

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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S.C. SUPREME COURT

Appeal from Oconee County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY M. WIRTZ,

APPELLANT.

APPELLATE CASE NO. 2020-001388

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED OCTOBER 12-13, 2020.....	1
JURY SELECTION.....	3
DEFENSE MOTION TO SUPPRESS.....	5
COURT’S RULING DENYING MOTION	10
DISCUSSION OF CURATIVE INSTRUCTION REGARDING COURT’S EXHIBIT #4.....	12
OPENING REMARKS BY THE COURT	13
OPENING STATEMENT BY MS. SIMMONS	19
OPENING STATEMENT BY MS. BYFORD.....	25
TESTIMONY BY FIRST SERGEANT JUSTIN PELFREY	28
Direct Examination by Mr. Alderman	29
Cross Examination by Ms. Byford.....	52
Redirect Examination by Mr. Alderman.....	58
TESTIMONY BY CORPORAL JAKE SPENCE.....	60
Direct Examination by Ms. Simmons.....	60
Cross Examination by Ms. Byford.....	66
TESTIMONY BY SERGEANT DAVID PHILPOTT	66
Direct Examination by Ms. Simmons.....	67
Cross Examination by Ms. Byford.....	72
Redirect Examination by Ms. Simmons	74
TESTIMONY BY MEREDITH LANFORD	75
Direct Examination by Ms. Simmons.....	75
Cross Examination by Ms. Byford.....	83
Redirect Examination by Ms. Simmons	84
STATE RESTS	85
DEFENSE MOTION FOR DIRECTED VERDICT	86
COURT’S RULING DENYING MOTION	88

DEFENSE RESTS	88
CLOSING ARGUMENT BY MR. ALDERMAN	89
CLOSING ARGUMENT BY MS. BYFORD	100
JURY CHARGE	106
VERDICT	122
SENTENCING	124
DEFENDANT’S MOTION TO SUPPRESS.....	129
COURT’S EXHIBIT #1	135
COURT’S EXHIBIT #2	138
STATE’S EXHIBIT #3A.....	140
STATE’S EXHIBIT #3B.....	141
STATE’S EXHIBIT #3C.....	142
STATE’S EXHIBIT #3D.....	143
STATE’S EXHIBIT #3E	144
STATE’S EXHIBIT #3F	145
STATE’S EXHIBIT #3G.....	146
STATE’S EXHIBIT #3H.....	147
STATE’S EXHIBIT #5.....	148
INDICTMENT, ARREST WARRANT AND SENTENCING SHEET PERTAINING TO TRAFFICKING CHARGE	151
INDICTMENT ARREST WARRANT AND SENTENCING SHEET PERTAINING TO WEAPONS CHARGE	155
CERTIFICATE OF COUNSEL	156

COURT’S EXHIBIT #3 IS ON FILE WITH THIS COURT

1 In the Court of General Sessions for the
2 State of South Carolina, County of Oconee

3

4 Case No.: 2020-GS-37-00226

5 2020-GS-37-00229

6 State of South Carolina,

7 Plaintiff,

8 vs. Transcript of Record

9 Gary M. Wirtz,

10 Defendant.

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16 October 12, 2020 through October 13, 2020

17 Walhalla, South Carolina

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21

22 BEFORE:

23 The Honorable Letitia H. Verdin

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1

APPEARANCES

2

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JURY SELECTION

1 PROCEEDINGS

2 THE COURT: All right. This is the State of South
3 Carolina versus Gary Martin Wirtz, and I'm going to go
4 through some questions regarding that. The first thing
5 that I'm going to do is ask you, ladies and gentlemen,
6 if you know anybody who's involved in the case. So,
7 Ms. Simmons, I will ask you to stand, introduce
8 yourself and the folks at your table.

9 MS. SIMMONS: Good morning. My name is Lindsey
10 Simmons. I am deputy solicitor here in Oconee County.
11 I serve at the pleasure of your elected solicitor,
12 David Wagner. And this is David Alderman, who is an
13 assistant solicitor in our office. He will be
14 assisting with this trial. And this is first sergeant
15 Justin Pelfrey from the Oconee County Sheriff's Office.

16 THE COURT: All right. Is any member of the jury
17 panel acquainted by blood or marriage or otherwise
18 related to in any way Ms. Simmons or Mr. Alderman of
19 the Oconee County Sheriff's Office -- excuse me, the
20 Solicitor's Office, I'm so sorry? If so, please stand.
21 I am going to ask that question a little more broadly.
22 You heard that your circuit solicitor is David Wagner
23 and you are in the tenth judicial circuit. And for
24 those of you who do not know, that is Anderson and
25 Oconee County. And does any member of the jury panel

JURY SELECTION

1 case. And if you do, I'll ask you to please stand.

2 The first allegation is for trafficking in
3 methamphetamine, 10 grams but less than 28 grams. The
4 Defendant Gary Martin Wirtz did, it alleges, that the
5 Defendant Gary Martin Wirtz did, on or about July 31st,
6 2019, in Oconee County knowingly sell, manufacture,
7 deliver, purchase, or bring into the state or provide
8 financial assistance or otherwise aid, abet, or
9 attempt, or conspire to sell, manufacture, deliver, or
10 purchase or bring into this state or was in knowing or
11 constructive possession, actual constructive possession
12 10 to 28 grams of methamphetamine, a controlled
13 substance, in violation of the South Carolina laws.

14 And that he did, on or about July 31st, 2019,
15 while committing the crime of trafficking
16 methamphetamine, a crime of violence, have in his
17 possession a Ruger LCP pistol. And that indictment is
18 for possession of a weapon during the commission of a
19 violent crime.

20 Any member of the jury panel familiar with the
21 allegations in this particular case, think you know
22 anything about it, have heard anything about it,
23 anything like that? And if so, please stand. And none
24 are standing.

25 Has any member of the jury panel or immediate

DEFENSE MOTION BEFORE THE COURT

1 Thrift. Thank you so much, I'm so sorry. Roger
2 Thrift, Juror No. 178. I am so sorry, that my fault.

3 All right. Do y'all want to go ahead and try to
4 take up our motions at this time?

5 MS. SIMMONS: Yes, Your Honor.

6 THE COURT: Okay. Anybody need a break? If
7 anybody needs a break, just let me know.

8 MS. SIMMONS: Okay. Judge, we did need to pass up
9 the one other policy to Your Honor.

10 THE COURT: Okay. I have read the one policy that
11 you passed up in the notebook; is there another? Okay.

12 MS. SIMMONS: Oh, the other policy is attached
13 to Ms. Byford's motion.

14 THE COURT: I have read that. I have read that.
15 I have read both of them in detail.

16 All right. Ms. Byford.

17 MS. BYFORD: Thank you, Your Honor. Would it be
18 okay with the court if I just --

19 THE COURT: You do whatever you need to do.

20 MS. BYFORD: Just for the motion, Judge.

21 THE COURT: The court reporter is very thankful.

22 MS. BYFORD: I will try not to spread. Your
23 Honor, I know that you have read my motion and looked
24 through the information that I have provided. And I
25 know that you are also aware that the State has now

DEFENSE MOTION BEFORE THE COURT

1 supplemented their original response to my request to
2 have the inventory policy. So I'm just going to -- I'm
3 going to pivot my argument slightly from the argument
4 that was contained in my motion, because I do think
5 they produced a policy that contains the magic language
6 required by the two cases that I cited.

7 But what I want to point out is that I believe the
8 intention of those cases remains the same. And the
9 reason the Supreme Court came to the conclusion that it
10 did is because they didn't want the police to use the
11 inventory search as the ability to have this cart
12 blanche to just tear apart a car, look for evidence of
13 a crime, instead of actually inventorying the vehicle.

14 And I would still argue to the Court that that is
15 what happened in this case. I know you have reviewed
16 the video, you have heard the exchange between the
17 officer and my client. And he asks the defendant
18 several times, What are we going to find in the car,
19 what are we going to find in the car. And, again, it
20 is not until Mr. Wirtz says, You can't search that car,
21 I don't consent to a search of that car, that he
22 switches to use the term "inventory". And I think
23 that's very telling of the motivation of the officers.

24 Yes, they did eventually do an inventory. And
25 they have a policy governing it, but their intention

DEFENSE MOTION BEFORE THE COURT

1 before they did it was to find evidence of a crime in
2 that car. A lot of the conversation that is contained
3 on the video prior to the search indicates that that is
4 what the officer is thinking.

5 I would just ask the Court to find that this
6 search -- the inventory -- it was pretext. This was a
7 not-consented-to search of the vehicle. And the drugs
8 that were found as a result should be suppressed.

9 THE COURT: Thank you. And I want to just note
10 for the record, if I could please, Ms. Byford, how much
11 I appreciate your written motion and how thorough it
12 was, and even including case law with it and the policy
13 that, at least at the time, the policy that you had
14 with it. And I just want to thank you and tell you how
15 much the Court appreciates your very thorough work on
16 that.

17 MS. BYFORD: Thank you, Your Honor.

18 THE COURT: Ms. Simmons.

19 MS. SIMMONS: Your Honor, I believe that
20 Ms. Byford's words were that "law enforcement cart
21 blanche tore apart the car". Judge, case law and the
22 Sheriff Department policy takes into consideration the
23 caretaker function as to preservation of evidence and
24 contents of a car very seriously.

25 Judge, as to that caretaker function, the

DEFENSE MOTION BEFORE THE COURT

1 contraband in question was found in a wallet, purse
2 type item that was -- I wouldn't say purse, it is a
3 black bag, and contained Mr. Wirtz's personal effects.
4 That certainly is something that, pursuant to that
5 caretaker type function, law enforcement would need to
6 inventory as an area where important items would be
7 stored; indeed in this case, cell phones, money, and
8 important items belonging to Defendant were found
9 there.

10 Judge, at some point in time this case did switch
11 to an inventory search, but that was at which time the
12 Defendant was under arrest for driving under
13 suspension. It had been confirmed he had an
14 outstanding warrant for his arrest for, I believe, a
15 municipal court level resisting arrest. And a new
16 crime had been committed for which he was under arrest,
17 that was the false information to law enforcement.

18 So, yes, Your Honor, we did switch to an inventory
19 type role in this situation, but it is consistent with
20 case law and the Sheriff's Department policy what the
21 officers did do, and they followed their policy as to
22 containers and two officers being present and
23 inventorying the vehicle.

24 THE COURT: All right. And if my memory serves me
25 right from the video, the owner of the vehicle, the

DEFENSE MOTION BEFORE THE COURT

1 actual owner of the vehicle was not present at the
2 scene?

3 MS. SIMMONS: That is correct, Your Honor. The
4 owner of the vehicle, I believe, is a relative of
5 Mr. Wirtz. They were not present, nor did he summon
6 them to the scene.

7 THE COURT: Understood. Understood. Well, I do
8 find that the deputy in this case acted in full
9 accordance with the policy of the Oconee County
10 Sheriff's Office. I do find that that policy is in
11 compliance with Vertina and Wells, as well as State
12 Court Case State v. Miller and 4th Circuit Case, U.S.
13 versus Matthews. I do find that policy complies.

14 I also find that the towing, the decision to tow
15 the vehicle, was in compliance. Mr. Wirtz was charged
16 with driving under suspension and false information and
17 was driving a vehicle that was not his, it was a
18 relative's vehicle, but necessarily needed to be towed
19 from the scene.

20 I further find that the officers acted in
21 accordance with the policy and did not act in a
22 pretextual manner in inventorying this vehicle, that a
23 bag such as the nature that this evidence was found in
24 would have to be inventoried. In any event, would have
25 to be inventoried for, not only to protect Mr. Wirtz

DEFENSE MOTION BEFORE THE COURT

1 and any property he might have, but to protect the
2 Sheriff's Office both from any allegations of theft,
3 but also from anything that could be dangerous inside a
4 bag of that size. So it would necessarily need to be
5 inventoried.

6 And I find that the policy was in accordance with
7 that, and that the officers followed that policy fully.
8 And your motion is respectfully denied. Is there
9 anything else that we need to take up?

10 MS. BYFORD: Your Honor, if we could just make the
11 two policies Court exhibits.

12 THE COURT: Exactly. Okay. We will do, the first
13 policy that is attached to your motion, and I believe
14 that it is -- I don't know if I can find it in my
15 thing, I'm sorry. Oconee County Sheriff's Office
16 General Order 12, that will be Court's Exhibit No. 1.

17 And then the second Court's exhibit would be the
18 policy. This is a 171-page policy. Would you want any
19 particular -- would you want Section D on Page 12,
20 Inventory? We may need to do --

21 *(Whereupon, Court's Exhibit No(s). 1 marked for*
22 *identification and received in evidence.)*

23 MS. BYFORD: I believe that -- I don't have that
24 policy in front of me to check the pages, but I would
25 be perfectly fine with just having the portions

DEFENSE MOTION BEFORE THE COURT

1 relevant to our argument here today as a Court's
2 exhibit. I think that's only like two pages.

3 MS. SIMMONS: Judge, I believe it is page 12 and
4 maybe the preceding page.

5 THE COURT: It looks like 12 and 13 are the
6 applicable sections. And I'm going to take them out.
7 But I'm not going to mess your book up, your whole
8 policy book. I am going to take them out and turn them
9 to the side and maybe we can just get copies. And I'll
10 make that Court's Exhibit No. 2.

11 MS. BYFORD: Thank you, Judge.

12 THE COURT: Thank you.

13 *(Whereupon, Court's Exhibit No(s). 2 marked for*
14 *identification and received in evidence.)*

15 MS. SIMMONS: Judge, as to -- for the record, we
16 did submit to Your Honor for your review prior to court
17 the entirety of the acts on video in this case. It is
18 not our intention, obviously, to introduce that entire
19 disc at trial, but we would ask, since the Court
20 considered the disc in its entirety, that we also mark
21 this as a Court's exhibit.

22 THE COURT: All right. Then, the full disc,
23 unredacted, will be Court's Exhibit No. 3.

24 *(Whereupon, Court's Exhibit No(s). 3 marked for*
25 *identification and received in evidence.)*

DEFENSE MOTION BEFORE THE COURT

1 MS. SIMMONS: And, Judge, to that issue we have
2 reached an agreement as to the admissibility of the, I
3 think, 12-minute video at this point. And as we
4 discussed in chambers, I think we would agree and ask
5 the Court to issue a somewhat curative instruction on
6 that.

7 THE COURT: I will. And I went through briefly
8 what I would do. But just, Mr. Wirtz, to fill you in
9 on this redacted video, I am going to instruct the jury
10 that I have taken out certain portions of this video
11 that simply are not relevant to this case and that they
12 may not consider anything that the video leaves out, so
13 they don't have any questions as to what has been taken
14 out. All right. Anything else?

15 MS. BYFORD: Nothing from the Defense, Your Honor.

16 THE COURT: All right. So let's plan for us to
17 meet back up at 9:15 tomorrow morning just to go over
18 anything that might come up in the evening. And then
19 we'll plan to get going at 9:30 with the jury. Thank
20 y'all.

21 MS. SIMMONS: Thank you.

22 THE COURT: Thank you.

23 MS. SIMMONS: This will be Court's Exhibit No. 4.

24 *(Whereupon, Court's Exhibit No(s). 4 marked for*
25 *identification and received in evidence.)*

10-13-2020 PROCEEDINGS

1 (This case adjourned for the day at 12:40 p.m.)

2 * * *

3 10-13-2020 PROCEEDINGS

4 THE COURT: I apologize for the delay in getting
5 started this morning. I had a call from another
6 circuit and I needed to deal with another issue over
7 there, so I'm sorry. All right. I think that all of
8 our jurors are here.

9 THE BAILIFF: Yes, ma'am.

10 THE COURT: I think that we are ready to get
11 going. Is there anything that we need to take up?

12 MS. SIMMONS: Your Honor, we have premarked all of
13 the exhibits, so that is taken care of. And just for
14 clarification, are you okay if we remove our mask, if
15 we are away from the jury?

16 THE COURT: Totally. I'm totally okay with that.
17 And I think that it will help the court reporter
18 immensely, so let's definitely do that.

