wasn't like an ironclad thing. I had

1 anticipated using his testimony and kind of using
2 her testimony to kind of try to supplement it or
3 shore it up. But her testimony alone would not have
4 assisted in any way, I don't think.

5 Q. And it's been discussed that Mr. Sexton did not
6 appear for his trial. Can you kind of explain what
7 happened?

8 A. Well, they had a -- he wasn't the first trial
9 that week. It was, like, Wednesday around
10 lunchtime, they were saying they wanted to pick a
11 jury in the evening session or the afternoon
12 session. And I got ahold of Mr. Sexton on the phone
13 and he said that he had been working -- I think it
14 was somewhere upstate, but it was somewhere up north
15 of here -- and that he wouldn't be able to make it,
16 and discussed with him whether or not it would be
17 okay to pick the jury without him. And we went
18 ahead and picked a jury without him and we may have
19 done some pretrial motions.

20 The trial commenced on Thursday and he hadn't
21 showed up. And my paralegal and he were texting
22 back and forth about coming to court, the fact that
23 the trial was going to go on without him. He said
24 something about it had been raining and his driveway
25 was muddy and he couldn't get out of the driveway.

1 And we told him, well, you need to get a ride to get
2 up here. And then after a while, we said, look,
3 we'll come pick you up. And he said, well, no, my
4 clothes are muddy too. I said, we got clothes at
5 the public defender's office, we'll dress you out.
6 And he just didn't want to come.

7 And then he said something about pleading the
8 next day or something. I just told him there's no
9 deal, you'd have to plead straight up, but you have
10 to show up to do that.

11 Q. Did he show up?

12 A. No, he did not.

13 Q. And so what effect did his not appearing have
14 on the trial and your defense?

15 A. Well, you know, initially, you discuss it
16 basically -- because my paralegal had gone and
17 talked to his wife who had already pled. My
18 paralegal had gone off to the prison to talk to her.
19 And she was going to testify against him pretty much
20 the way that she did at the trial.

21 So, you know, without her testimony, it would
22 have been a circumstantial case, obviously, without
23 him there. But then it would be the circumstantial
24 case plus her word against him, and so it would be
25 important for him to show up and present his side of

1 the story.

2 Q. And do you recall what the State presented to
3 show that he was, in fact, staying at this trailer?

4 A. Well, the wife's testimony. And I think they
5 had the landlord come in or something about him
6 being on the lease and the landlord had interactions
7 with him regarding payments.

8 Q. All right. And you testified that you spoke
9 with the aunt prior to trial. Did he give you any
10 other leads or witnesses?

11 A. No.

12 Q. But you did speak with Ms. Wright, I believe
13 her name was?

14 A. Yes.

15 Q. And her testimony would have been just to
16 supplement his at trial?

17 A. Well, that's basically what I got off her. If
18 she said, oh, yeah, he was just with me the whole
19 time, he never went over there, I would have put her
20 up. But there were a lot of holes in it. I figured
21 I'd have him testify and then have her corroborate
22 the fact that he did live over there, even though
23 she couldn't account for his whereabouts --

24 Q. All right.

25 A. -- during the time period of the indictment.

1 MS. OPPENHEIMER: Beg the Court's indulgence.

2 BY MS. OPPENHEIMER:

3 Q. You testified that you spoke with him about the
4 potential penalties at your initial meeting.

5 A. Yes'm.

6 Q. Did you discuss that those sentences could be
7 concurrent or consecutive?

8 A. Yes'm; it's zero to 30. And the plea offer had
9 been plead to two and dismiss one. His wife had
10 been sentenced to, I think, ten years suspended on
11 four years with some probation afterward. And he
12 got real scared that jail time might be involved,
13 because I told him, look, the sentence will probably
14 be somewhat similar to what your wife got and that
15 you probably could expect some prison time if you do
16 plead, but that it was zero to 20 versus zero to 30.
17 It was three charges, ten years apiece.

18 Q. All right. And did he seem to understand all
19 your conversations with him?

20 A. Yes'm.

21 MS. OPPENHEIMER: Your Honor, I have no further
22 questions.

23 THE COURT: Any redirect?

24 MS. MCMAHAN: Yes.

25 THE COURT: I'm sorry. Any cross?

1 MS. MCMAHAN: Yeah. I knew what you meant.

2 THE COURT: Yeah.

3 CROSS-EXAMINATION

4 BY MS. MCMAHAN:

5 Q. Mr. Mauldin, how many times did you meet with
6 the defendant again?

7 A. Let's see. On August 5th of '14, September 4th
8 of '14, 9/11 of '14; would have been with him at the
9 prelim on 9/12 of '14. Let's see. I talked to him
10 on the phone March 30th of '14; he came into the
11 office March 31st of '14; near the beginning of
12 April, we got these meth-watch records, called and
13 left him a voicemail to contact me, had some
14 discussions about his aunt, called his aunt; he came
15 in the office on April 7th of '15, and I think that
16 was the last time I saw him before the sentencing.

17 Q. So either in person or telephone conversations,
18 it was about eight or nine times, I think?

19 A. Somewhere around there.

20 Q. And do you have any recollection of how long
21 each of those meetings were?

22 A. No, ma'am. Obviously, the in-person would have
23 been a lot longer than the telephone conversations.
24 But other than that, I couldn't give you anything
25 other than that.