19 MS. SIMMONS: Thank you.

20 THE COURT: And it looks like we are back up and
21 are you pleaing on the --

22 MS. SIMMONS: With some modification, we cannot
23 connect to the jail still, but we can -- but video.
24 And we actually, Your Honor, we had agreed to put all
25 of the photographs on a disc, because the presenter is

OPENING REMARKS BY THE COURT

1 not working. And the hard copies of the photos will go
2 back with the jury as well. We have all of those
3 things marked.

4 THE COURT: All right. Very good. We are going
5 to take a picture of this set-up. I had somebody
6 calling me from Colleton asking if we had begun it in
7 Greenville with the plexi glass booths. And I said,
8 No, we have not done it in Greenville, but I'm in
9 Oconee County and they already have it set up. So I
10 told them that y'all are way ahead of the curve and
11 they wanted a picture of it. So, they were good to go.
12 All right. Thank you.

13 Y'all sit anywhere you want to sit. The only
14 people with assigned seats are these people right here,
15 and our forelady.

16 Good morning, ladies and gentlemen. I want to
17 first apologize to you about starting late this
18 morning. I want to tell you that that is in no way any
19 reflection on the lawyers. They have been here and
20 ready to go; that is completely my fault. I had an
21 issue to come up from another county and had to take
22 care of it this morning, and I'm very, very sorry about
23 that. We will do our best not to keep you waiting any
24 more. But thank you very much for being here.

25 I want to give you basic instructions before we

OPENING REMARKS BY THE COURT

1 start going. I'm not going to give you my full initial
2 charge or instructions to you, because this is going to
3 be a short trial; we know that it is going to be a
4 short trial. We already talked about yesterday, that
5 you can't discuss this case with one another. You
6 can't discuss this case with your family. But you are
7 probably not going to get to go home and see them
8 before you make a decision in this case. You can't
9 discuss this case on social media or anything like
10 that.

11 However, once you have rendered your verdict in
12 this case, you can discuss it with anyone that you want
13 to, or not discuss it with anyone that you want to. So
14 that is a large part of my initial charge, but we've
15 already gone over that. What I am going to say to you
16 now is not intended to be my instruction on the law,
17 this is merely an explanation of the procedures that we
18 are going to follow throughout the trial of this case.

19 As you know, the defendant is charged in two
20 indictments that are filed in this court. One for
21 trafficking methamphetamine, greater than 100 and less
22 than 28 grams, and possession of a weapon during the
23 commission of a violent crime. And he's pled not
24 guilty to both of these; therefore, the burden of proof
25 is on the State to prove each and every element of the

OPENING REMARKS BY THE COURT

1 indicted charges against the defendant.

2 It'll be your duty to determine whether or not the
3 State has met that burden. You are the sole judge of
4 the facts. I am the judge of the law, but you-all are
5 the judge of the facts. That means that you determine
6 the facts as you find them to be. You listen to the
7 testimony, see the evidence that is presented. And
8 from that you determine what the facts in this case
9 are.

10 You will take the law, just as I give it to you,
11 and apply the law to the facts. And from that you will
12 come up with your verdict whether or not the State has
13 met its burden of proof in this case. Now, when I tell
14 you that I'm the sole judge of the law, what that means
15 is you might have a different opinion what the law is
16 or what the law ought to be, but you are sworn under an
17 oath that you are going to take in just a moment to
18 follow that law just exactly as I give it to you. All
19 right.

20 And I'll charge you on the law at the end of this
21 case. I told you that you cannot discuss the case even
22 with one another. I know that you are broken into two
23 groups and we are doing unusual procedures right now,
24 but you are broken into two groups, but you cannot
25 discuss this case with one another until it's time to

OPENING REMARKS BY THE COURT

1 begin your deliberation. And we think that that is
2 going to be in probably not too long.

3 From time to time you may hear the lawyers say
4 that they need to take up a matter of law with me, or
5 speak to me at the Bench. And because of what is going
6 on in our world with pandemic, we may do something that
7 I have never done, we may step out the door to take up
8 a matter of law. If we do that, we are not hiding the
9 ball from you in any way. I told you that you are the
10 sole judges of the facts; I can't comment on the facts
11 or say anything about the facts, but on ruling on the
12 law I have to talk about facts. So, it's not to hide
13 anything from you in any way if we are outside
14 speaking, we will be out working and we will be back as
15 quickly as possible .and sufficient to the determine
16 the credible.

17 And you have to determine the credibility of the
18 witnesses. For these witnesses, credibility means
19 believability. And you determine whether a witness is
20 credible or believable, just like you do everyday in
21 dealing with folks. You look at how they act. You
22 think about what they said and how it matches up with
23 other things in this case, how it matches up with other
24 testimony or evidence. And from that, you can
25 determine who, if anyone, is telling the truth in the

OPENING REMARKS BY THE COURT

1 case. But that is in your sole discretion to determine
2 the credibility of witnesses.

3 Now, Madam Foreperson, I have told you that your
4 job is going to be to lead the deliberations in the
5 jury deliberation room. You will have an added
6 responsibility when you're in there during these odd
7 times, and that is to make sure that everybody stays
8 spread out, nobody feels uncomfortable, that we are
9 doing what we need to do to keep everybody safe.

10 But -- and then ultimately you will have a verdict
11 form, and I'll ask you to read and sign and date the
12 verdict form once the jury has come up with its
13 unanimous decision.

14 As I have told you, the burden of proof is on the
15 State. They must prove each and every element of the
16 indictment beyond a reasonable doubt. It will be your
17 job to determine if they have done so, and from that
18 you will come up with your verdict.

19 All right. With all of that being said, any
20 objection to my initial charge on the law from the
21 State?

22 MS. SIMMONS: No, Your Honor.

23 THE COURT: Any from the Defense?

24 MS. BYFORD: No, Your Honor.

25 THE COURT: All right then. Very well.

OPENING STATEMENT BY THE STATE

1 Madam Clerk, do you mind swearing in our jury?

2 (The jury is sworn.)

3 THE COURT: Thank you. All right. We are ready
4 to proceed.

5 MS. SIMMONS: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes.

8 OPENING STATEMENT BY THE STATE

9 MS. SIMMONS: Good morning, ladies and gentlemen.
10 I am going to take my mask off and stay a distance from
11 you folks so that the Court Reporter can take down
12 everything I'm saying.

13 First of all, I want to tell you again, my name is
14 Lindsey Simmons. I work in the Solicitor's Office here
15 in Oconee County. And this is Jason Alderman. He
16 works in the Solicitor's Office as well, and we work
17 for Solicitor David Wagner.

18 I can't thank you enough for being here today. I
19 know that these are extraordinarily difficult times,
20 and it is no fun to sit in the jury box surrounded by a
21 panel. So we are going to make this as quick as we
22 possibly can, and -- and get all the evidence to you in
23 an efficient manner.

24 The Defendant in this case is charged with two
25 things: Trafficking methamphetamine, 10 to 28 grams;

OPENING STATEMENT BY THE STATE

1 and possession of a weapon during the commission of a
2 violent crime.

3 First of all, let's talk about what trafficking
4 methamphetamine is. I know when I think of trafficking
5 methamphetamine, I expect, like, a truckload of drugs.
6 In reality, in South Carolina, trafficking
7 methamphetamine is the -- the offense is charged with
8 anywhere between 10 and 28 grams. That's not a whole
9 lot, it's a portion of a Baggie, and you're going to
10 see that later today.

11 Trafficking 10 to 28 grams is the threshold amount
12 for trafficking, and part of your responsibility will
13 be to find that the drugs in question were, indeed,
14 between 10 and 28 grams.

15 So when you look at trafficking, you don't have to
16 sell it, you don't have to drive it anywhere, it is,
17 did you possess a certain amount.

18 And possession can be proved two different ways
19 under the law. You are going to hear from Judge Verdin
20 at the end of this trial about actual possession and
21 constructive possession.

22 Actual possession may be that I have the drugs in
23 my pocket, that I actually possess them, they are on my
24 person. If I have the drugs in a bag in my hand, I'm
25 actually possessing them.

OPENING STATEMENT BY THE STATE

1 Constructive possession is me exercising dominion
2 and control over those drugs, power over their final
3 disposition. That can be that they are under my seat,
4 they are in a Baggie in my seat, in a console, anywhere
5 that I have dominion and control. In this case the
6 dominion and control would be a bag that is in question
7 in a vehicle.

8 The weapons charge is probably the simplest charge
9 to understand. The Defendant is charged with
10 possession of a weapon during the commission of a
11 violent crime. In South Carolina, the Legislature
12 decides what is a violent crime. It is a
13 classification of a crime.

14 Trafficking methamphetamine is considered a
15 violent offense. There was a weapon in the vehicle the
16 Defendant was driving in this case, and that weapon was
17 found underneath the driver's seat. That is the
18 testimony you are going to hear.

19 I want to briefly go over what I expect the
20 witnesses will say in this case today. You are going
21 to hear from First Sergeant Pelfrey from the Sheriff's
22 Office. He's going to tell you on July 31st, 2019, he
23 was on routine patrol here in the county. He was in
24 the area of Oconee County around Highway 24, where some
25 of you may know where Oakway Tractor is.

OPENING STATEMENT BY THE STATE

1 He was in that area of the county, driving down
2 the road. He sees a car pass him with a broken
3 windshield. Not a little chip, but a big crack. That
4 got his attention, and he turned around to attempt to
5 run the tag on the car.

6 The car abruptly pulled over at Oakway Tractor,
7 under the little drive-in portico. Officer Pelfrey got
8 out of the car and he immediately encountered the
9 Defendant, Gary Wirtz. He approached him, as his right
10 to do, asked him his name, what he was doing.
11 Immediately Mr. Wirtz was extremely nervous and lied
12 about his identity. I would say probably for a good 15
13 minutes maybe, he adamantly asserted he was Jeremy
14 Wirtz, giving a false birthday, a false age.

15 And the passenger, there was a passenger in the
16 car, she was truthful about who she was, and she told
17 the officer that she also knew this person.

18 MS. BYFORD: Objection.

19 THE COURT: Sustained. Yeah.

20 MS. SIMMONS: I apologize, ladies and gentlemen.
21 I veered a little far.

22 She was -- the passenger also provided information
23 to law enforcement about who she was.

24 Mr. Wirtz ultimately ended up being revealed to be
25 Gary Wirtz, and he was placed under arrest for driving

OPENING STATEMENT BY THE STATE

1 under suspension and false information to law
2 enforcement.

3 As part of Deputy Pelfrey's duty, he conducted an
4 inventory search before he towed the vehicle in
5 question, which was actually registered to a family
6 member of Mr. Wirtz. He is going to testify to you
7 that he found a bag in the driver's seat containing
8 drugs, money, and multiple cell phones. You are going
9 to see on Deputy Pelfrey's body camera, that bag was
10 actually in the possession of Gary Wirtz at the
11 beginning of the traffic stop.

12 There is going to be paraphernalia found in the
13 car, a handgun found under the driver's seat, and the
14 car is full of things that would -- purportedly would
15 belong to Gary Wirtz -- tattooing equipment, needles,
16 things of that nature.

17 The officer did find some money in the bag with
18 the drugs. That money, he counted it out, he
19 approached Mr. Wirtz, asked him, Is this your money,
20 and Mr. Wirtz said something along the lines of -- he
21 said, Is this your money in the bag with the drugs,
22 Mr. Wirtz said, Well, the money shouldn't have been in
23 the bag with the drugs. And then he abruptly thinks
24 about what he said and says, What drugs? You are going
25 to see that on video.

OPENING STATEMENT BY THE STATE

1 The officer also -- the officer is going to take
2 him to find the drugs, and he also tells the officer
3 that he has swallowed a baggy of drugs, necessitating a
4 trip to the hospital.

5 In addition to the testimony of Officer Pelfrey,
6 you are going to have his video. And that video has
7 been redacted by the Court. Judge Verdin will explain
8 that process to you, and the legalities of that. So
9 you are going to see about 12 minutes of the video of
10 their encounter.

11 You are also going to hear from Deputy Jake
12 Spence. He's also employed at the Sheriff's Office.
13 He was the backup officer in this case. He primarily
14 dealt with the female that was a passenger in the car.
15 And he is going to tell you what he observed during the
16 course of backing up Deputy Pelfrey. I anticipate his
17 testimony will be very short.

18 And you are going to also hear from David
19 Philpott, who is a sergeant with the Oconee County
20 Sheriff's Office. His job is, he is a crime scene
21 technician and he's in charge of evidence. He took the
22 drug evidence and the firearm in his safety and custody
23 in this case, and he's going to testify what he did
24 with it.

25 Finally you will hear from Meredith Lanford. She

OPENING STATEMENT BY THE DEFENSE

1 is a forensic chemist employed by the Anderson Oconee
2 Forensic Labs. She is going to tell you how drugs are
3 tested, which is a pretty interesting process, and she
4 is going to tell you what she found when she analyzed
5 the drugs in question in this case.

6 At the end of the day Mr. Alderman will come back
7 and summarize what you heard, and he will have the
8 opportunity to give you a closing argument.

9 I believe that you will see clear evidence
10 presented to you during the course of this trial that
11 Gary Wirtz is guilty of possession of a weapon during
12 the commission of a violent crime and trafficking
13 methamphetamine.

14 You will see clear and video evidence in this
15 trial that the Defendant is literally holding the bag
16 of drugs in question in this case.

17 Thank you all for your time and attention. And
18 Ms. Byford has a few opening remarks for you.

19 MS. BYFORD: Thank you, Ms. Simmons.

20 THE COURT: Ms. Byford.

21 OPENING STATEMENT BY THE DEFENSE

22 MS. BYFORD: Thank you, Your Honor. May it please
23 the Court.

24 THE COURT: Yes.

25 MS. BYFORD: Good morning, ladies and gentlemen.

OPENING STATEMENT BY THE DEFENSE

1 Welcome back. I want to start by saying something I
2 think is very important to remember based on what the
3 State just presented to you.

4 The things that Ms. Simmons said to you today, and
5 the things that I say to you today, this is not
6 evidence. This is us telling you what we think about
7 the case. But it's not evidence.

8 So all the things that she just said happened,
9 that is for you to determine whether or not they
10 happened. And you will make that determination, not
11 based on what we say here, but what is told to you from
12 that witness stand and what you watch on the video.

13 Yesterday, when we selected you, Judge Verdin said
14 something to you that I went home and thought about for
15 a while. She told you that she had had jurors tell her
16 before that serving on a jury was one of the most
17 meaningful experiences they have. And I really thought
18 about that because most of us that you see in this
19 courtroom today, we have been doing this a long time
20 and I think sometimes we forget how important what it
21 is that we do here -- how important that is.

22 This is the place, this is the process with which
23 we defend our most basic rights, our most basic
24 freedoms. The right to confront your accusers, to
25 force the State to bring you their evidence, to have it

OPENING STATEMENT BY THE DEFENSE

1 weighed by members of your community.

2 That is -- that just goes right to the heart of
3 our freedom as Americans. And it is an amazing process
4 to be a part of, and I'm so grateful for you to come in
5 here today to serve that, to be the arbiters of justice
6 for us here today.

7 The State listed -- they told you there are two
8 charges in front of you today. The State has to prove
9 each and every element of those charges beyond a
10 reasonable doubt. And that, ladies and gentlemen, is
11 our highest level of proof in the law. There are lots
12 of others. I believe in the Judge's instructions at
13 the end she will talk about some of the others. We
14 have probable cause, you may have heard that thrown
15 around. If you have ever watched the show COPS or
16 anything, they have to have probable cause for arrest.

17 You have preponderance of the evidence. If you've
18 ever been involved in a civil case, you might know
19 that. I hope none of you had to go to family court,
20 but if you have, clear and convincing evidence is the
21 standard you might have heard.

22 Clear and convincing is just what it sounds. You
23 have to be clearly convinced. But here in criminal
24 court, we take it one step further. You have to be
25 convinced beyond a reasonable doubt, beyond hesitation.

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 And there are going to be a lot of things today that
2 are going to cause you to hesitate.

3 The other thing I want to remind you of quickly
4 before I sit down is -- and we throw this phrase around
5 a lot, and sometimes it can lose its meaning, but
6 "innocent until proven guilty". Right now, Mr. Wirtz
7 is innocent, and he will remain so throughout the
8 course of this trial. He will remain so until you have
9 concluded your deliberations to your satisfaction and
10 only -- only does he become guilty when you decide that
11 the State has provided you enough proof beyond a
12 reasonable doubt.

13 They are not going to be able to do that.
14 Mr. Wirtz is going to remain just as he is right now,
15 an innocent man. I'll talk to you later.

16 THE COURT: All right. Thank you so much.

17 The State ready to proceed with your first
18 witness?

19 MR. ALDERMAN: Yes, Your Honor.

20 THE COURT: All right.

21 MR. ALDERMAN: Judge, the State will call First
22 Sergeant Justin Pelfrey.

23 Thereupon,

24 JUSTIN PELFREY

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 was examined and testified as follows:

2 THE COURT: Mr. Alderman, can I ask you to remove
3 your mask, and I'll ask you for the same thing,
4 Sergeant Pelfrey. Thank you.

5 DIRECT EXAMINATION

6 BY MR. ALDERMAN:

7 Q Would you state your name for the record, please?

8 A Justin Pelfrey.

9 Q And, Sergeant Pelfrey, where are you employed?

10 A By the Oconee County Sheriff's Office.

11 Q How long have you been at the Sheriff's Office?

12 A Approximately seven years.

13 Q And can you tell us a little bit about your
14 training and experience?

15 A I have been assigned to the patrol division since
16 I began. I respond to calls for service, investigate
17 crimes, try to do private policing in the community.

18 Q All right. So duties from day-to-day on patrol,
19 what does that look like?

20 A Responding to calls for service. You know,
21 speaking with complainants, trying to investigate crimes.

22 Q Were you on duty in that capacity on July 31st of
23 2019?

24 A I was.

25 Q Okay. And where?

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 A West Oak Highway near Oakway.

2 Q Okay. Did you come in contact with the Defendant,
3 Mr. Wirtz, on that day?

4 A I did.

5 Q All right. Tell us how that happened.

6 A I was sitting at Oakway Wesleyan Church, right
7 there on West Oak Highway in the parking lot. I saw a
8 light-colored sedan pass me with a cracked windshield. As
9 soon as the vehicle passed me, it sped up. That seemed a
10 little odd for somebody who just passed a police car, so I
11 left the parking lot and proceeded to try to catch up with
12 the vehicle.

13 Q When you say "catch up," had you lost sight of him
14 at any point?

15 A He did. There's a stop sign at the top of the
16 hill where -- past the church. I lost sight of him when he
17 crossed that hill.

18 Q All right. So did you actually pull him over at
19 any point?

20 A He had already pulled over before I was able to
21 initiate any blue lights or sirens.

22 Q So if I understand what you are saying, you come
23 over the hill and he's already pulled over?

24 A Yes, sir.

25 Q All right. And where at?

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 A He had pulled into Oakway Tractor.

2 Q And we will see, we'll get more of it in the
3 video, but if we think about Oakway Tractor and where he was
4 parked, is that where someone would typically park, or was
5 it out of the ordinary?

6 A It was out of the ordinary. It was right by the
7 front door. Makes it kind of hard for people to go in and
8 out.

9 Q All right. Where did you pull relative to him?
10 Where was your vehicle relative to him in front of Oakway
11 Tractor?

12 A I was parked in line with him on the driver's
13 side, just kind of offset a little bit.

14 Q Did you ask him to step out of the vehicle?

15 A He was already out of the vehicle. He was getting
16 out of the vehicle as I was getting out of mine.

17 Q All right. Did you talk to him at all?

18 A I did. I asked him about taking off after he
19 passed me at the church.

20 Q Okay. Did he have anything to say about that?

21 A He seemed to not know what kind of church I was
22 talking about, and said that he had to get something from
23 the store.

24 Q All right. So did you ask him who he was or ask
25 for an ID at that point?

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 A I did. I asked for his name. He told me he was
2 Jeremy Wirtz. I asked for some identification; he said that
3 he didn't have a driver's license or an ID with him.

4 Q All right. Did he give you any other information,
5 a birthday or anything along those lines?

6 A He did. He gave me a date of birth, I think it
7 was [REDACTED]/85.

8 Q All right. [REDACTED]/85. All right. So you did, you
9 made contact with him. He doesn't have an ID, you're trying
10 to identify him. How do you do that with that information?

11 A With a name, date of birth, we can run that
12 information through dispatch and they can pull up driver
13 records from that information.

14 Q Is that what you did?

15 A Yes, sir.

16 Q And what information did dispatch get back to you?
17 I mean, was it even a real person?

18 A It was a real person. It said it was -- came back
19 to a Jeremy Wirtz, it was clear he had no outstanding
20 warrants and a valid license.

21 Q Okay. So everything checked out with Jeremy
22 Wirtz?

23 A Yes, sir.

24 Q Okay. Since he didn't have an ID and you are just
25 working off of information that he's giving you, did you ask

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 any follow-up questions about his identification?

2 A I did. Usually when someone doesn't have a
3 picture ID for us to confirm, I ask for the last four of
4 their Social, just to -- that's part of their driving
5 history that we can double check.

6 Q Is that what you did in this case?

7 A Yes, sir.

8 Q And what information did Mr. Wirtz give you about
9 that?

10 A Mr. Wirtz said he did not know his Social.

11 Q Was that -- just in your training and experience,
12 was that odd to you?

13 A Yes. Most people know their Social.

14 Q Okay. Did you ask him any other questions about
15 his identity when he didn't know his Social?

16 A I did. I asked him how old he was. He told me he
17 was 25. That didn't really add up, being born in '85.

18 Q So he told you he was born in '85. That was a
19 real person, and when you asked how old he was, he said?

20 A Twenty-five.

21 Q So at this point, where do you proceed from here?

22 A At that point, I believe -- I was fairly sure that
23 he was lying to me, so I placed him in investigative
24 detention.

25 Q And what was his demeanor like throughout this

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 exchange to this point?

2 A As soon as I first made contact with him, he was
3 very fidgety, trying to move around the vehicle. He was
4 having trouble keeping his train of thought, and talking all
5 over the place.

6 Q All right. So you put him in investigative
7 detention. What did you do next?

8 A After I put him in investigative detention, I put
9 him in my patrol car and I went and made contact with the
10 female passenger.

11 Q Now, with the information that you have given
12 dispatch about this Jeremy Wirtz, were they able to send you
13 a picture or anything to help you just finally conclude the
14 Defendant was not Jeremy Wirtz?

15 A They were. They were able to send the driver
16 record photo from Jeremy Wirtz. I compared that with the
17 subject in the back of my patrol car. They were not the
18 same person.

19 Q Did dispatch eventually send you a picture of a
20 Gary Wirtz?

21 A They did.

22 Q And were you able to match that picture with the
23 Defendant?

24 A Yes, sir.

25 Q Okay. Did he eventually admit to you who he was

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 at any point in the exchange?

2 A He did. After other units arrived and he shook
3 the car door trying to get my attention, I went and made
4 contact with him, and he said that he was Gary.

5 Q Okay. Did he have anything else to say, any other
6 reason for calling you over there?

7 A He was telling me that if I let him go to a house,
8 he can get a bunch of drugs, if I just wait down at the
9 bottom of the driveway, pull him over afterward.

10 Q And so he wants you to let him out of that patrol
11 car so he can get back in his car and go buy drugs? Is that
12 --

13 A Yes, sir.

14 Q Did you do that?

15 A No, sir.

16 Q Okay. So once you identify him as Gary Wirtz, was
17 there any reason to arrest him? You said he was in
18 investigative detention, but taking that next step and
19 arrest him?

20 A Yes, sir. Once we ran Gary Wirtz's information
21 through dispatch, they advised that he had a suspended
22 license and that he had an outstanding warrant.

23 Q All right. So at this point it's fair to say that
24 you are going to have to take him to jail?

25 A Yes, sir.

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 Q All right. So what do you do with the car in that
2 situation?

3 A Per department policy, anytime a driver is
4 arrested we inventory the vehicle.

5 Q Inventory the vehicle, and then what do you do
6 with the vehicle itself?

7 A It is towed by either owner's preference or next
8 on rotation.

9 Q Okay. Tell us a little bit about why you would
10 need to inventory a vehicle that is going to go to the tow
11 yard?

12 A It's to protect their property that could be
13 inside the vehicle, I have that documented. And it protects
14 the Sheriff's Office from being accused of taking or
15 removing anything, and kind of protects the public from
16 there being anything there that could harm anyone.

17 Q All right. So did you inform the Defendant that
18 you were going to have to tow the vehicle?

19 A I did.

20 Q Did he have a preference of who towed it?

21 A He didn't care who towed it.

22 Q Okay. Did you then inform him that you were going
23 to have to inventory the vehicle?

24 A Yes, sir.

25 Q Tell us a little bit about his demeanor at that

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 point, when you say you're going to have to search the
2 vehicle before it's towed.

3 A Well, as soon as I brought up the inventory, he
4 said, you are not going to search my car, you're not going
5 to get in my car. You can tow it, but just don't search it.

6 Q Were there other deputies present when you began
7 the inventory of the vehicle?

8 A Yes, sir.

9 Q Tell us a little bit about how you conduct the
10 inventory and what you found.

11 A When I started the inventory, I started on the
12 driver's side door. Opened the driver's side door, found a
13 beer can. And right there between the door and the seat, in
14 the seat where Mr. Wirtz had been sitting, found a black
15 bag. When I opened the black bag, several baggies of what
16 appeared to be methamphetamine.

17 Q Was there anything else in the bag?

18 A There was scales and several baggies, cell phones,
19 and the scale.

20 Q Any money?

21 A There was some money.

22 Q Okay. Did you search beyond that bag that was in
23 the front seat?

24 A I did. We conducted a full inventory of the
25 vehicle. After searching the driver's front, we searched

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 the back and found a pistol under the driver's seat.

2 Q Under the driver's seat, where you witnessed Gary
3 sitting when he drove past you?

4 A Yes, sir.

5 Q Okay. So you find money in the bag. Did you try
6 to give that back to Mr. Wirtz, or do you take it as
7 evidence? What -- what did you do in this case?

8 A I counted the money, then went and approached
9 Mr. Wirtz, and asked him if it was his money. He said that
10 it was. I asked him how much it was supposed to be. He
11 gave me the amount. And I counted it, and it was the amount
12 that he said.

13 Q Okay. Did you ask him why his money would have
14 been in a bag of drugs?

15 A I first asked him if this was his money and he
16 said, Yes. And I said, Well, why was it in a bag full of
17 drugs? He said, It shouldn't have been with the drugs.
18 Then changed his statement to say, What drugs?

19 Q Just that fast, or did he think about it for a
20 while?

21 A It was fast.

22 Q And after that exchange, was that when you
23 transported him to the detention center?

24 A After completing inventory, I told him we were
25 going to the detention center. He stated he needed to go to

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 the hospital because he had swallowed something.

2 MR. ALDERMAN: Judge, permission to approach the
3 witness?

4 THE COURT: Certainly.

5 And just for the record, I give all the attorneys
6 blanket permission to approach the witness.

7 MR. ALDERMAN: Thank you.

8 BY MR. ALDERMAN:

9 Q Sergeant Pelfrey, I'm going to show you what has
10 been previously marked as State's Exhibit 1. I want you to
11 take a look at that and tell me if you recognize it, or any
12 of the documentation along with it.

13 A Yes, sir.

14 Q All right. How is it that you recognize this or
15 the documentation along with it?

16 A This is the gun I found under Mr. Wirtz's seat.
17 It's got my evidence bag that I filled out the day of the
18 seizing.

19 Q And tell me how it goes from you seizing it to
20 being in evidence.

21 A Well, as soon as I seize the gun, it stays in my
22 possession until it's turned over to the evidence locker, to
23 our evidence technician.

24 Q All right. And if you look at the gun, does it
25 appear that it's been changed; has it been altered; has it

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 been manipulated, destroyed -- anything done to it that you
2 can tell as you look at it today?

3 A No, sir.

4 MR. ALDERMAN: Judge, at this time we would seek
5 to admit State's 1.

6 THE COURT: Any objection?

7 MS. BYFORD: No objection, Your Honor.

8 THE COURT: All right. Then it's admitted without
9 objection.

10 (State's Exhibit No. 1 marked for identification
11 and received in evidence.)

12 MR. ALDERMAN: Judge, permission to publish to the
13 jury.

14 THE COURT: Certainly.

15 MR. ALDERMAN: If I could just hold it and show it
16 to them?

17 THE COURT: Absolutely. And I'll give you
18 permission to publish anything to the jury that is in
19 evidence.

20 MR. ALDERMAN: Thank you very much.

21 BY MR. ALDERMAN:

22 Q And, Sergeant Pelfrey, remind us again where
23 exactly this was found.

24 A Under the driver's seat.

25 Q All right. I'm going to show you what has been

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 marked as State's Exhibit 3 through -- 3-A through H and ask
2 you to take a look at these. Tell me if you recognize any
3 or all of them.

4 A Yes, sir.

5 Q And how is it you recognize them?

6 A They are photographs that I took of the encounter
7 with Mr. Wirtz.

8 Q All right. And tell me about the disc, how is it
9 that you recognize that?

10 A It is the disc that I reviewed before court. It's
11 got my initials on it.

12 Q All right. And what's on the disc?

13 A That would be the digital photos of those that I
14 just reviewed.

15 Q So is it fair to say that everything we have here
16 printed is also found on this disc, and they are exactly the
17 same?

18 A Yes, sir.

19 Q All right. Anything altered or manipulated with
20 regard to the printed pictures or the disc that you
21 reviewed?

22 A No, sir.

23 MR. ALDERMAN: And, Judge, at this time, we would
24 seek to admit States 3, 3-A through H.

25 THE COURT: Any objection?

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 MS. BYFORD: Your Honor, I don't have any
2 objection. Just for the record, I have reviewed the
3 video and I have trusted the State. I have not
4 reviewed the discs, but I trusted the State has put
5 what they said they put on the disc.

6 THE COURT: All right. Those are so admitted
7 without objection.

8 *(Whereupon, State's Exhibit No(s). 3A-3H marked*
9 *for identification and received in evidence.)*

10 THE COURT: Ladies and gentlemen, before we go any
11 further to publish this video, I just wanted to let you
12 know, I have reviewed this video, I've redacted certain
13 things from this video that either are just not
14 relevant or -- not relevant at all to this case. You
15 will see probably, I don't know how great the
16 redactions can be, but you may see some choppiness and
17 think there are some things missing. I don't want you
18 to distrust the video. I want to explain to you that I
19 am the one that ordered that.

20 All right. Thank you.

21 MR. ALDERMAN: And, Judge, just for clarification,
22 we will have the video you just described, and that's
23 State's 4.

24 THE COURT: Oh, I'm sorry.

25 MR. ALDERMAN: This is actually just the pictures,

25 A This would be a still from my body camera footage,

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 when I first made contact with Mr. Wirtz.

2 Q All right. And is this in front of the Oakway
3 Tractor we talked about before?

4 A Yes, sir.

5 Q Okay. And what is this in his hand?

6 A That's a black bag.

7 Q Moving on to the next picture.

8 A That is another still from my body cam footage of
9 my first initial contact with Mr. Wirtz.

10 Q All right. Now, tell us what we are looking at
11 here.

12 A That would be the contents of the black bag that
13 Mr. Wirtz was originally carrying when I made contact with
14 him.

15 Q All right. And you said "originally carrying,"
16 where did you find it when it had all of that in it?

17 A It was in the driver's seat.

18 Q Before we talk about this one, could you tell me
19 how, if you know, it got from his hand to the driver's seat?

20 A While I was speaking with Mr. Wirtz, he did go
21 back to the driver's side door and put the baggy in the
22 driver's seat.

23 Q Okay. So would this have been captured on your
24 body cam?

25 A Yes, sir.

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 Q So then we will have the opportunity to see him
2 hold the bag and set it down where you found it?