1 Q. Did you ever explain to him the difference
2 between consecutive and concurrent sentences?

3 A. I don't think I used those words. Sometimes I
4 say stack on top of one another or something like
5 that. But it was 10, 10, and 10.

6 Q. But you explained that the sentences could
7 ultimately end up either being, like, 10 all at the
8 same time --

9 A. Right.

10 Q. -- or 30 --

11 A. I usually say zero to 30 or zero to 20 when I'm
12 talking about exposure or plea ranges.

13 Q. Did you show him the meth-watch records at all?
14 Do you remember?

15 A. I do -- or do not. We did discuss them. He
16 said that he had been buying for some uncle of his
17 that was making meth and he would get paid to do
18 that.

19 Q. Was the uncle the husband of Debra?

20 A. No, it was some other guy.

21 Q. And did you ever explain to him that you felt
22 like he had a good chance of winning at trial?

23 A. I never make a guarantee absolute one way or
24 the other whether somebody is going to win or
25 they're going lose. In this case, it was -- it was

1 going to be his word against her word and the
2 circumstantial evidence surrounding as far the
3 landlord and that kind of thing. But I have never
4 guaranteed. I mean, you never know what a jury is
5 going to do. I mean, you can have a terrible case
6 and the jury would say not guilty and you can have
7 what you think is a good case and the jury would
8 find the defendant guilty.

9 Q. What were the plea offers?

10 A. Drop one, plead to two -- drop one count, plead
11 to two, which is the same plea offer that the
12 codefendant received.

13 Q. And was there a recommendation of a sentence or
14 anything or it was just dismiss the one and plead
15 straight up to the two others?

16 A. Well, around here in Lexington, they pretty
17 much, 90 percent of the time, don't make any kind of
18 recommendations as to sentence. They'll say stuff
19 like, well, we don't oppose a probationary sentence.
20 But as far as specifically recommending --
21 typically, they work on the amount of charges you
22 plead to or the type of charges you plead to.

23 Q. Is that just an office-wide policy or is it
24 solicitor-to-solicitor policy or --

25 A. Pretty much, it's office-wide. Like I said,

1 it's not a 100-percent type of policy, but they tend
2 to stand behind when they feel like it and not when
3 they feel like it. But, generally, again, it's a
4 general policy.

5 Q. Did you discuss that plea offer with him?

6 A. Yes, I did.

7 Q. And do you recall what he said about that?

8 A. He said that he did not want to plead because I
9 had told him that the codefendant had pled and got
10 ten suspended to four on probation and that,
11 obviously, involved going to prison, and I imagined
12 that his sentence would be somewhere in the same
13 range, that it would involve some sort of prison
14 time, and he wasn't for that at all.

15 Q. He didn't want to go to prison?

16 A. No.

17 Q. Did you ever ask the solicitor if there was an
18 opportunity for probation?

19 A. I discussed the case and the plea offer with
20 her over the phone. I can't remember what
21 specifics. I just wrote that I discussed the plea
22 offer. I did not have any discussions about whether
23 she would recommend or not recommend. And
24 typically, like I said, they'll say, well, we won't
25 oppose it; it will be up to the Judge.

1 Q. And I think you said something earlier. And I
2 apologize for being redundant, but I missed it.
3 Something about the plea -- if he pled guilty, the
4 sentence would be similar to the wife?

5 A. I -- like I said, I didn't guarantee that. I
6 said I imagined it would be. Typically, like when
7 codefendants plead and they're kind of similarly
8 situated, they get fed out of the same spoon.

9 Q. What was the deal with the expert at the trial,
10 the State's expert?

11 A. Which one?

12 Q. The one about -- the one that you challenged
13 about the -- about qualifying them as an expert. I
14 think it was a cop.

15 A. I made several objections during the trial:
16 Obviously, the introduction of the meth records. I
17 think the officer was testifying to something that
18 was beyond his training and experience, and I think
19 objected to that. And I think it was overruled, and
20 I think that was held up on appeal.

21 Q. And when he was there for sentencing and it was
22 unsealed, did you ever tell him that you would file
23 a motion to reconsider or take care of any of that
24 for him?

25 A. We never discussed a motion to reconsider. We

1 did discuss appeal. If he had requested to do a
2 motion to reconsider, I would have filed it.

3 Q. Do you think -- have you ever had a TIA with a
4 motion to reconsider a sentence hoping that the
5 sentence was reduced?

6 A. Um...

7 Q. That's a very wordy question. I apologize.

8 A. That's true.

9 I can't recall. I try between -- over 30
10 cases, I know. But TIAs are very few and far
11 between. Usually the judge wants to get a bench
12 warrant and try it with them there.