3 A Yes, sir.

4 Q All right. So tell us what we are looking at
5 here.

6 A This will be the contents of the black bag minus
7 the money that was given back to Mr. Wirtz, and a pistol
8 that was found under the driver's seat, the same pistol that
9 we have already seen here today.

10 Q Yes, sir. All right.

11 A And there's also some pills that were found in the
12 female passenger's belongings.

13 Q All right. So the pills that we are looking at
14 here have nothing to do with Mr. Wirtz; is that fair to say?

15 A Yes.

16 Q All right. But everything else that we see here,
17 cell phones, drugs, scales, gun, all found on the front seat
18 or under it?

19 A Yes, sir.

20 Q Okay. And this?

21 A This is just a close-up of the gun with the serial
22 number that I seized from Mr. Wirtz.

23 These are more close-ups of the three
24 individual bags, and one big bag that was found inside the
25 black bag.

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 This is a picture of the three small bags on
2 top of the digital scale.

3 Q Now, again, is this your digital scale, something
4 that you use or --

5 A It was the same scale that was in Mr. Wirtz's bag.

6 Q Okay.

7 A This is the larger bag placed on the scale.

8 Q All right. Now, we talked a little bit about a
9 body camera video.

10 MR. ALDERMAN: Lisa, could we have the lights back
11 up?

12 THE CLERK: Yes, sir.

13 MR. ALDERMAN: Thank you.

14 BY MR. ALDERMAN:

15 Q I'll hand you what has been previously marked as
16 State's Exhibit 4, and ask you if you recognize that.

17 A Yes, sir.

18 Q And how is it that you recognize it?

19 A I reviewed it prior to court and put my initials
20 on it.

21 Q And when you reviewed it, obviously in its
22 redacted form, but when you reviewed it, was it a fair and
23 accurate representation of the scene that day?

24 A Yes, sir.

25 Q Had anything been altered, changed, manipulated

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 that you could tell?

2 A No, sir.

3 Q Other than the redaction, of course.

4 A No.

5 MR. ALDERMAN: And, Judge, we would seek to admit
6 State's 4.

7 THE COURT: Any objection?

8 MS. SIMMONS: No, ma'am. And just for the record,
9 I have reviewed it with the State the other day and it
10 also has my initials on it.

11 THE COURT: All right. Very well. All right.
12 Very well. And this was the disc I was referring to
13 earlier. It's so admitted.

14 *(Whereupon, State's Exhibit No(s). 4 marked for*
15 *identification and received in evidence.)*

16 BY MR. ALDERMAN:

17 A And Sergeant Pelfrey, just like with the pictures,
18 particularly in the areas of the video where the audio has
19 been redacted, if you could just tell us a little bit about
20 what is happening and what we are seeing.

21 MR. ALDERMAN: Lisa, I hate to make you --

22 THE CLERK: No.

23 MR. ALDERMAN: Thank you.

24 *(Lights are lowered.)*

25 A This is when I first initiated my body cam. I had

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 actually already passed Mr. Wirtz because he had pulled into
2 the Oakway Tractor.

3 (Video playing.)

4 A At this point, Mr. Wirtz is getting out of the
5 driver's seat, and I'm going to make contact with him.

6 (Video playing.)

7 A And this is when I asked him why did he take off
8 in front of the church.

9 (Video playing at 10:35.)

10 A At this time, I'm running his information through
11 dispatch.

12 BY MR. ALDERMAN:

13 Q Does he still have that bag in his hand?

14 A He does. He's alternating between hands, but it's
15 still in his possession.

16 At this point Mr. Wirtz is kind of making
17 small talk about things I didn't really understand.

18 Q Where is the bag now?

19 A He had just placed it in his driver's seat.

20 Q Moving on to the next clip.

21 (Video playing at 10:36.)

22 A At this time, I'm telling Mr. Wirtz that most
23 people our age know our Social.

24 (Video playing.)

25 Q And then we will move on to the next clip.

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 A Now, this is when Mr. Wirtz tried to get my
2 attention.

3 (Video playing at 10:38.)

4 A At that point he finally admits he's Gary Wirtz.

5 Q And I believe the audio is redacted for a bit
6 here, but you can just tell us what you are doing.

7 A We're beginning the vehicle inventory, just
8 running Gary's name. We found out that he had an
9 outstanding warrant and he had a suspended license, so he's
10 being placed under arrest.

11 Per department policy, we begin inventorying
12 the vehicle. I started at the driver's side, where
13 Mr. Wirtz had gotten out, now I'm going to get gloves in the
14 vehicle.

15 Q At this point is Mr. Wirtz saying anything?

16 A He is saying, You can't search my car. You can
17 tow it, but you just can't search it.

18 I'm trying to explain to Mr. Wirtz that it is
19 an inventory, what we are going to have to do.

20 I go back to inventorying the vehicle, that
21 stuff, black bag that had been in his hand earlier.

22 (Video playing at 10:39.)

23 Q All right. On the next clip.

24 A Continuing to do the inventory. Moved on to the
25 driver's side rear. That was something I had to hold the

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 seat up and push the seat forward. Found the pistol under
2 the driver's seat.

3 Q Was it loaded?

4 A It had a loaded magazine; there was not one in the
5 chamber.

6 (Video playing.)

7 A At this time, I'm running the serial number
8 through dispatch just to confirm if it's stolen.

9 (Video playing.)

10 Q And then the next clip?

11 A I'm retrieving the evidence bag to take possession
12 of the contraband and illegal drugs that were found.

13 Q Do you have a standard bag that you do that with?

14 A We use different size bags, but that seemed like
15 the most appropriate size bag for the amount that was found.

16 Q Something issued by the Sheriff's Office?

17 A Yes, sir.

18 Q All right.

19 A And that's our inventory sheet on the driver's
20 side window, next to the crack.

21 Right there is the pills Deputy Spence had
22 found for the female's belongings.

23 Q Did it appear to you her belongings were separate
24 from everything else in the car?

25 A Yes, sir.

DIRECT EXAMINATION OF J. PELFREY BY ALDERMAN

1 Q Is that them on the hood of the car, in that
2 brightly-colored bag?

3 A I believe they had already been put in the
4 evidence bag.

5 (Video playing.)

6 A There's the money and drugs that were found in the
7 vehicle -- or in the bag.

8 (Video playing.)

9 A When I located the money, I made contact with
10 Mr. Wirtz.

11 (Video playing at 10:43.)

12 Q And then the last clip.

13 A This is right after we completed the vehicle
14 inventory and I was about to transport Mr. Wirtz.

15 (Video stopped at 10:44.)

16 MR. ALDERMAN: And, Lisa, we need the lights back.
17 BY MR. ALDERMAN:

18 Q That was a little hard to hear, that last clip,
19 with the Defendant sitting behind you. So what did he tell
20 you or ask you at that point?

21 A He asked me to go to the hospital. I asked him
22 why. He said that he had swallowed something. I tried to
23 question what he had swallowed, he ended up saying a baggy.
24 I believed the baggy to be narcotics. I asked him when he
25 swallowed it, he said as soon as I pulled up.

CROSS EXAMINATION OF J. PELFREY BY MS. BYFORD

1 Q And did you take him to the hospital?

2 A I did.

3 Q Okay. Sergeant Pelfrey, that is all I have for
4 you at this time. If you would please answer any questions
5 that the Defense may have for you.

6 THE COURT: Ms. Byford.

7 MS. BYFORD: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. BYFORD:

10 Q Just a few questions.

11 Let's start with the DUS. You said that when
12 you pulled the Defendant over that he appeared to be
13 nervous?

14 A Well, he was already pulled over. I never
15 actually initiated --

16 Q Right. When you first approached the Defendant,
17 you indicated to the jury earlier that he appeared to be
18 nervous; is that accurate?

19 A Yes, ma'am.

20 Q And he did give you what turned out to be his
21 brother's name; isn't that correct?

22 A Yes, ma'am.

23 Q And driving under suspension is an arrestable
24 offense; isn't that correct?

25 A It is arrestable, yes, ma'am.

CROSS EXAMINATION OF J. PELFREY BY MS. BYFORD

1 Q So wouldn't it make sense that that would explain
2 his nervousness? Would that be one explanation for his
3 nervousness?

4 A Well, just how he was acting. Most people are
5 nervous, but they don't move around so much.

6 Q If they believe they are about to be arrested for
7 driving under suspension, would they move around a lot and
8 be nervous?

9 A My experience, no. That was not the normal
10 behavior for somebody about to be --

11 Q In your experience, people about to be arrested
12 are not nervous?

13 A For driving under suspension, no, ma'am.

14 Q Isn't it true that being placed under arrest is
15 generally a nerve-racking experience for most folks?

16 A Yes, ma'am.

17 Q Let's address the gun next. You had testified
18 earlier that the gun was found under the driver's seat. But
19 could you be a little more specific as to the location of
20 the gun, especially given what we just saw in the video?

21 A I had to access it from the rear of the driver's
22 seat. When I checked under it from the front side I could
23 not see it, no.

24 Q And it appears that you removed a yellow -- there
25 seems to be a yellow pole in the back seat. Would you

CROSS EXAMINATION OF J. PELFREY BY MS. BYFORD

1 explain to us what that was about?

2 A It appears -- I guess the -- what reclines the
3 seat had broken, and they were using the pole to hold the
4 seat up.

5 Q And it also appeared there was some debris in the
6 back seat that was partially covering the gun. Could you
7 tell us about that?

8 A I can't recall exactly.

9 Q It appears in the video there was a -- what was
10 the white thing that was sort of on top of the gun and next
11 to it; do you recall what that was?

12 A No, ma'am.

13 Q That is okay. It is on the video, the jury can
14 see it.

15 All right. Who did that car belong to?

16 A It belonged to another family member of Mr. Wirtz.

17 Q It was not Mr. Wirtz's vehicle?

18 A No.

19 Q That's correct. Okay. Do you have any idea how
20 long Mr. Wirtz had been driving the car?

21 A No, ma'am.

22 Q Other than that brief time that you saw him?

23 A I don't know.

24 Q Is it possible that he didn't know what was in the
25 back seat of the car?

CROSS EXAMINATION OF J. PELFREY BY MS. BYFORD

1 A I don't know.

2 Q Okay. But it wasn't his car; is that correct?

3 A Yes.

4 Q Now, let's move on to the drugs that -- the black
5 bag, describe its position for the jury, please.

6 A When I found it or --

7 Q Yeah, when you found it, when you searched it.
8 Yeah, when you found it in the car.

9 A It was laying in the driver's seat.

10 Q Okay. And Mr. Wirtz was in the back of your
11 vehicle; isn't that correct?

12 A When I found it, yes, ma'am.

13 Q Okay. And isn't it also correct that for a good
14 bit of the time the passenger remained in the vehicle?

15 A She did stay in the vehicle for --

16 Q She did. And was she in the vehicle while the
17 black bag was on the driver's seat of the vehicle?

18 A She was, but she was still under observation until
19 deputies arrived.

20 Q How long was it before deputies arrived at the
21 scene, before a second deputy arrived at the scene?

22 A It had to have been at least ten to 15 minutes.

23 Q All right. And during that ten to 15 minutes, at
24 one point did you not walk Mr. Wirtz over to your patrol
25 car?

CROSS EXAMINATION OF J. PELFREY BY MS. BYFORD

1 A I did.

2 Q So while you were walking Mr. Wirtz away from the
3 car, where was the passenger?

4 A She was still in the vehicle.

5 Q Still in the vehicle. And was she within arms
6 reach of that bag --

7 A She was.

8 Q -- while you were walking Mr. Wirtz to the car?

9 A Yes, ma'am.

10 Q And you did find drugs in her bag; isn't that
11 correct? Or did another deputy find drugs in her bag?

12 A Yes, ma'am.

13 Q Okay. And the brightly-colored bags that were
14 on the -- the large bags that were on the hood of the car,
15 who did those belong to?

16 A The female passenger.

17 Q I noticed in the video, there appears to be a
18 brightly-colored piece of fabric next to the driver's seat.
19 What -- could you tell what that was?

20 A No, ma'am.

21 Q While you were talking to the passenger, did she
22 ever rummage through her bag; do you remember?

23 A Not that I can recall.

24 Q And you said you have been with the Sheriff's
25 Department for seven years?

REDIRECT EXAMINATION OF J. PELFREY BY MR. ALDERMAN

1 A Yes, ma'am.

2 Q In what capacity over the course of your time?

3 A Started out as just a normal patrol deputy and
4 moved up to different supervisory roles.

5 Q And during the course of your employment, have you
6 ever requested that something be processed for fingerprints?

7 A I have.

8 Q Did you do that in this case?

9 A No, ma'am.

10 Q Did you ask that the gun be processed for
11 fingerprints?

12 A No, ma'am.

13 Q Did you request that the baggies of drugs be
14 processed for fingerprints?

15 A No, ma'am. When we were doing the video, saw the
16 bag in his hand --

17 Q But there was more than one person at the scene,
18 wasn't there?

19 A Yes, ma'am.

20 MS. BYFORD: That is all I have at this time, Your
21 Honor. Thank you.

22 THE COURT: All right. Thank you.

23 Mr. Alderman, any follow-up?

24 MR. ALDERMAN: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

REDIRECT EXAMINATION OF J. PELFREY BY MR. ALDERMAN

1 BY MR. ALDERMAN:

2 Q Sergeant Pelfrey, Ms. Byford touched on the
3 demeanor of the Defendant, how people normally act when they
4 are about to be arrested. Do you have any training or
5 experience or -- in the course of your experience as a road
6 deputy, have you ever come into contact with someone under
7 the influence of drugs?

8 A I have.

9 Q All right. Do they from time to time appear
10 fidgety?

11 A They do.

12 Q And scatter brained?

13 A Yes, sir.

14 Q Unable to coherently respond to your questions?

15 A Yes, sir.

16 Q All right. Did you observe that that day with
17 regard to the Defendant?

18 A I did.

19 Q All right. And did you not find narcotics in the
20 vehicle?

21 A Yes, sir.

22 Q All right. And did you seize those narcotics?

23 A I did.

24 Q And did you enter those narcotics into evidence?

25 A Yes, sir.

REDIRECT EXAMINATION OF J. PELFREY BY MR. ALDERMAN

1 Q All right. Now, the passenger was still in the
2 vehicle for a period of time. How long would you say that
3 was without you being in line of sight to her?

4 A From when I lost sight of her or --

5 Q Well, I'm looking for how long it would have been
6 approximately from the time that you are taking Mr. Wirtz to
7 the vehicle and out of line of sight to this other passenger
8 and before backup arrived.

9 A She was probably only out of my sight for 20 to 30
10 seconds. So about 10 minutes, 10 to 15 minutes for backup
11 to arrive.

12 Q All right. And you testified that you called out
13 for fingerprints, and fingerprint analysis before in the
14 course of your seven years?

15 A (Nods in the affirmative.)

16 Q Do you do it every time?

17 A No, sir.

18 Q Do you do it often?

19 A When we can get a clear print or we have no
20 suspect information.

21 Q When you have no suspect information?

22 A Yes, sir.

23 Q Okay. Is it fair to say that there are limited
24 resources for fingerprinting and DNA analysis and any other
25 forensics that might be done?

DIRECT EXAMINATION OF JAKE SPENCE BY MS. SIMMONS

1 A Yes, sir. We only have two evidence technicians
2 and we have 80,000 people in Oconee County.

3 Q Thank you.

4 THE COURT: Anything else, Ms. Byford?

5 MS. BYFORD: No, ma'am.

6 THE COURT: All right. Sir, you can step down.

7 Thank you.

8 Ms. Simmons.

9 MS. SIMMONS: Thank you, Judge. The State calls
10 Corporal Jake Spence.

11 **Thereupon,**

12 JAKE SPENCE

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SIMMONS:

17 Q Corporal Spence, please state your full name and
18 spell it for the record.

19 A Yes, ma'am. My name is Scott Jacob Spence.

20 Q Is that S-P-E-N-C-E?

21 A Yes, ma'am.

22 Q Tell us how long you have been employed in law
23 enforcement.

24 A Just over four years.

25 Q And in what capacity are you employed?

DIRECT EXAMINATION OF JAKE SPENCE BY MS. SIMMONS

1 A I work for the Sheriff's Department in Oconee
2 County. I began on uniform patrol, and approximately one
3 year ago I was promoted to a special operations division
4 with the Sheriff's Office, PACE (phonetic) team.