13 Q. Yeah.

14 A. I don't think I've had one that had been
15 reduced after the trial. I can't be sure 100
16 percent.

17 Q. Okay. So you didn't know what the sentence was
18 either until it was unsealed?

19 A. That's correct.

20 Q. But you did file a notice of appeal; is that
21 correct?

22 A. That's correct.

23 Q. Is there anything else you feel the Court
24 should know today about this case?

25 A. I don't believe so.

1 MS. MCMAHAN: Court's indulgence, Your Honor.

2 Nothing further, Your Honor.

3 THE COURT: Redirect?

4 MS. OPPENHEIMER: Very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. OPPENHEIMER:

7 Q. I want to clarify a couple things with you:

8 You said that y'all did not discuss a motion to
9 reconsider?

10 A. No. It didn't come up.

11 Q. And are you required or do you typically file a
12 motion to reconsider in every case?

13 A. No.

14 Q. And you said that if he had asked for one, you
15 would have filed it?

16 A. Yes'm. But I think I had presented all the
17 mitigation I had. I think the only extra thing
18 would be if he had spoken to the judge. If he had
19 gone to the trial and, yeah, denied everything and
20 if he had tried to say he was sorry or that if he
21 did it, it would be, basically, admitting guilt,
22 which would defeat the purpose of a trial and kind
23 of scuttle him on appeal and that sort of thing.

24 Q. And with regards to this plea offer, you
25 testified that you explained it to Mr. Sexton?

1 A. Yes'm.

2 Q. And he did not want to take that offer?

3 A. No. He -- he -- like I said, I said that it
4 was likely that he would go to prison and get a
5 similar sentence, and he didn't want to do that. I
6 think later on, as the trial was progressing, he
7 might have been changing his tune. But then he
8 didn't come in and do anything. So the die was
9 cast.

10 Q. In a case such as this, is a probationary
11 sentence common?

12 A. It's hard to say. Judges sentence differently.
13 It's just hard to say. But the fact that the
14 codefendant had already gone and gotten some prison
15 time, is more likely that that would be his future.
16 It wasn't a guarantee, but...

17 MS. OPPENHEIMER: I have no further questions,
18 Your Honor.

19 MS. MCMAHAN: One brief follow-up.

20 REDIRECT EXAMINATION

21 BY MS. MCMAHAN:

22 Q. So in situations when someone has been
23 sentenced and the judge is explaining the notice of
24 appeal and all that, is it your practice that you
25 just don't ever discuss your motion to reconsider

1 the sentence or anything like that?

2 A. It's hard to say. I haven't filed too many of
3 those in my career.

4 Q. Okay. And the ones you did file, were they
5 successful? Unsuccessful? All over the board?

6 A. Typically unsuccessful. I think there's a time
7 or two I might have gotten a year shaved off or
8 something like that.

9 Q. In his situation, given that he got -- it was
10 over 20 years --

11 A. Yes'm.

12 Q. Do you feel that he -- well, never mind. Let
13 me back up.

14 A. It's hard to say. It was Judge Russo doing the
15 sentencing. He really hates stuff that involves
16 children. And --

17 Q. I mean, he could have gotten 30, right?

18 A. Yes'm.

19 Q. So if he had done the motion to reconsider,
20 Russo could have just changed it to 30?

21 A. Well, if the State had presented evidence that
22 they hadn't presented before to show aggravation, he
23 could have gone up with it.

24 Q. Or it would have just stayed the same?

25 A. Yes'm.

1 MS. MCMAHAN: Okay. Nothing further, Your
2 Honor.

3 THE COURT: You may step down, Mr. Mauldin.

4 MS. OPPENHEIMER: Your Honor, we'd ask that
5 Mr. Mauldin be released from his subpoena.

6 MS. MCMAHAN: No objection.

7 THE COURT: All right.

8 MS. OPPENHEIMER: The State has no further
9 witnesses.

10 MS. MCMAHAN: No reply, Your Honor.

11 THE COURT: Okay. Any closing?

12 MS. MCMAHAN: No closing, Your Honor.

13 THE COURT: All right. Well, I've got the
14 matter under advisement and we'll get a decision
15 out. Thank you.

16 MS. OPPENHEIMER: Thank you, Your Honor.

17 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh 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 hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 24th of January, 2019.

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

June 3, 2019

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

FILED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON FOR THE ELEVENTH JUDICIAL CIRCUIT

Johnny Neal Sexton, II, #363922

Case No. 2018-CP-32-01143

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this court by way of an application for post-conviction relief filed April 3, 2018, by Johnny Neal Sexton, II (Applicant) and an amendment thereto filed January 20, 2019. The State of South Carolina (Respondent) made its return on July 5, 2018, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on January 24, 2019, at the Lexington County Courthouse before Judge Walton J. McLeod, IV. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Assistant Attorney General Kelly Oppenheimer, of the South Carolina Attorney General's Office, represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its April 2015 term, the Lexington County Grand Jury indicted Applicant for three

counts of unlawful conduct towards a child (2015-GS-32-00989; -00990; -00991). Assistant Public Defender David M. Mauldin, of the Eleventh Circuit Public Defender's Office, represented Applicant on these charges. Senior Assistant Solicitor Rhonda W. Patterson and Assistant Solicitor Shannon A. Davis, both of the Eleventh Circuit Solicitor's Office, prosecuted the case. On April 15, 2015, Applicant's case was called to trial before Judge Thomas A. Russo. Due to Applicant's failure to appear for trial, Judge Russo found Applicant had proper notice his case would be called to trial and would be tried in his absence should he fail to appear. *See* Tr. 43, 61. Applicant was, therefore, tried in his absence on April 15-17, 2017, before Judge Russo and a jury. Following deliberations, the jury convicted Applicant as indicted on all counts. Judge Russo sentenced Applicant to consecutive terms of imprisonment of eight years for each charge, sealed the sentence, and issued a bench warrant for Applicant's arrest. Thereafter, on May 6, 2015, Applicant appeared before Judge R. Keith Kelly for sentencing. At the hearing, Judge Kelly imposed Judge Russo's sentence.

Applicant filed a timely notice of appeal, and Appellate Defender LaNelle Cantey DuRant, of the South Carolina Commission on Indigent Defense, Office of Appellate Defense, perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

1. Whether the court erred in allowing Agent Mike Merckle to give his opinion that the substances in two mason jars were Coleman fuel and ether, both necessary ingredients for making "meth," when the substances were never tested in [Applicant's] case although Agent Merckle had tested similar substances in prior cases; therefore, the opinion was not reliable as shown by the judge instructing the jury on the spoliation of evidence; thus, the judge failed to fulfill his role as gatekeeper of the reliability of the evidence; [and]
2. Whether the court erred by ruling admissible the testimony that [Applicant] did not attend the subsequent DSS legal hearings on his three children, which were outside the time period stated in

the indictments, and therefore irrelevant to the crime of unlawful conduct towards a child, as well as the witness's testimony that [Applicant] did not show interest in getting his children back, since this testimony was a gratuitous attack and highly prejudicial?

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on December 6, 2017. *State v. Sexton*, Op. 2017-UP-454 (S.C. Ct. App. filed December 6, 2017). The remittitur was issued on December 28, 2017.

STATEMENT OF FACTS

Applicant was the children's father, and the family, including the three children, lived in a small camper between November 1, 2013, and February 21, 2014. The children's mother testified Applicant manufactured methamphetamine in the camper and his van during that time, and she and Applicant smoked methamphetamine inside the camper while the children were present. During cross-examination, Applicant implied the mother testified against him because he left her in January 2014, and prior to the arrival of law enforcement on February 21, 2014, he confronted her about her drug use and threatened to take the children away from her; all of which the mother denied. Tr. pp. 80-110.

A Lexington County Deputy testified he went to the camper in January 2014 and served eviction paperwork on Applicant personally. When he went back to the camper in February 2014 to eject the family, he met a Department of Social Services (DSS) caseworker who was going to the camper as well. Applicant was not at the camper when they arrived, and the deputy served the writ of ejectment on the mother, who consented to the deputy and caseworker entering the camper. The children were sitting inside the camper, and the deputy saw items he believed may be related.

to manufacturing methamphetamine sitting in the kitchen area, so he immediately escorted everyone outside and contacted narcotics investigators. Tr. pp. 110-23.

Agent Michael Merckle, of the Lexington County Sheriff's Department, testified he responded to the camper location in February 2014 to investigate the possibility of a methamphetamine lab. After describing the different types of methamphetamine labs, he stated the chemicals required to manufacture methamphetamine are very toxic and flammable, and having them around children, especially in a small, confined space like the camper, would be extremely dangerous. Tr. pp. 170-77.

The camper contained items associated with a methamphetamine lab, including mason jars containing liquid substances, coffee filters, and a coffee grinder containing what appeared to be ground pseudoephedrine, which is a central ingredient in methamphetamine. Over Applicant's objection, Agent Merckle testified based on his training and experience, the mason jars contained Coleman camp fuel and ether, which he identified by the smell and appearance. He further testified the chemicals in the jars were destroyed because they are potentially harmful, and cannot be stored in an enclosed evidence storage facility to be handled by personnel who are not specifically trained to do so. Tr. pp. 177-84.

The DSS caseworker who was present at the camper in February 2014, testified she was there to investigate an allegation of child abuse or neglect received by DSS. She stated there was little food inside the camper, and the children were only "minimally clean." The children were placed in emergency protective custody that day due to the circumstances and risk of harm to them. There were several subsequent hearings regarding the children's custody, and the mother, who was incarcerated, attended each one. Tr. pp. 203-12.

The State then asked the caseworker if Applicant had attended any of the hearings or shown any interest in getting his children back, and she replied "no." Applicant objected, arguing all the custody hearings occurred outside the dates included in the indictments and the State's question elicited "improper bad act evidence," and moved for a mistrial. The State responded the question related to Applicant's allegation he came to get the children in February 2014 because he wanted to take care of them because of the mother's drug use and showed he had no interest in the children. The court denied the mistrial motion, finding the question was an appropriate response to Applicant's allegations. Tr. pp. 213-16.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations:

1. Ineffective Assistance of Counsel:
 - a. Did not have my best interest in mind while he was supposed to be investigating and preparing my case;
 - b. Neglected the necessary investigations and the preparation of my case;
 - c. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage;
 - d. My defense attorney never explained to me or discussed with me how the elements of the crime charge[d] and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd;
 - e. Knowing I was illiterate [sic] in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case;
 - f. Ineffective assistant [counseling];
 - g. Did not hear from him until about 2 weeks before my trial started;
 - h. Did not get anyone to testify on my behalf;
 - i. I asked him if I had a chance to win and he said yes;

- j. He never told me what the prosecution plan was;
- k. I didn't understand what the laws were; [and]
- l. I didn't have his full attention, and I [feel] like he could have done more for me.