5 Q What is your day-to-day business now?

6 A Now, my day-to-day business is traffic
7 enforcement, as well as drug interdiction. I am also on our
8 marine unit, patrolling the lakes of our county. And prior
9 to that I was on uniform patrol responding to calls for
10 service, doing traffic enforcement and routine patrols of
11 high crime areas.

12 Q And let's talk a little bit about your training
13 and education.

14 A Yes. You know, general training for the Sheriff's
15 Office, you know, semi-annual training. Being on a
16 specialized division, I have gotten some specialized
17 training in drug interdiction and traffic enforcement and
18 that sort of thing.

19 Received a bachelor's degree at Anderson
20 University, and I'm currently pursuing a master's degree at
21 the same university for criminal justice.

22 Q And were you on duty on July 31st, 2019?

23 A Yes, ma'am.

24 Q And did you respond to the area of Oakway Tractor?

25

DIRECT EXAMINATION OF JAKE SPENCE BY MS. SIMMONS

1 A I did. I was a back-up officer for First Sergeant
2 Pelfrey.

3 Q And is that in Oconee County?

4 A Yes, ma'am.

5 Q Did you encounter the Defendant in this case, Gary
6 Wirtz?

7 A I did, yes, ma'am.

8 Q What is your purpose as a back-up officer,
9 specifically that day?

10 A Yeah. Generally it's mostly for safety reasons.
11 You know, traffic stops can oftentimes be dangerous and it
12 is very common to do, call for a back-up officer for safety
13 respects. And then if there is going to be an inventory or
14 a search of a vehicle, it's a policy that we have two
15 officers there for the inventory of that vehicle.

16 Q And describe the vehicle in question and the
17 contents that day.

18 A It was a white sedan, a relatively small vehicle,
19 somewhat cluttered. It's a fairly -- you know, it had bags
20 and different items, fairly usual things.

21 Q Now, was there a female passenger that day?

22 A There was, yes, ma'am.

23 Q And how did you get her identity?

24 A She gave us her identity relatively quickly when
25 asked.

DIRECT EXAMINATION OF JAKE SPENCE BY MS. SIMMONS

1 Q And was she charged with anything that day?

2 A She was charged. I believe Corporal Pelfrey
3 charged her with the pills that I had found in her purse
4 pursuant to the inventory search.

5 Q So the pills were found in her purse?

6 A Yes, ma'am.

7 Q And is the purse -- describe the purse. Did it
8 look like a lady's purse?

9 A Yes. It was very colorful, multiple colors. She
10 was actually holding the purse while I was standing there
11 talking to her initially. She had possession of the purse
12 and then -- that is where the pills were found, in that
13 purse.

14 Q I'm going to show you what has been pre-marked as
15 State's Exhibit 2. And the pills in question, do you see
16 them in this BES (phonetic) bag?

17 A Yes, ma'am.

18 Q And could you tell us the -- the number associated
19 with those pills in the pre-marked baggy inside there, or
20 the letter and number. I'm sorry.

21 A A03 and A04. Is that -- I believe that's correct.

22 Q Okay. And so the pills were found in her purse?

23 A Yes, ma'am.

24 Q And you said the purse was in her lap when she was
25 talking to you?

DIRECT EXAMINATION OF JAKE SPENCE BY MS. SIMMONS

1 A Yes, ma'am.

2 Q At any point in time did she go in her purse or
3 make aggressive or a movement within the car?

4 A Definitely no aggressive movements. Whether she
5 went in her purse or not, I don't think so. Usually we try
6 to keep people from reaching in places where we can't see.
7 I would probably remember that.

8 But definitely no aggressive -- you know, she
9 didn't have an aggressive demeanor or anything like that.

10 Q Did you ever see her reach towards a front
11 driver's seat during your encounter with her?

12 A No, ma'am. She was holding her -- she had a big
13 purse, I think she might have had two big purses, and she
14 was holding onto them the entire time I was talking to her.

15 Q The black bag that is in question in this case,
16 did you ever see her reach for that bag?

17 A No, ma'am.

18 Q Did you ever see her move it?

19 A No, ma'am.

20 Q Did you ever see her put anything in it?

21 A No, ma'am.

22 Q During your inventory search of the car that you
23 assisted with, did you find anything else in the car?

24 A We found multiple other things. The pills was
25 probably the biggest thing that I found. I started on the

CROSS EXAMINATION OF J. SPENCE BY MS. BYFORD

1 passenger side front and worked my way back to the trunk of
2 the vehicle. There was several things found, nothing of any
3 substantial value that I recall.

4 Q But your responsibility was nothing to do with the
5 driver's side inventory search?

6 A Correct, yes.

7 Q The personal items found in the vehicle, do you
8 remember what those were both -- would have been?

9 A The personal -- what personal items are you
10 referring to?

11 Q Like needles or paints or clothes or any of those
12 sort of things that I think we just saw?

13 A Yeah. Yeah, there was several different -- there
14 was the paint in the back seat. There was a needle under
15 the front passenger's seat, I believe. There was the
16 tattooing kit, as well as the large yellow handle. I think
17 that that was an ax or something like that. So --

18 Q And the tattooing kit, where was that found?

19 A That was in the trunk, I believe.

20 MS. SIMMONS: I believe Ms. Byford has a few
21 questions for you.

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

23 MS. BYFORD: Thank you, Your Honor.

24 Just a few, not very many at all.

25 CROSS EXAMINATION

DIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 BY MS. BYFORD:

2 Q You said the passenger was charged with the pills
3 that you found; was she charged with anything else?

4 A I believe she was also charged with the possession
5 of -- or the methamphetamine, yes.

6 Q And just to be clear, do you know how long
7 after -- and just for, we will call it the traffic stop for
8 ease, I know he was already pulled over, but how long after
9 that initial encounter did you arrive on the scene; how many
10 minutes?

11 A I think it was right about 12 minutes. It was
12 sometime between 10 and 15 minutes.

13 Q Okay. So between 10 and 15 minutes, probably 12,
14 before you were able to arrive and observe the passenger.

15 A Yes, ma'am.

16 MS. BYFORD: I have no further questions.

17 THE COURT: Any other questions for this witness?

18 MS. SIMMONS: No, Your Honor.

19 THE COURT: Sir, you can step down. Thank you.

20 MS. SIMMONS: Judge, the State calls Sergeant
21 David Philpott.

22 Thereupon,

23 DAVID PHILPOTT

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

DIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 DIRECT EXAMINATION

2 BY MS. SIMMONS:

3 Q Good morning, Sergeant Philpott.

4 A Good morning.

5 Q Please spell your last name for the court
6 reporter.

7 A Philpott. P-H-I-L-P-O-T-T.

8 Q Sergeant Philpott, where are you employed?

9 A Currently employed with the Oconee County
10 Sheriff's Office.

11 Q How long have you been there?

12 A Just over 18 years.

13 Q And what division are you currently assigned to?

14 A Currently assigned to CID, the Criminal
15 Investigative Division, as an evidence tech in the forensics
16 arena.

17 Q And how long have you been in that position?

18 A Since 2010.

19 Q A decade?

20 A Yes, ma'am.

21 Q Tell me about the training and education that is
22 there for your position at the Sheriff's Office.23 A I originally received a bachelor's degree through
24 Clemson University, was then hired by the Sheriff's Office.
25 Graduated the South Carolina Criminal Justice Police

DIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 Academy. Worked for approximately eight years on the road,
2 being promoted to supervisory positions within road patrol.

3 At that point I was promoted to a sergeant in
4 CID, was sent to numerous schools after that for forensics
5 training from anything from evidence control, blood
6 splatter, homicide investigations, basic fingerprinting,
7 just about anything with a forensics relation.

8 Q And how many evidence technicians are there with
9 the Sheriff's Office?

10 A We currently have two full-time evidence techs.

11 Q And are you divided on two different shifts?

12 A Yes. We have split hours. I work predominantly
13 Monday through Friday earlier hours, and the other evidence
14 tech works Wednesday through Sunday, and more later
15 afternoon hours. Then we split on-call throughout the year.

16 Q Did you -- you have been in the courtroom -- did
17 you receive the gun in question in this case?

18 A Yes, ma'am, we did.

19 Q And did you also receive the drug evidence in this
20 case?

21 A We did.

22 Q Before you, I believe, Corporal Spence left you
23 State's Exhibit 2. Do you recognize that item?

24 A Yes, ma'am.

25 Q And did you bring that to court with you today?

DIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 A I did.

2 Q Are there any markings that were left by Sergeant
3 Pelfrey when that item was turned into evidence?

4 A Yes. If y'all can see this inner bag here is what
5 we call a BES pack, when officers seize narcotics evidence,
6 they seal it in this BES pack. And then they have -- right
7 here, it says, Justin Pelfrey, and underneath it, he has
8 signed his name, Justin Pelfrey. We receive that sealed
9 bag, and that's what we house until anything further is
10 needed with it.

11 Q When was that filled bag received into evidence?

12 A We received it on August 1st of 2019.

13 Q And when was it placed into evidence?

14 A On July 31st, 2019.

15 Q Explain to me how things are placed into evidence
16 at the Sheriff's Office and what safeguards are in place.

17 A We have what we call temporary evidence lockers in
18 our division, to where there is a door on the front side
19 that officers can open up to put items into. And on the
20 back side is in our secured office where we can open the
21 back door and pull the evidence out.

22 So when we are not there, after hours, the
23 officers can put items of evidence into evidence where it's
24 secured and we can remove it when we come back to shift the
25 next day or on Monday or whatnot, when needed.

DIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 Q State's Exhibit 2, how long has it been in the
2 care, custody, and control of the evidence department?

3 A It has been in our control the entire time other
4 than when it was currently at the lab for analysis.

5 Q Okay. And just to be clear, from the time
6 Sergeant Pelfrey placed it in July 31st, 2019 until now, it
7 has been in your care, custody, and control when it was not
8 at the lab?

9 A Correct.

10 Q And at any point did you alter, damage, or tamper
11 with that item?

12 A No, ma'am.

13 Q And when you removed it from evidence to take it
14 to the lab, was it still in the same position as it was with
15 Sergeant Pelfrey?

16 A Yes, ma'am, it was.

17 Q And where did you take -- where is the lab?

18 A We have an Anderson County Regional Forensics Lab
19 that's in Anderson County. So when drug evidence is turned
20 into us that needs analysis we will make weekly, biweekly,
21 or, you know, whatever necessary trips to take these entered
22 BES packs -- we take all the ones we have at that time,
23 deliver them to the lab in Anderson, and they subsequently
24 perform analysis on the substances.

25 Q When did you deliver that particular evidence in

DIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 this case?

2 A On August 9th, 2019.

3 Q And do you pick items up at the lab when they're
4 finished?

5 A Yes, ma'am.

6 Q When did you retrieve it up from the lab?

7 A It was returned to us, I believe, December 20th,
8 2019.

9 Q And both that drop off and that pick up, was that
10 with Agent Lanford from the lab?

11 A Yes, ma'am.

12 Q And you brought the gun in question and this drug
13 evidence to court today?

14 A I did.

15 Q Had any of this evidence been altered or tampered
16 with in any way or been outside your care, custody, or
17 control other than the times you had it?

18 A We have had complete control within our locked,
19 secured facility. The only thing that we have done was, I
20 installed the lock on the gun before coming to court, just
21 so that it is inoperable.

22 MS. SIMMONS: And we appreciate that.

23 Please answer any questions Ms. Byford may have.

24 THE COURT: Ms. Byford.

25 MS. BYFORD: Very briefly, Your Honor.

CROSS EXAMINATION OF D. PHILPOTT BY MS. BYFORD

1 THE COURT: Certainly.

2 CROSS EXAMINATION

3 BY MS. BYFORD:

4 Q How long have you worked with the Sheriff's
5 Office?

6 A Since February 2002, so almost 19 years.

7 Q And, sorry, I keep forgetting.

8 So from the time the drugs left to go to the
9 lab, they were at the lab on August 9th, 2019. When did
10 they come back from the lab?

11 A December 20th, 2019.

12 Q December 20th, 2019. And since December 20th,
13 2019, could you remind the jury where they have been?

14 A They have been in our locked storage facility
15 within our evidence department.

16 Q So for approximately ten months; is that correct?

17 A Correct.

18 Q Is that enough time to run a fingerprint analysis
19 on baggies?

20 A If we were going to run a fingerprint, it would
21 have to be done beforehand, because once it comes back in a
22 sealed package we never open this again.

23 Q Never open it again?

24 A Yes.

25 Q So if you needed to run a fingerprint, you would

CROSS EXAMINATION OF D. PHILPOTT BY MS. BYFORD

1 have had to do it before August 9th?

2 A Correct. It would usually be done before the item
3 is submitted to the lab for analysis.

4 Q That would have to have been requested by the
5 officer almost immediately?

6 A We have -- when evidence is turned in, there is an
7 evidence submission form, and on the form there is blocks to
8 check for, you know, destroy item, request analysis,
9 fingerprints, you know, different choices. And if that is
10 checked, then we would have fingerprinted it at that time
11 before it goes to the lab.

12 Q So that fingerprint analysis box, that is on the
13 same form that you would send to request the drugs to be
14 tested?

15 A No. That is on the form that they turn in with
16 the items to us.

17 Q To you. But is it on the same form?

18 A There's -- I have got the form, if it would help
19 to explain.

20 Q I'm just ask -- how hard is it to request
21 fingerprints?

22 A It's not -- to explain, like I say, there is these
23 two items in this case. So it is a form where they list
24 what items are turned into us, and then under each item
25 there's a few choices where they can choose that they want

REDIRECT EXAMINATION OF D. PHILPOTT BY MS. SIMMONS

1 something done to it.

2 So all it is is just paperwork showing this
3 is what the officer put into the locker, and we agree that
4 this is what we took out of the locker, so everything
5 matches.

6 Q It's a very simple procedure.

7 A Yes, ma'am.

8 Q And would somebody who's been with the Sheriff's
9 Office for at least seven years be well-trained in that
10 procedure?

11 A They would. I can't say as to why it is or isn't
12 done, because I wasn't privy to the case. It is up to each
13 individual officer whether they believe that it's needed or
14 not. It just depends on a case-by-case basis.

15 Q Thank you, sir.

16 THE COURT: Ms. Simmons, anything else for this
17 witness?

18 MS. SIMMONS: Just very briefly, Judge.

19 THE COURT: Certainly.

20 REDIRECT EXAMINATION

21 BY MS. SIMMONS:

22 Q Sergeant Philpott, how many times during the
23 course of, let's say, a year, would you be asked to
24 fingerprint drugs?

25 A Drugs, hardly ever at all.

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 Q The bulk of your fingerprint cases, what kind of
2 cases are we talking about?

3 A Usually it's going to be larcenies, burglaries.
4 It's typically the property crime type incidents that we
5 fingerprint.

6 MS. SIMMONS: Thank you.

7 THE COURT: Ms. Byford, anything else?

8 MS. BYFORD: No, ma'am.

9 THE COURT: Sir, you can step down. Thank you.

10 MS. SIMMONS: Your Honor, the State calls Meredith
11 Lanford.

12 **Thereupon,**

13 MEREDITH LANFORD

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. SIMMONS:

18 Q Good morning.

19 A Good morning.

20 Q Is it working?

21 A Yes, I think so.

22 Q Ms. Lanford, where are you employed?

23 A I am employed with the Anderson Oconee Regional
24 Forensics Laboratory.

25 Q And how long have you been employed there?

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 A Almost 15 years.

2 Q Tell me in what capacity you are employed at the
3 lab.

4 A I am a forensic drug chemist.

5 Q What are your duties as a forensic chemist?

6 A My primary function is to take in evidence from
7 our agencies and to analyze them for any suspected
8 controlled substances.

9 Q And tell me about your specialized training in
10 forensic drug chemistry, your educational background.

11 A I graduated from Clemson University with a
12 Bachelor's of Science degree in chemistry. I then went on
13 to complete the forensic science certificate program at
14 Greenville Technical College. I was trained and certified
15 as a forensic drug chemist with my previous employer, the
16 Charleston City Police lab, as well as my current
17 laboratory.

18 I received training in the area of drug
19 chemistry from the drug enforcement administration. I am a
20 member of the American Chemical Society as well as the
21 Clandestine Laboratory Investigating Chemists. And each
22 year I'm required to pass a proficiency test, as well as
23 maintain about 40 hours of training or continuing education
24 in the area of forensics.

25 Q All that being said, how often do you analyze

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 substances for the presence of methamphetamine or controlled
2 substances?

3 A Almost daily.

4 Q How many times did you estimate that you conduct
5 chemical analysis on drugs within a calendar year?

6 A Almost daily, and I probably analyzed over 8,000
7 cases.

8 Q And how many times do you estimate you have
9 testified in court as an expert in your field?

10 A Thirty-nine times.

11 MS. SIMMONS: Your Honor, at this time we would
12 move to admit Ms. Lanford as an expert in forensic drug
13 chemistry.

14 MS. BYFORD: Without objection, Your Honor.

15 THE COURT: All right. That was my next question.

16 Ladies and gentlemen, the rules of evidence
17 ordinarily don't permit a witness to testify as to his
18 or her opinion. An exception to this rule is if the
19 witness is what we call expert witnesses. If a person
20 has become an expert in some art, science, profession,
21 or calling, then they may testify as to an opinion that
22 is relevant and may also give their reasons for that
23 opinion.

24 This witness will be qualified to give her opinion
25 in the area of forensic drug chemistry. You may use

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 that opinion any way you see fit. Thank you.

2 MS. SIMMONS: Thank you, Judge.

3 BY MS. SIMMONS:

4 Q Ms. Lanford, I believe State's Exhibit 2 is before
5 you. Can you identify this particular item?

6 A Yes. This is our, what we call a BES kit, which
7 is what we ask all of our agencies to submit their drug
8 evidence in.

9 Q When was this item received by the lab?

10 A It was received on August 9th, 2019.

11 Q And who was it received from?

12 A David Philpott.

13 Q And received by you?

14 A Yes, it was.

15 Q This item that is in your hand, was it in your
16 care, custody, and control during the period of time that it
17 was at the lab?

18 A Yes, it was.

19 Q And that's in Anderson, right?

20 A Correct.

21 Q Is the item today substantially in the same
22 condition as when you received it and you returned it?

23 A It is.

24 Q And for what purpose did this item come into your
25 possession related to this particular case?

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 A It came into our lab in order to be tested to see
2 if any controlled substances were present.

3 Q Did -- what is the weight of State's Exhibit 2, as
4 far as methamphetamine?

5 A Okay. It would be -- it is 11.28 grams.

6 Q Okay. And tell me about the process of deciding
7 what to test. You were here when the jury saw photographs
8 of a large bag and smaller bags. Tell us a little bit about
9 that decision making process for you.

10 A So our lab policy is to test items up to the
11 highest threshold weight for the charge. So in this case,
12 there were four bags of crystalline substance. So I
13 individually weighed each bag's contents, and then I
14 determined that out of those weights I only needed to
15 analyze one bag in order to meet the threshold weight of
16 trafficking.

17 Q And that would be between 10 and 28 grams?

18 A Correct.

19 Q And so you conducted chemical analysis on the bag
20 in State's Exhibit 2, marked A.01; is that correct?

21 A I did.

22 Q And did you write A.01 on that bag?

23 A I did.

24 Q And for pictures of the -- purposes of
25 photographs, is that the largest bag of the crystalline

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 substance?

2 A Yes, I tested that bag.

3 Q And tell me about the process of testing that
4 particular substance.

5 A So we first remove the substance from any
6 packaging that it's in and get a weight of just the
7 substance. We then perform two screening tests to narrow
8 down what type of substance we may have. And then we
9 perform two confirmatory tests on the instruments in the lab
10 in order to determine what specific controlled substance is
11 present, if there is one present at all.

12 Q From your testing, were you able to form two --
13 form an expert opinion as to what State's item 2, A.01,
14 contained?

15 A I did.

16 Q And what is that opinion?

17 A Item A.01 contained methamphetamine at
18 11.28 grams.

19 Q Did you -- and what is that opinion based on?

20 A On the testing that I did on the item.

21 Q Did you subsequently issue a report as to the
22 items in question in this case, and in particular State's
23 Exhibit 2A.01?

24 A Yes, I did.

25 Q I'm going to pass up to you what has been marked

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 as State's Exhibit 5 and previously provided to the Defense.

2 Does that reflect your -- is that your
3 report?

4 A Yes, it is.

5 Q And does that reflect your final weight as to
6 State's Exhibit 2A.01?

7 A It does.

8 Q And what would that be?

9 A It is 11.28 grams.

10 MS. SIMMONS: Your Honor, at this time we would
11 move in State's Exhibit 2, which is the BES pack before
12 Ms. Lanford, and State's Exhibit 5, which would be her
13 report.

14 THE COURT: Any objection?

15 MS. BYFORD: Your Honor, may it please the Court.
16 I do have one brief issue I would like to take up with
17 the Court before admitting this item.

18 THE COURT: All right. All right.

19 Ladies and gentlemen, this is one of those moments
20 when I told you we are going to have to step out in the
21 hall for just a moment.

22 If it's something that needs to be put on the
23 record, then we can put it on the record at another
24 time when the jury is not in.

25 All right. Thank you.

DIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 I say to the jury members while we are gone, that
2 might be a good time to stand and stretch, I don't
3 know. It felt good for me to stand up just now.

4 (Off-the-record discussion held.)

5 THE COURT: All right. Ladies and gentlemen, you
6 are going to receive a report into evidence. You will
7 be able to look at it.

8 You have heard some testimony that there was
9 another person present at the scene who was charged
10 with some pills. That -- you are not to consider those
11 whatsoever as to this Defendant. The only thing that
12 you may consider from this report is -- A.01?

13 MS. SIMMONS: Yes, Your Honor.

14 THE COURT: A.01 from this report. So I instruct
15 you that it is limited to that.

16 And while I have got the floor for just one
17 minute, I want to tell you, these attorneys, you just
18 don't know the lengths they have gone to to agree and
19 have everything pre-marked and pre-done. I told you
20 these were two of the best attorneys in the state, and
21 they have really shown it.

22 So -- three of the best attorneys in the state.
23 I'm sorry, Mr. Alderman. I forget you're over there.

24 All right. Yes, ma'am, please continue.

25 MS. SIMMONS: Judge, again, the State would move

CROSS EXAMINATION OF MEREDITH LANFORD BY MS. BYFORD

1 into evidence State's Exhibit 2, which is the drug
2 evidence in question, and State's Exhibit 5, which is
3 the report authored by Ms. Lanford.

4 THE COURT: All right. And once again, I jumped
5 the gun. But now the report is without objection?

6 MS. SIMMONS: Yes, ma'am. Thank you.

7 THE COURT: Without objection in evidence with
8 that stipulation.

9 All right. Yes. Thank you.

10 *(Whereupon, State's Exhibit No(s). 2 and 5 marked*
11 *for identification and received in evidence.)*

12 MS. SIMMONS: Ms. Lanford, please answer any
13 questions that Ms. Byford might have.

14 THE COURT: Yes, ma'am.

15 CROSS EXAMINATION

16 BY MS. BYFORD:

17 Q Good morning. How are you?

18 You started to talk very briefly about the
19 process for testing methamphetamine. How do you determine
20 that a substance is, in fact, methamphetamine? Can you go
21 into a little more detail about your tests?

22 A Sure. So the first thing I do is a chemical spot
23 test. That is kind of a screening test that we perform. We
24 do three different ones of those tests, and that helps us
25 narrow down what substance we might have.

REDIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 We then, for conforming -- confirming the
2 substance, we use the FTIR, which is the Fourier-transform
3 infrared spectroscopy. And then we also place it on the gas
4 chromatography mass spectrometer.

5 Q And we talked about methamphetamine; what is that
6 made up of? Is it solid meth? Is it made with other
7 things? Are you looking that it is just -- the substance is
8 a percentage of meth?

9 A Methamphetamine can be in several different forms.
10 The one that we are seeing the most right now is what we
11 call "ice", because it looks like a crystal. And a lot of
12 times that will also be cut with a similar looking
13 substance. However, we do not determine how much of cutting
14 agent is present.

15 Q Okay. So you -- it's possible that there is more
16 than one substance in there, and you don't determine how
17 much of that other substance contributes to the weight; is
18 that correct?

19 A Correct. Yes.

20 MS. BYFORD: That is all I have. Thank you.

21 THE COURT: Anything else for this witness?

22 MS. SIMMONS: Just one quick follow-up.

23 REDIRECT EXAMINATION

24 BY MS. SIMMONS:

25 Q Ms. Lanford, when we are talking about cutting

REDIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 agents and things of that nature, if something -- like if a
2 drop of liquid is put into a gallon of water, per se, and we
3 have a cutting agent, for purposes of determining weight, is
4 the entire amount part of your conclusion?

5 A Correct. It would be the entire substance itself,
6 whether it is made up of, you know, just a small portion of
7 the cutting agent versus the rest of it being the pure
8 controlled substance.

9 Q So meth -- meth is meth no matter if it's ten
10 percent pure or a hundred percent pure?

11 A Correct.

12 MS. SIMMONS: Thank you.

13 MS. BYFORD: Your Honor, I would object. I don't
14 believe that is a question for the jury.

15 THE COURT: All right. Well, she is an expert in
16 the field, and I'm going to allow her to give her
17 expert opinion, and she did answer it. So thank you.

18 All right. Anything else from the State?

19 Oh, ma'am, you can step down.

20 You don't have any more questions for this
21 witness? I'm sorry.

22 MS. BYFORD: No, ma'am.

23 THE COURT: You can step down.

24 Anything else from the State?

25 MS. SIMMONS: Your Honor, the State rests at this

REDIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 time.

2 THE COURT: All right. Ladies and gentlemen, we
3 have come to the conclusion of the State's portion of
4 the case here right now. And so I need to take up a
5 couple of matters with the attorneys. I need to take
6 them up without you in the courtroom, so I'm going to
7 ask you to step to your jury deliberation room for just
8 a moment. We are going to be straight back with you.

9 All right. Thank you.

10 (Jury exits the courtroom at
11 11:33 a.m.)

12 THE COURT: Ms. Byford, anything you would like to
13 take up?

14 MS. BYFORD: Briefly, Your Honor.

15 At this time, I would like to make a motion for a
16 directed verdict. I believe based on the evidence
17 presented, I think the fact that the passenger was left
18 alone in the vehicle at arm's reach of the bag, I think
19 the testimony just now from Ms. Lanford, that she can't
20 tell us what portion of the drugs is a cutting agent,
21 what portion -- or that they do not determine what
22 portion is a cutting agent and which portion is meth, I
23 believe goes straight to the State's ability to prove
24 that my client was knowingly in possession of more than
25 10 grams of meth.

REDIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 So I believe a directed verdict would be
2 appropriate in this case.

3 THE COURT: All right. Well, I certainly
4 appreciate your argument on behalf of your client, and
5 I know you will argue both those things vigorously to
6 the jury, but I do find -- I do deny your motion for
7 directed verdict at this time.

8 All right. Ms. Byford, do you need a moment to
9 speak with your client, or do you think he's ready to
10 --

11 MS. BYFORD: Your Honor, my client and I have
12 previously discussed his right to testify. I -- we had
13 a long conversation about it yesterday. I just touched
14 base with him again. He does not wish to testify in
15 this case, and I have advised him that you have
16 questions for him regarding his rights.

17 THE COURT: Sure. All right.

18 Mr. Wirtz, if you'll stand and raise your right
19 hand for me.

20 **Thereupon,**

21 GARY MARTIN WIRTZ
22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows.

24 THE COURT: Will you put your hand down and will
25 you remove your mask.

REDIRECT EXAMINATION OF MEREDITH LANFORD BY MS.
SIMMONS

1 to retrieve those in any way.

2 MS. SIMMONS: No.

3 THE COURT: Okay. All right. Then very well.

4 Then unfortunately, Ms. Byford, I have got to
5 respectfully deny your motion. All right.

6 MS. BYFORD: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 All right. And everybody -- and Ms. Simmons,
9 y'all are in agreement that the Defense didn't put any
10 evidence in such that they would still have last
11 argument?

12 MS. SIMMONS: (Nods in the affirmative.)

13 THE COURT: All right. Very well then.

14 Ms. Byford, anything from the Defense?

15 MS. BYFORD: No, Your Honor.

16 THE COURT: All right. So the Defense --

17 MS. BYFORD: Oh, I apologize. The Defense rests,
18 Your Honor.

19 THE COURT: Ladies and gentlemen, the State has
20 rested and the Defense has rested, and thus we are to
21 the end of the testimony and evidence in this case.

22 I will now turn to closing arguments, my charge on
23 the law. I don't want to make anybody hungry, but your
24 Clerk of Court has already ordered you some lunch. So
25 when we break after we have heard closing arguments and

CLOSING ARGUMENT BY THE STATE

1 my charge, we should be well before one o'clock, I
2 would think. There will be pizza waiting for you in
3 your jury deliberation room for you to begin your
4 deliberations. All right.

5 All right. Yes, sir.

6 CLOSING ARGUMENT BY THE STATE

7 MR. ALDERMAN: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes.

10 MR. ALDERMAN: Ladies and gentlemen, first of all,
11 I want to again thank you for your patience, for your
12 attention throughout the presentation of this case. We
13 have put this together about as quickly as we possibly
14 could, just given the circumstances, but we appreciate
15 your patience.

16 You are, to my knowledge, the first jury in this
17 State that has had to serve in this capacity in a giant
18 plastic egg crate. So you are breaking new ground. We
19 appreciate you being good sports about it. So, again,
20 thank you.

21 Now, the Defendant is charged with trafficking
22 methamphetamine between 10 and 28 grams. He's also
23 been charged with possession of a firearm during the
24 commission of a violent felony.

25 The charge of trafficking, as you heard earlier,

CLOSING ARGUMENT BY THE STATE

1 is based on weight. If what he had was
2 methamphetamine, and it weighed between 10 and 28
3 grams, then he's guilty of the charge of trafficking
4 methamphetamine. The elements are actually much
5 simpler than most others.

6 Now, Ms. Byford touched a little bit on weight
7 towards the end of the chemist's testimony, asking if
8 it could have been cut with something else, could have
9 had something else in it that could influence the
10 weight.

11 But I want to tell you, and I believe the Judge
12 will when she instructs you on the law, that the law
13 doesn't consider that. Meth could be made in a bathtub
14 somewhere, it could be made in a lab somewhere. You
15 could have very different concentrations, stronger
16 meth, weaker meth. In the eyes of the law, it is all
17 just meth with respect to the weight.

18 They don't break down each and every element that
19 could have possibly been mixed in that bag before it
20 was bought or sold or changed in nature. If it tests
21 positive for meth, it's meth. If it weighs between 10
22 and 28 grams, it just does. So keep that in mind.

23 And the charge of trafficking methamphetamine
24 between 10 and 28 grams is a violent felony, as you've
25 heard before. It just is, as a matter of law,

CLOSING ARGUMENT BY THE STATE

1 classified as that. So if you should find that while
2 he was trafficking methamphetamine the Defendant also
3 had a pistol under his seat in his immediate control,
4 then he will be guilty of that charge, too.

5 So let's consider the evidence we've seen. When
6 the Defendant drives past Sergeant Pelfrey, Sergeant
7 Pelfrey looks at him, sees the cracked windshield,
8 pulls out, Defendant speeds up. Odd. Sergeant Pelfrey
9 told you, it's not how typically people would behave
10 when they pass a police officer. Generally they do tap
11 the brakes, it's kind of a common (SIC) thing if they
12 don't. Then it comes to the officer's attention, takes
13 note of it.