In his amended application for post-conviction relief, Applicant raises the following additional grounds for relief:

- 1. Ineffective Assistance of Counsel:
 - a. Counsel failed to file a motion to reconsider the sentence;
 - b. Counsel failed to call Applicant's aunt, Deborah Wright, as a witness on his behalf at the trial; [and]
 - c. Counsel informed the Applicant that he had a good chance of winning if he went to trial.

At the evidentiary hearing, Applicant proceeded forward on the following allegations of ineffective assistance of counsel for:

- 1. Failing to prepare for trial;
- 2. Failing to investigate;
- 3. Failing to file a motion to reconsider the sentence; and
- 4. Informing Applicant he had a good chance of winning if he went to trial.

Additionally, at the hearing, Applicant waived his allegation of ineffective assistance of counsel for failing to call Applicant's aunt as a witness on his behalf at trial, as raised in his amended application for post-conviction relief.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of Assistant Public Defender Mauldin (Counsel). This court also had before it a copy of Applicant's trial transcript, the records of the Lexington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he met with Counsel once or twice in Counsel's office while Applicant was out on bond for about thirty to forty-five minutes. He testified he could not specifically recall everything from his conversations with Counsel. He further testified they did not discuss much about his case, but they did discuss Applicant's aunt would be the only witness at trial. He elaborated he and Counsel discussed that his defense would be he was not at the house, which is how his aunt came into play; but the jury was unable to hear his side of the story. He further elaborated he told Counsel about his aunt and told Counsel to call her as a witness, but Counsel did not call Applicant's aunt as a witness. Applicant admitted, however, he did not give Counsel any leads or witnesses to investigate. He testified he did not know if his aunt was at trial because he was not at trial. Applicant also testified Counsel told him with what he was charged with and that he was facing ten years. Applicant could not recall if he and Counsel discussed the elements of the offenses, but they never reviewed what the State would have to prove at trial. He testified he and counsel did not discuss concurrent or consecutive sentences. He elaborated Counsel told him he had a chance to win at trial.

He also testified the State alleged he was cooking meth in a camper around his children. He testified he did not make any payments on the camper and never dealt with the landlord. He further testified, however, he did not show up at trial to dispute the landlord's testimony he did have dealings with Applicant. Applicant testified he was found on his aunt's property, but he was not cooking meth for his aunt at the time.

Applicant further testified he did not go to his trial, which he in his own words acknowledged was a "stupid" decision. He explained he did not go to his trial because he was

scared. He also testified he did not go to trial because he was at work one day and his driveway was washed out the next day. He elaborated he did not recall if Counsel offered to pick him up at home and did not recall refusing any offers from Counsel to pick him up.

He testified he was arrested after his trial and went to a sentencing hearing, where the judge read his sentence. He further testified at that time, he and Counsel discussed an appeal and a motion for reconsideration. Applicant elaborated Counsel told him he would take care of everything, which Applicant took to mean Counsel would file everything. He testified he did not know if Counsel filed a motion for reconsideration.

Following Applicant's testimony, Applicant rested, and Respondent presented the testimony of Counsel. Counsel testified he has been practicing law since 1997, and he has been employed with the Eleventh Circuit Public Defender's Office since 1999, so the majority of his practice has involved criminal law. Counsel testified he met with Applicant in person and talked to him via telephone, and his in-person meetings with Applicant were longer than his phone conversations with him. He testified Applicant was arrested in July 2014, and Counsel met with him in the jail on August 5, 2014, where he reviewed with Applicant the charges, the potential penalties, the elements, and the risk of harm. He also testified he told Applicant he was facing up to thirty years and explained concurrent and consecutive sentences to Applicant, although he did not specifically use the terms "consecutive" and "concurrent." Counsel explained he informed Applicant he was facing up to thirty years, and the court could stack each sentence on top of each other. He further testified on September 11, 2014, he received a plea offer from the State, which Applicant rejected, and on September 12, 2014, a preliminary hearing was held. Counsel testified Applicant had two appearances in October and November 2014, during which time Applicant

informed him he would not plead guilty; therefore, the trial was set for April 2015. He also testified in March 2015, he reviewed everything for trial with Applicant. Counsel testified Applicant understood everything Counsel explained to him. He also testified the last time he saw Applicant was April 7, 2015.

He testified he sent initial discovery to Applicant on August 27, 2014, and met with Applicant on September 4, 2014, to review the discovery and discuss that Applicant's co-defendant had pled guilty to these charges. Counsel testified the State had pseudoephedrine records, which showed Applicant was buying pseudoephedrine and is used in the manufacturing of methamphetamine. He testified Applicant alleged he was buying pseudoephedrine for his uncle, and his uncle paid him to purchase pseudoephedrine. He also testified Applicant's co-defendant testified against him at trial, which was important. Additionally, the State had the landlord testify as to Applicant's involvement in the lease and payments.

He testified he and Applicant discussed Applicant's version of the facts, and Applicant alleged during the time in which the camper was being used as a meth lab, he had moved out and was living with his aunt. Counsel further testified Applicant did not give him the names of any witnesses to investigate, but he did speak with Applicant's aunt prior to trial, who did tell him Applicant was living with her, but she could not account for Applicant's whereabouts. He testified the aunt also told him Applicant would occasionally spend the night with his wife, his co-defendant. He also testified if Applicant were to testify at trial, he would have presented the aunt's testimony in order to supplement Applicant's testimony.