14 So he decides that he's going to follow the
15 Defendant. The Defendant speeds up, and he loses sight
16 of him. And by the time he sees him again, he's
17 already pulled in to the Oakway Tractor. He pulls
18 along the side and he gets out. He starts a
19 conversation with him. Immediately he notices his
20 demeanor, his odd -- he's very fidgety, he's very
21 nervous. He hopped out of the car, he's holding in his
22 hand some sort of a bag.

23 Now, Sergeant Pelfrey testified earlier that he
24 didn't actually take much notice of that bag at the
25 time. It wasn't until later when he reviewed the tape

CLOSING ARGUMENT BY THE STATE

1 that he realized that he was holding the bag that was
2 later found right there in his seat and that he later
3 dropped --

4 So he's nervous, he immediately lies about who he
5 is. Right? The Sergeant asked him who he is, he
6 doesn't have any ID on him. He gives him a false name.
7 And that gets blown up pretty quick when he can't
8 figure out how old he is supposed to be.

9 So Sergeant Pelfrey puts him in the back of his
10 patrol car. He's still trying to figure out exactly
11 who he is. The Defendant calls him back over and says
12 he wants to talk to him.

13 And says, Hey, if you just let me go, if you work
14 with me here a little bit, you can follow me down the
15 road and I know where we can find some drugs. I was
16 about to go pick something up, if you just follow me,
17 we'll go get those.

18 Of course Sergeant Pelfrey doesn't take him up on
19 that offer, as you would imagine. And then he tells
20 him that he's going to have to inventory the vehicle.
21 And that's when his demeanor changes.

22 As Sergeant Pelfrey testified, he became more
23 aggressive, he became more assertive about, You can't
24 search my vehicle. Don't look in my vehicle. You can
25 tow it, tow it if you got to tow it, but you can't

CLOSING ARGUMENT BY THE STATE

1 search it, and digs in on that point.

2 Essentially the Defendant tries to talk his way
3 out of it to panic, realizing that Sergeant Pelfrey is
4 going to be inside of that vehicle.

5 He, of course, goes inside the vehicle, has a look
6 around, opens up the bag. What does he find laying
7 right there in the seat? The drugs, the money, cell
8 phone, and scales. Everything packed right there, nice
9 and neat, one bag.

10 He pulls the money out, presents it to the
11 Defendant, and he says, Is this your money? He says it
12 is. He asks him how much it is, and he knows. Making
13 it pretty obvious that it is his money.

14 And then he asks him that important question, Why
15 would your money be in there with the drugs? And he
16 says, It wasn't supposed to be in there with drugs --
17 what drugs?

18 Now, you will have an opportunity to go back to
19 watch that clip as many times as you like in your
20 deliberations. It was fast, I know. Some of you
21 probably saw it, maybe some of you didn't quite catch
22 that moment. But go back and watch it.

23 "It wasn't supposed to be in there with drugs --
24 what drugs?"

25 Finally after he takes him back through his

CLOSING ARGUMENT BY THE STATE

1 on-the-fly sting operation, it falls through. He can't
2 protest enough to keep the officer out of the vehicle.
3 No one is buying the -- it's my money, but not my
4 drugs -- what drugs?

5 He is finally about to be taken to jail, and he
6 actually admits at that point to actually hiding some
7 drugs. He says, Look, I swallowed a baggy when you
8 pulled up, and I need to go to the hospital.

9 And, folks, that is what happened on July 31st of
10 2019.

11 Now, the theme of the Defense is pretty simple.
12 It's hard to argue that the drugs aren't drugs. It's
13 hard to argue that they don't weigh what they weight.
14 It is hard to argue that the gun is not the gun, right?

15 So the only thing that is left, the only hope is,
16 I don't know anything about the drugs. And I would
17 submit to you that --

18 MS. BYFORD: Your Honor, I would object that this
19 is a little bit of burden shifting.

20 THE COURT: I would just say, just be careful
21 about that, but certainly proceed. Go ahead.

22 MR. ALDERMAN: Thank you.

23 Now, you have -- you have already heard about the
24 concept of reasonable doubt, and you will hear more
25 about it before you start your deliberations. But I

CLOSING ARGUMENT BY THE STATE

1 really want you to kind of stop and zero in on that
2 word, reasonable. Reasonable.

3 Reasonable doubt is not elimination of any and all
4 conceivable possibilities in the world. Far from it.
5 Far from it. Reasonable doubt really just asks when
6 you apply your same common sense, your life
7 experiences, the same way you would outside of this
8 courtroom to the facts that you hear inside the
9 courtroom, are you firmly convinced? Are you firmly
10 convinced? Not is anything possible, but what makes
11 sense and what leaves you convinced?

12 Now, when you consider that you are naturally
13 going to ask yourself some questions about the evidence
14 that you have seen. And I think you are going to find
15 that the evidence really only points to one logical
16 answer to those questions.

17 So some questions to consider: Why did he speed
18 up when he passed the officer? He saw the officer pull
19 out, he knew he was going to get pulled over, and he
20 needed to ditch the drugs. That is the answer to that
21 question.

22 Why did he lie about his name? He knows he's
23 driving under suspension, he knows he can get arrested
24 for that. But more importantly, he knows that if he
25 gets arrested for that, they are going to find the

CLOSING ARGUMENT BY THE STATE

1 drugs.

2 MS. BYFORD: Objection. That is not in evidence.

3 THE COURT: Overruled.

4 MR. ALDERMAN: Why did he drop the bag on the
5 front seat of the vehicle while he's talking to the
6 officer? You notice he waits until the officer is
7 talking to dispatch, slightly distracted for a moment,
8 turns around, walks back to the door and drops the bag.

9 He actually -- and I encourage you to go back and
10 look at it -- he drops the bag and his cell phone, kind
11 of in one motion, kind of smooth, and picks up the cell
12 phone, holds it up, starts back to his conversation
13 with the officer.

14 Why ditch the bag on the front seat? Because he
15 knows there's drugs in the bag, and he is standing
16 face-to-face with an officer who might say, what's in
17 the bag? He has got to put some distance between
18 himself and the bag of drugs he knows he has.

19 Why did he say he was about to go pick up some
20 drugs? It seems like a crazy thing to admit, right?
21 I'm about to go pick up some drugs, if you will just
22 follow me. The reason is because he knew that he had a
23 bag of drugs. If he thought -- if he didn't know
24 anything about these drugs, there were no drugs in the
25 car, why in the world would he tell the officer, follow

CLOSING ARGUMENT BY THE STATE

1 me to some drugs?

2 The reason he did it is because he knew he had
3 those drugs, and he had to find a way to get out of
4 that back of that police car and back into his own.

5 Because then he has options. Now, who knows what
6 he would have done. Maybe had a chance to ditch the
7 drugs. Maybe run. Maybe be really creative and just
8 go to some house, his house or some other house, and
9 come back out with the same bag of drugs and say, see,
10 I told you. You're welcome.

11 But it gets him out of there. And there's no
12 reason he would do it if he didn't know there were
13 drugs in the car.

14 Why did he try so hard to keep the deputy out of
15 the car once he realized that it was going to be
16 inventoried before it's towed?

17 MS. BYFORD: Your Honor, I would object to that
18 argument. My client has a Constitutional Fourth
19 Amendment right to not consent to the search of the
20 car.

21 THE COURT: Certainly. And that is noted for the
22 record, but this is argument and I'll allow it.

23 MR. ALDERMAN: Thank you, Judge.

24 He does it for the obvious reason that he knows
25 there's drugs in that car, and if they search it they

CLOSING ARGUMENT BY THE STATE

1 are going to find it.

2 Why, when he's asked why his money was in the bag
3 of drugs, did he respond, it wasn't supposed to be in
4 there with the drugs -- what drugs?

5 Because he knows there is drugs in there the whole
6 time. It is the one and only thing on his mind. He
7 just got tripped up on his own words before he tried to
8 correct fast and say, What drugs?

9 Any reasonable person that didn't have drugs in
10 the car would have responded first with, I don't know
11 what you are talking about. What drugs? Drugs? What
12 drugs?

13 Not, My money wasn't supposed to be in there with
14 the drugs. Wait, what drugs?

15 Why did he say he swallowed a baggy when the
16 officer pulled up, and he needs to go to the hospital?
17 Because he did. He's been trying to hide drugs the
18 entire time, from the moment he saw the officer, the
19 officer pulled out, and he knows he's going to get
20 pulled over. And now there is no way to talk his way
21 out of it, he is on his way to jail, and he finally
22 says something to the effect of hiding some drugs.
23 Because now it is in his best interest, Hey, I
24 swallowed a baggy of drugs, can you get me to the
25 hospital?

CLOSING ARGUMENT BY THE STATE

1 Why? Why if this is all on the passenger, which
2 is another argument of the Defendant, if it's all on
3 the passenger, right, Gary Wirtz doesn't know anything
4 about any drugs, the passenger put them in there. Why
5 did she still have the pills in her bag?

6 I mean, if you are going to put something in his
7 bag, in the whatever it was, 20-some-odd seconds in the
8 time that he's walking the Defendant to the car and
9 comes back and has eyes on the passenger, why, if you
10 are going to put anything in the bag, wouldn't you just
11 put everything in the bag?

12 The reason is she didn't put anything in the bag.
13 She sat right there waiting for the officer to talk to
14 her. Got her stuff searched, got charged for the pills
15 she had. And those drugs were his the entire time.

16 See, ladies and gentlemen, there is really just
17 that one reasonable answer. The drugs are his. That
18 answers all of the questions you might have about the
19 evidence you have seen.

20 You can come up with any number of other random
21 "what if" possibilities that might answer any one of
22 those questions. But when you put them all together,
23 one simple answer that ties all the evidence together
24 and clearly points to the Defendant being guilty of
25 trafficking methamphetamine in 10 to 28 grams and

CLOSING ARGUMENT BY THE DEFENSE

1 having a loaded .9 millimeter pistol right under his
2 seat while he does.

3 To simply dismiss all the actions as some kind of
4 crazy coincidence is unreasonable. And, folks, I will
5 tell you there is such a thing as unreasonable doubt.
6 It doesn't make sense.

7 Folks, the evidence is yours to consider. We ask
8 that you do consider it carefully, but we believe that
9 when you do, you will see that all of the evidence
10 points towards the Defendant being guilty as charged.
11 Thank you.

12 THE COURT: Thank you so much, Mr. Alderman.
13 Ms. Byford.

14 MS. BYFORD: Thank you, Your Honor. .

15 CLOSING ARGUMENT BY THE DEFENSE

16 BY MS. BYFORD:

17 Q And a good afternoon. Good afternoon, ladies and
18 gentlemen. I want to start with two very important things.
19 One, a reminder that what the State has told you and what
20 I'm about to tell you is not evidence.

21 The conclusions and wild assumptions that
22 they have drawn are not evidence. The arguments that I'm
23 about to make are not evidence. You and you alone are the
24 folks who decide the facts. You decide how much the drugs
25 weighed. You decide who was knowingly in possession of it.

CLOSING ARGUMENT BY THE DEFENSE

1 The same for the gun. You decide who could have knowingly
2 been in possession of that gun.

3 And another important element that the Judge
4 will charge you on, in order for you to find that the
5 Defendant is guilty of possession of a weapon during a
6 violent crime, you have to determine that that weapon was
7 used to further the crime.

8 We are going to talk about the gun first in
9 just a second, but before I get to that, I want to make
10 another very important point. You have seen several times
11 that the State has tried to use my client's exercise of his
12 Constitutional rights against him. You cannot consider the
13 fact that he has exercised his right to remain silent here
14 today, because we all have the right against
15 self-incrimination. We do not have to put up a case. The
16 Defense does not have to put up a case. I don't have to ask
17 questions. I don't have to talk to you right now.

18 I do have trouble being quiet from time to
19 time, but I don't have to do this. This is entirely their
20 show. They have to bring you everything. There are no
21 requirements placed on us, and my client has every right,
22 just as all of you have every right to object to the search
23 of your vehicle or your house or your personal property.
24 Those are our Constitutional rights, and our exercise of
25 them can never be held against us. So I just remind you of

CLOSING ARGUMENT BY THE DEFENSE

1 that.

2 Let's talk about the gun first, because I
3 think it is the easiest. You saw in the video where it was
4 found. It is not under the driver's seat, it is to the
5 backside of the driver's seat, a driver's seat which is
6 propped up by some mop/ax/weird yellow bar thing, and
7 firstly, there is a bunch of clutter in the back seat. The
8 car did not belong to my client. There's no testimony
9 indicating exactly how long my client was in possession of
10 that car. We have no idea whether or not he even knew the
11 gun was there, whether or not he even touched it, because
12 nobody has fingerprinted the weapon.

13 That is the easiest thing to do. And if this
14 was an important case to the State, they would have done it.
15 They would have used their resources to figure out -- that
16 is an easy question to answer. Dust it for fingerprints,
17 see if you find any; and they didn't do that.

18 And they left us with a question. And that
19 question is a doubt. They cannot say that my client knew
20 that gun was there or that he used it in furtherance of any
21 other possible crime in this case that's happening now. And
22 my argument to you today is that you have to find him not
23 guilty because the State has utterly failed to meet their
24 burden on the possession of a weapon charge.

25 But let's turn to the drugs. That's what we

CLOSING ARGUMENT BY THE DEFENSE

1 have been talking about the most. You saw my client
2 standing on the video talking to the officer, and, yeah, he
3 was nervous. Yes, he gave his brother's name, because he
4 knew his license was suspended. And that means you go to
5 jail. That would make anybody nervous. Did he do the right
6 thing by lying to the officers about his name? No,
7 absolutely not. But does it explain why he was nervous?
8 Does it explain that behavior adequately? Yes, even the
9 officer eventually conceded that point.

10 Well, let's talk about the bag. He's
11 standing out there talking to that officer, holding that bag
12 for a while. For a while, ladies and gentlemen. He doesn't
13 immediately ditch it. He doesn't try -- he just holds it.
14 Would he have done that if he knew there was trafficking
15 weight meth in it?

16 He sets it on the passenger seat, he goes
17 back to talk to the police, and the police tell you that
18 they walk him to the car while there's still a passenger in
19 the seat. A passenger with a big bag of her own, within
20 easy arm's length.

21 It is 12 minutes before another officer gets
22 on the scene, but even -- even if she's only unobserved for
23 20 to 30 seconds as the officer walked Mr. Wirtz over to the
24 other car, how long does it take to reach over and -- you
25 wouldn't have to make a whole lot of motion to do this. To

CLOSING ARGUMENT BY THE DEFENSE

1 reach over, grab the bag, tuck the meth inside, tuck it
2 back. That doesn't take long at all. Not long at all.

3 And, again, we can't say for sure what
4 happened because we don't have fingerprints on that bag.
5 There's two people in the car, one person who's unobserved
6 with the bag and the drugs for a while, but we don't
7 fingerprint the bag. We could have answered this question
8 definitively. This case is a year old. More than a year
9 old. They had plenty of time to bring you that answer.

10 They had the resources to bring you that answer, and that is
11 their job, to bring you that answer; and they didn't do it.

12 If this was an important case to them, they
13 would have closed every gap. They had the ability to close
14 that gap, to have me not stand up here and get to make this
15 argument to you right now, but they didn't because they just
16 want you to make assumptions. They want you to assume that
17 the drugs were his. They want you to assume that she just
18 sat there quiet as can be for 12 to 15 minutes.

19 Mr. Alderman did a lot of time talking about
20 what makes sense. Let me run a different set of what makes
21 sense by you. She is in the car with the drugs. He thinks
22 they are going to get drugs, and you know that because he
23 told the officer.

24 He is with her, they are going somewhere, he
25 knows drugs are involved. He tells the officer, let's help

CLOSING ARGUMENT BY THE DEFENSE

1 out. He doesn't know they are actually already with him.
2 She has got them in that big bag.

3 When he tells the officer that he swallowed
4 something, why would he go to the dangerous link of
5 swallowing a small part? Because even he didn't -- he told
6 the officer he needs to go to the hospital. He knew that
7 that was dangerous. Why would he go to that length, risk
8 his life in that way, if he thought all the rest of the
9 drugs were in that car? That makes sense. He tells the
10 officer, you can hear him say in the part that they keep
11 referring to, and I would ask you to go back and listen
12 because what I hear is there are supposed to be drugs --
13 what drugs?