Counsel further testified the State offered to drop one of Applicant's unlawful neglect of a child charges in exchange for a plea to the remaining two charges, which was the same offer

Applicant's co-defendant took. He testified ninety percent of the time, the State does not make any recommendations regarding sentencing. He testified he discussed the plea offer with Applicant, but Applicant did not want to plead guilty. Counsel explained he told Applicant he would likely receive an active prison sentence, as Applicant's co-defendant received an active sentence, but Applicant did not want to spend any time in prison, which he discussed with the solicitors.

He testified that at lunch on Wednesday, April 15th, he was informed they would pick a jury for Applicant's trial that afternoon, so he called Applicant. He further testified Applicant was working out of town, so Counsel picked a jury without Applicant and also made pre-trial motions. Counsel further testified the next day, Applicant did not appear for trial, and Counsel informed Applicant the trial would proceed without him. He explained Applicant told him his driveway was washed out, to which Counsel asked Applicant if he needed a ride and also told Applicant he could pick him up for trial. He further explained Applicant said his clothes were muddy, so he could not come to court in them. He also testified Applicant informed him he would appear to plead guilty the following day, but Applicant did not appear. Counsel testified based on this, Applicant did not want to appear at trial.

He also testified he made no guarantees to Applicant they would win at trial, because Counsel cannot know what a jury is going to do. He testified he explained to Applicant the evidence was circumstantial, and it would have been Applicant's word versus his co-defendant's word. Counsel also testified he made objections during the trial, and he objected to the pseudoephedrine records as well as Agent Merckle testifying beyond his training and experience, but that issue was affirmed on appeal.

Counsel testified he did not discuss a motion to reconsider with Applicant, but he is not required to discuss a reconsideration with his clients. He also testified he typically does not discuss motions to reconsider with his clients. He testified had Applicant asked him to file a motion to reconsider, he would have filed one. Counsel testified he does not recall ever having a client's sentence reduced on a motion to reconsider after the client had been tried in his or her absence. He explained motions to reconsider are typically unsuccessful. He testified, however, he and Applicant did discuss an appeal; and Counsel filed an appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant's allegations are ineffective assistance of counsel for: (1) failing to prepare for trial; (2) failing to investigate; (3) failing to file a motion to reconsider the sentence; and (4) informing Applicant he had a chance at winning at trial.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the

trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 444, 334 S.E.2d at 815.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 442, 334 S.E.2d 815. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” *Id.*, 300 S.C. at 117, 385 S.E.2d at 625 (internal citation omitted). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this court finds Applicant has failed to carry his burden in this action. Below are this court’s findings in regards to each of Applicant’s allegations of ineffective assistance of counsel.

Counsel’s alleged failure to prepare for trial

Applicant alleges Counsel was ineffective for failing to prepare for trial. In particular, Applicant alleges Counsel was ineffective for failing to fully inform Applicant of the elements of the offenses and the potential sentences, specifically the difference between concurrent and consecutive sentences, and for failing to discuss the evidence with Applicant. “There is a strong

presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 73, 659 S.E.2d 140, 144 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This court finds Counsel’s testimony with respect to this allegation credible, whereas Applicant’s testimony is not credible. Counsel testified he met with Applicant in person numerous times and also talked with Applicant on the phone, approximately seven times total. During these meetings, they discussed everything, including potential sentences, specifically that Applicant was facing up to thirty years imprisonment and that the sentences for each charge could be stacked on top of one another, the elements of the offenses, Applicant’s constitutional rights, the risk of harm in proceeding to trial, Applicant’s version of the facts, defenses, and the plea offer. Counsel also testified he reviewed all of the evidence with Applicant, including the pseudoephedrine records and the fact Applicant’s co-defendant would be testifying against him at trial and how she would be an important part of the prosecution’s case. This court, therefore, finds Applicant has failed to establish any deficiency on the part of Counsel. *See Harris*, 377 S.C. at 75, 659 S.E.2d at 145 (finding trial counsel was not deficient when he had been practicing law for a number of years and had met with the applicant, however brief, particularly in light of the fact counsel is presumed to have rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case).

This court similarly finds Applicant has presented no evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this court with any evidence as to what benefit could have been realized from additional preparation by Counsel. *See Id.* ("Furthermore, Harris did not offer any evidence or argument as to how counsel's alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel's alleged deficient performance was prejudicial to Harris."). Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate

Applicant further contends Counsel was ineffective for failing to investigate. In particular, Applicant contends Counsel was ineffective for failing to investigate and call his aunt as a witness at trial. "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker*, 350 F.3d at 442 (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."

Porter, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Applicant admitted he did not provide Counsel with any leads or witnesses to investigate. Furthermore, Counsel testified he met with Applicant's aunt prior to trial in an effort to support Applicant's contention he had moved out before the camper was used as a meth lab, but Applicant's aunt could not account for Applicant's whereabouts at all times. Indeed, Counsel testified Applicant's aunt informed him Applicant would occasionally spend the night with his wife, who was his co-defendant. Additionally, Counsel testified Applicant's testimony would only supplement Applicant's testimony at trial, but Applicant failed to appear and present his side of the story to the jury. Based on the foregoing, this court finds Applicant has failed to establish any deficiency on the part of Counsel.

This court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant wholly failed to present the testimony of any of these witnesses at the evidentiary hearing. Applicant's bare assertions as to what these witnesses would have testified, without more, do not give rise to the level of proof required for Applicant to meet his burden. *See Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result."). In addition, Applicant has wholly failed to provide this court with any additional investigation counsel Casto should have performed or would have been beneficial to his case. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to file for a motion for reconsideration

Applicant further alleges Counsel was ineffective for failing to file a motion for reconsideration of his sentence. Applicant testified after his sentencing, he and Counsel discussed a motion to reconsider as well as an appeal. He further testified during this discussion, Counsel told him he would "take care of everything," which Applicant took to mean Counsel would file an appeal and a motion to reconsider. Applicant failed to testify he asked Counsel to file a motion to reconsider. Counsel, however, testified he did not recall if he and Applicant discussed a motion for reconsideration, but he did recall them discussing an appeal. He further testified it is not in his normal practice to discuss a motion to reconsider with his clients, but if Applicant had asked for one, Counsel would have filed a motion to reconsider. This court finds Counsel's testimony credible, whereas Applicant's testimony is not. Accordingly, because Applicant did not ask Counsel to file a motion for reconsideration of his sentence, Applicant has failed to establish Counsel was deficient.

Similarly, this court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976); *Clark v. State*, 259 S.C. 378, 383, 192 S.E.2d 209, 210 (1972). To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive; or that the sentence constitutes cruel and unusual punishment per se. *Clark*, 259 S.C. at 383, 192 S.E.2d at 210; *State v. Cogdell*, 273 S.C. 563, 569-70, 257 S.E.2d 748, 751 (1979). Here, Applicant was charged with three counts of unlawful conduct towards a child. A person who is convicted of or pleads guilty to unlawful conduct towards a child "must be fined in the discretion of the court or imprisoned not more than ten years, or both" S.C. Code Ann. §

63-5-70(B). Applicant was sentenced to a term of imprisonment of eight years for each charge of unlawful conduct towards a child. The sentence Applicant received was well within the sentencing range prescribed. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged promise to Applicant regarding success at trial

Applicant alleges Counsel was ineffective for informing him he had a good chance of prevailing at trial. Applicant testified during one of his brief discussions with Counsel, Counsel informed him he had a chance to win at trial. On the other hand, Counsel testified he made no guarantees to Applicant about his chances of prevailing at trial. Indeed, Counsel testified he had no way of predicting what a jury would do, so he did not promise Applicant he would be acquitted at trial. Counsel simply informed Applicant the State's case was based on circumstantial evidence and, should he testify at trial, the evidence would have rested between Applicant's word and his co-defendant's word. This court finds Counsel's testimony with respect to this allegation credible, whereas Applicant's testimony is not credible. Because Counsel made no guarantees to Applicant about the result at trial, this court finds Applicant has failed to establish any deficiency or resulting prejudice on the part of Counsel. Indeed, Applicant wholly failed to testify this alleged promise by Counsel led him to proceed to trial. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

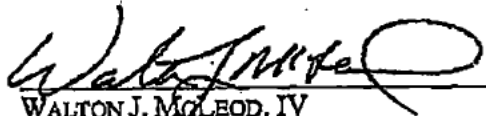
Based on all the foregoing, this court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 1st day of March, 2019.


WALTON J. MOLEOD, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

WITNESSES

LCSD
S. Black

Law Enforcement Case #: 14003000

DOCKET NO. 2015GS3200989The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2015

ARREST WARRANT NUMBER

14-STR-00125

Referencing 2014GS3202956

ACTION OF GRAND JURY

THE STATE
vs.

Johnny Neal Sexton II

TRUE BILLForeperson of Grand Jury
Date: 4/13/15

VERDICT

GUILTY

CDR #: 2481

Indictment for

Unlawful Conduct Towards a Child

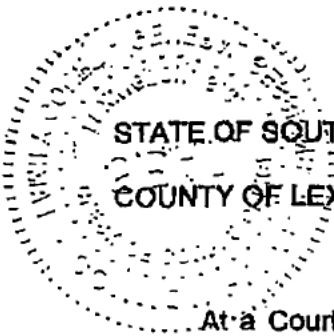
§ 63-05-0070

Foreperson of Petit Jury
Date: 4/17/15

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. O.C.C.P., G.S. & F.C.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Unlawful Conduct Towards a Child

§ 63-05-0070

At a Court of General Sessions, convened on April 2015, the Grand Jurors of Lexington County present upon their oath:

That Johnny Neal Sexton II in Lexington County, South Carolina, on or between November 1, 2013 and February 21, 2014, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, Minor 2 unlawfully place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety, to wit: exposing the child to drug activity and/or deplorable living conditions, defined in 63-7-20 and in violation of Section 63-5-70 South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

Lex. Co. C.O.P. G.S. & F.C.

TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE VS.

Johnny Neal Sexton II

AKA:

Race: White Sex: M Age: 37

DOB: SS#

Address:

City/State/Zip: Columbia, SC 29016

DL#: SID#: SC01025894

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless person

IN THE COURT OF GENERAL SESSIONS

INDICMENT/CASE#: 2015GS3200989

AW#: 14-STR-10123

Date of Offense: 2/21/2014

S.C. Code §: 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS.

In violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-GS-32-990 + 991
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit for 24 days time served.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Det. Waiver Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 17.9 (Public Def/Prob)

§ 14-1-212 (Law Enforc. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(B)(1) (Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

4-17-2015

WITNESSES
LCSD
S. Black

Law Enforcement Case #: 14003000

DOCKET NO. 2015GS3200990

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

APRIL TERM 2015

14-STR-00126

Referencing 2014GS3202955

THE STATE
vs.

Johnny Neal Sexton II

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 4/13/15

VERDICT

GUILTY

CDR #: 2481

Indictment for

Unlawful Conduct Towards a Child

§ 63-05-0070

Foreperson of Petit Jury
Date: 4/17/15

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.O.P. G.S. & R.O.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Unlawful Conduct Towards a Child

§ 63-05-0070

At a Court of General Sessions, convened on April 2015, the Grand Jurors of Lexington County present upon their oath:

That Johnny Neal Sexton II in Lexington County, South Carolina, on or about between November 1, 2013 and February 21, 2014, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, ^{Minor 1}

unlawfully place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety, to wit: exposing the child to drug activity and/or deplorable living conditions, defined in 63-7-20 and in violation of Section 63-5-70 South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

Lexington, S.C. 29016

A TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Johnny Neal Sexton II

AKA:

Race: White Sex: M Age: 37

DOB:

SSN:

Address:

City/State/Zip: Columbia, SC 29016

DL#:

SID#: SC01025894

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless person

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS(CSC) § 17-25-45
w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar# 189169

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-GS-32-989 + 991☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. credit for 30 days time served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-205 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(B)(1) (Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3200990

A/W#:

Date of Offense: 2/21/2014

S.C. Code § 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS(CSC) § 17-25-45
w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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§ 14-1-205 (Assessments 107.5 %)

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§ 56-5-2995 (DUI Assessment)

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TOTAL:

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SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3200990

A/W#:

Date of Offense: 2/21/2014

S.C. Code § 63-05-0070

CDR Code #: 2481

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☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

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w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

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months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-205 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

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§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3200990

A/W#:

Date of Offense: 2/21/2014

S.C. Code § 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS(CSC) § 17-25-45
w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

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Recipient:

*Fine:

§ 14-1-205 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

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§ 14-1-212 (Law Enforce. Funding)

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§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3200990

A/W#:

Date of Offense: 2/21/2014

S.C. Code § 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS(CSC) § 17-25-45
w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-GS-32-989 + 991☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. credit for 30 days time served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-205 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(B)(1) (Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3200990

A/W#:

Date of Offense: 2/21/2014

S.C. Code § 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS(CSC) § 17-25-45
w/minor 1st or Lewd ActThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Present

WITNESSES
LCSD

S. Black

Law Enforcement Case #: 14003000

ARREST WARRANT NUMBER

14-STR-00127

Referencing 2014GS3202957

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 4/13/15

VERDICT

GUILTY

[Signature] 4/17/15
Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS3200991

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2015

THE STATE
vs.

Johnny Neal Sexton II

CDR #: 2481

Indictment for

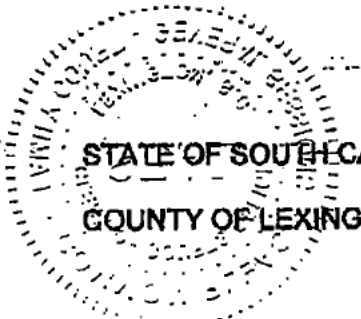
Unlawful Conduct Towards a Child

§ 63-05-0070

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 Unlawful Conduct Towards a Child

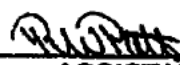
§ 63-05-0070

At a Court of General Sessions, convened on April 2015, the Grand Jurors of Lexington County present upon their oath:

That Johnny Neal Sexton II in Lexington County, South Carolina, on or between November 1, 2013 and February 21, 2014, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, ^{Minor}₃

unlawfully place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety, to wit: exposing the child to drug activity and/or deplorable living conditions, defined in 63-7-20 and in violation of Section 63-5-70 South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Johnny Neal Sexton II

AKA:

Race: White Sex: M Age: 37DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Columbia, SC 29016DL#: [REDACTED] SID#: SC01025894*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Children / Legal custodian, unlawful neglect of child or helpless personin violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481☒ NON-VIOLENT ☐ VIOLENT ☐ SPRIIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or 1.cwd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor 13969 SC Bar# [REDACTED] Defendant [REDACTED] Attorney for Defendant [REDACTED] SC Bar# [REDACTED]WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2015-63-32-989 + 990
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit for 23 days time served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(B) (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$130

Clerk of Court/Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA219 (03/2011)

Lex. Co. C.C.O.P., G.S. & F.O.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3200991

A/W#:

Date of Offense: 2/21/2014S.C. Code § : 63-05-0070CDR Code #: 2481

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/F. beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2141Sentence Date: 4-17-2015