14 But you are going to have that tape, and it's
15 not up to Mr. Alderman to tell you it's about, it's not up
16 to me to tell you what it's about. You can go look at that
17 tape and hear it for yourself. She -- and then he says, she
18 must have put them in there, because that is the only
19 explanation. And all of those things together make sense.
20 That makes sense.

21 My client's statements in that regard line up
22 with all the other facts that you have. And what the State
23 has to prove is that he was knowingly in possession of more
24 than 10 grams. So not just that he knew that there was
25 meth, but he knew there was more than 10 grams of meth.

JURY CHARGE

1 And I would argue that they can't prove that.
2 They can't prove that because we don't know if the meth was
3 cut with something. Now, there are going to -- they are --
4 you are going to hear testimony that you can absolutely
5 consider all of that, just like the example that Lindsey
6 gave, the drop in the gallon. You can consider that, but
7 ladies and gentlemen, you are also free to determine that
8 that matters, that the flex matters.

9 You are the determiners of how much that drug
10 weighs. The expert is there to give her opinion to help
11 you, but you are ultimately the trier of facts. And I would
12 argue to you today that based on what the State has
13 presented, you do not have enough evidence on either the
14 trafficking or the gun charge to find my client guilty
15 beyond a reasonable doubt. This case demands a verdict of
16 not guilty.

17 Thank you so much for your attention.

18 THE COURT: Thank you both.

19 If you don't mind, I'm going to take my mask off
20 for this. We're not going to use the microphone. I'm
21 going to stand up and speak.

22 JURY CHARGE

23 THE COURT: Madam Foreperson, ladies and gentlemen
24 of the jury, you have seen and heard the evidence
25 presented, as well as the arguments of counsel. It now

JURY CHARGE

1 becomes my duty and obligation to instruct you on the
2 law applicable in this case.

3 It will then be your duty and obligation to begin
4 your deliberations through which process you will
5 decide the facts, apply the law as instructed by the
6 Court, and determine whether the State met its burden
7 of proof.

8 It is your exclusive duty to determine the facts
9 in this case. You do that based upon your own common
10 sense, examination, and evaluation of the testimony and
11 other evidence received during the trial of this case.

12 You 12 jurors alone will decide what weight,
13 value, and effect that is to be given to any particular
14 testimony or any other evidence received. Your
15 ultimate goal is to determine whether the State has met
16 its burden of proof in this case, and in doing so, you
17 will have fulfilled your obligation as jurors, and that
18 is to give both the State and the Defendant a fair and
19 impartial trial based upon the evidence presented and
20 the law applicable in this case.

21 In this case the State of South Carolina, through
22 the Circuit Solicitor, has charged the Defendant with
23 criminal offenses known as trafficking methamphetamine
24 and possession of a weapon during the commission of a
25 violent crime.

JURY CHARGE

1 The allegations charging the Defendant with these
2 crimes are set forth in the indictment, the indictments
3 that have been previously explained to you. The
4 indictment is not evidence in this case, and may not be
5 considered by you as evidence against the Defendant.

6 As to the charges set forth in the indictments,
7 the Defendant has entered a plea of not guilty. That
8 plea of not guilty is therefore placed upon the State,
9 the burden of proving the allegations that are set
10 forth in the indictments, the burden of proving each of
11 the essential elements of any crime charged, and
12 therefore, the burden of proving the guilt of the
13 Defendant to the satisfaction of you 12 jurors beyond a
14 reasonable doubt before a verdict of guilty can be
15 returned as to any indictment.

16 The burden is never upon a Defendant to prove that
17 he is not guilty or to prove that he is innocent,
18 because in some cases that might not be possible. The
19 burden is always upon the State because they have made
20 the allegations to prove the Defendant guilty beyond a
21 reasonable doubt.

22 You are further instructed that it is a vital,
23 important, and cardinal rule of law that every
24 Defendant in a criminal trial, no matter how serious
25 the offense might be for which he stands charged, shall

JURY CHARGE

1 always be presumed innocent of that charge. And that
2 presumption of innocence shall be with the Defendant
3 from the moment of his arrest and throughout the course
4 of the criminal process, and even throughout the course
5 of the actual trial.

6 The presumption of innocence shall be with the
7 Defendant even as you go into the jury room to begin
8 your deliberations, and that presumption of innocence
9 shall be with him there, and be with him forever unless
10 you 12 jurors determine that he is no longer entitled
11 to that presumption of innocence. It is only if,
12 unless, and until you are satisfied of the Defendant's
13 guilt beyond a reasonable doubt that he would no longer
14 be entitled to the presumption of innocence.

15 I remind you that during this trial, you and I
16 have certain duties to perform. As the trial judge, it
17 is my responsibility to preside over the trial of this
18 case, and I also have the duty to rule on the
19 admissibility of the evidence offered during this
20 trial.

21 You are to consider only the competent evidence
22 before you. If there was any testimony ordered
23 stricken from the record, you must disregard that
24 testimony. You are to consider only the testimony
25 which has been presented from this witness stand and

JURY CHARGE

1 any exhibits that have been made a part of the record
2 in this case, and any stipulations of counsel.

3 I have the additional duty to charge you the law
4 applicable to this case. As the presiding judge, I am
5 sole judge of the law of the case, and it is your duty
6 to accept and apply the law as I state it to you. If
7 you already have any idea as to what the law is or what
8 the law ought to be, and it does not agree with what I
9 tell you now the law is, you must abandon that idea,
10 because you were sworn to accept the law, and apply the
11 law exactly as I state it to you.

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

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

JURY CHARGE

1 As jurors, it is your duty to determine the
2 effect, value, weight, and truth of the evidence
3 presented during this trial. The State has the burden
4 of proving the Defendant guilty beyond a reasonable
5 doubt. Some of you may have served as jurors in civil
6 cases where you were told that it is only necessary to
7 prove that a fact is more likely true than not true.
8 Such is by the greater weight or preponderance of the
9 evidence.

10 In criminal cases, the State's proof must be more
11 powerful than that. It must be beyond a reasonable
12 doubt. Reasonable doubt is the kind of doubt that
13 would make a reasonable person hesitate to act. Proof
14 beyond a reasonable doubt is proof that leaves you
15 firmly convinced of the Defendant's guilt.

16 There are very few things in this world that we
17 know with absolute certainty, and in criminal cases,
18 the law does not require proof that overcomes every
19 possible doubt.

20 If, based on your consideration of the evidence,
21 you are firmly convinced the Defendant is guilty of the
22 crimes charged, you must find the Defendant guilty. If
23 you -- on the other hand, if you think there is a real
24 possibility that the Defendant is not guilty, you must
25 find -- give the Defendant the benefit of the doubt and

JURY CHARGE

1 find him not guilty.

2 Facts and circumstances that merely place upon the
3 Defendant a grave suspicion of the crime charged or
4 that merely raises speculation or conjecture of the
5 Defendant's guilt are not sufficient to authorize a
6 conviction of the accused.

7 There are two types of evidence which are
8 presented during a trial, direct evidence and
9 circumstantial evidence. Direct evidence is the
10 testimony of a person who claims to have actual
11 knowledge of a fact, such as an eyewitness. It is
12 evidence which immediately establishes the main fact to
13 be proved.

14 Circumstantial evidence is a proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be
18 inferred.

19 Circumstantial evidence is based on inference and
20 not on personal knowledge or observation. The law
21 makes absolutely no distinction between the weight or
22 value that is to be given to either direct or
23 circumstantial evidence. Nor is a greater degree of
24 certainty required of circumstantial evidence than of
25 direct evidence. You should weigh all of the evidence

JURY CHARGE

1 in the case.

2 After weighing all the evidence, if you are not
3 convinced that the State met its burden of proof beyond
4 a reasonable doubt, you must find the Defendant not
5 guilty.

6 Necessarily, you must determine the credibility of
7 witnesses. Credibility simply means believability. It
8 becomes your duty as jurors to analyze and to evaluate
9 the evidence and determine if the State has met its
10 burden of proof in this case. In determining the
11 believability of witnesses who have testified in this
12 case, you may believe one witness over several
13 witnesses or several witnesses over one witness. You
14 may believe a part of the testimony of a witness and
15 reject the remaining part of the testimony of that same
16 witness.

17 You may believe the testimony of a witness in its
18 entirety, or reject the testimony of a witness in its
19 entirety. You may consider whether any witness has
20 exhibited to you any interest, bias, prejudice, or
21 other motive in this case. You may also consider the
22 appearance and manner of a witness while on the witness
23 stand.

24 The Rules of Evidence ordinarily do not permit
25 witnesses to testify to opinions or conclusions. An

JURY CHARGE

1 exception to this rule exists for witnesses we call
2 expert witnesses, a witness who by education and
3 experience has become an expert in some art, science,
4 profession, or calling may state an opinion as to the
5 relevant and material matter in which the witness
6 claims to be an expert, and may also state the reasons
7 for that opinion.

8 You should consider any expert opinion received in
9 evidence in this case, and like any other evidence,
10 give it the weight you think it deserves. If you
11 decide that the opinion of an expert witness is not
12 based on sufficient education and experience, or if you
13 conclude that the reasons given in support of the
14 opinion are not sound, or that the opinion is
15 outweighed by other evidence, you may disregard the
16 opinion entirely.

17 An expert witness's testimony is to be given no
18 greater weight than that of other witnesses simply
19 because the witness is an expert. Further, you are not
20 required to accept an expert's opinion, even though it
21 is not contradicted.

22 I instruct you and emphasize that the fact that
23 Defendant did not testify is not a factor to be
24 considered by you in any way in your deliberation, and
25 in your consideration on the question of the guilt or

JURY CHARGE

1 innocence of the Defendant, or whether or not the State
2 has met its burden of proof. It must not be considered
3 by you in any manner whatsoever. A Defendant has a
4 Constitutional right to remain silent, and the
5 assertion of this right must not be considered by you
6 in your deliberations.

7 I repeat, under your juror oath, you are to draw
8 no conclusion whatsoever from the fact the Defendant
9 did not testify in this case. The fact the Defendant
10 did not testify should not even be discussed in the
11 jury room.

12 The Defendant is not required to prove his
13 innocence. The burden of proof remains on the State to
14 prove guilt beyond a reasonable doubt.

15 In order to establish criminal liability, the
16 State must also prove criminal intent. For a
17 particular crime, the mental state required might be
18 purpose, intent, knowledge, recklessness, or criminal
19 negligence. The State must prove criminal intent
20 beyond a reasonable doubt. Criminal intent is a matter
21 that must be determined by the jury from the facts of
22 the case. There is no way to prove criminal intent to
23 a mathematical certainty, so the law says that criminal
24 intent may be inferred from the circumstances shown to
25 have existed.

JURY CHARGE

1 This is how you determine whether or not the
2 element requiring intent was present. It is not
3 necessary to establish intent by direct evidence.
4 Intent may be established by circumstantial evidence or
5 by taking into consideration the acts of the parties
6 and all the facts and circumstances of the case.

7 Criminal intent is a mental state of conscious
8 wrongdoing. It is up to you to determine what the
9 Defendant intended to do based on the circumstances
10 shown to have existed in this case.

11 Trafficking methamphetamine 10 grams but less than
12 28 grams. The State must prove beyond a reasonable
13 doubt that the Defendant trafficked methamphetamine for
14 more than 10 grams but less than 28 grams. The State
15 need not prove the Defendant trafficked methamphetamine
16 for less than 28 grams, only that he trafficked
17 methamphetamine for more than 10 grams.

18 The weight of methamphetamine includes the weight
19 of any substance it is mixed with. Trafficking means
20 to knowingly sell, manufacture, cultivate, deliver,
21 purchase, bring into the state, provide financial
22 assistance, or otherwise aid, abet, attempt, or
23 conspire to sell, manufacture, cultivate, deliver,
24 purchase, or bring into this state, or knowingly be in
25 actual or constructive possession, or knowingly attempt

JURY CHARGE

1 to become in actual or constructive possession of more
2 than 10 grams of methamphetamine.

3 Constructive possession means that the Defendant
4 had dominion or control or the right to exercise
5 dominion or control over either the methamphetamine
6 itself, or the property upon which the methamphetamine
7 was found.

8 Mere presence at the scene where drugs were found
9 is not enough to prove possession. Actual knowledge of
10 the presence of methamphetamine is strong evidence of
11 the Defendant's intent to control its disposition or
12 use. The Defendant's knowledge and possession may be
13 inferred when a substance is found on the property
14 under the Defendant's control.

15 However, this inference is simply an evidentiary
16 fact to be taken into consideration by you along with
17 the other evidence in this case and to be given the
18 weight you decide it should have.

19 Possession of a weapon during the commission of a
20 violent crime. The Defendant is charged with
21 possession of a weapon during the commission of a
22 violent crime. The State must prove beyond a
23 reasonable doubt the Defendant was in possession of a
24 firearm or visibly displayed what appeared to be a
25 firearm during the commission of a violent crime or

JURY CHARGE

1 attempt to commit a violent crime.

2 A firearm means any machine gun, automatic rifle,
3 revolver, pistol, or any weapon which will or is
4 designed to make or may be readily converted to expel a
5 projectile.

6 In order to find the Defendant guilty of
7 possession of a weapon during the commission of a
8 violent crime or an attempt to commit a violent crime,
9 you must first find the Defendant guilty of either
10 committing a violent crime or attempting to commit a
11 violent crime.

12 Trafficking in methamphetamine for more than
13 10 grams but less than 28 grams is defined as a violent
14 crime. The State must prove beyond a reasonable doubt
15 that the weapon furthered, advanced, or helped in the
16 commission of a crime.

17 Ladies and gentlemen, your verdict must be a
18 unanimous one. Madam Foreperson, when the jury agrees
19 upon a verdict, you will write it on this verdict form
20 and sign your name as the foreperson. Then knock on
21 the door of your jury deliberation room to signal to
22 the bailiff that you have reached a verdict. At that
23 time we will receive you back into the courtroom.

24 I ask that you now return to your jury
25 deliberation room, but do not begin your jury

JURY CHARGE

1 deliberations quite yet until you are told to do so by
2 the bailiff. There's some matters that I must discuss
3 with the attorneys. It will be signal to begin your
4 deliberations when they bring you the verdict form and
5 the exhibits in this case.

6 A couple of quick things about the exhibits. You
7 will have a laptop to be able to view the video in this
8 case. Next, the gun will remain here in the courtroom
9 with us, even though it has been rendered safe by law
10 enforcement. The gun will remain here with us, I
11 think, probably, for obvious reasons. If any of you
12 would like to inspect that gun, then we certainly can
13 do so. We can make that available for you.

14 Finally, I remind you that another Defendant's
15 drugs were listed on one of the exhibits. You are to
16 consider only A.01 on the report, the report from the
17 expert witness concerning the drugs.

18 All right. Thank you so much. You may now step
19 to your jury deliberation room. Thank you.

20 THE CLERK: We are actually going to bring them
21 back in here for deliberations.

22 THE COURT: Oh, I'm sorry.

23 THE BAILIFF: What am I supposed to do?

24 THE COURT: Well, we need to take them out for
25 just a moment, for just a brief moment, and then bring

JURY CHARGE

1 them right back in. So we will just --

2 They can just be separated. In fact, if you want
3 to put them in the hall for just a moment, yeah. We're
4 going to be that quick.

5 What we're going to do, I forgot to tell you,
6 they're having to keep me honest on all this. We're
7 going to bring y'all back in here so you can spread out
8 and eat, so you're not too close to anybody, and you
9 will deliberate in here. Okay? We are going to leave.
10 All right.

11 (Discussion off the record.)

12 THE COURT: All right. Any objection to my charge
13 on the law from the State?

14 MS. SIMMONS: No, ma'am.

15 THE COURT: Any from the Defense?

16 MS. BYFORD: No, ma'am.

17 THE COURT: Yes, sir. I'm sorry.

18 MR. ALDERMAN: With regards to the computer,
19 there's a password to log in and a way to get to it.
20 And I don't know if it's something that they can do on
21 their own. If they need to review it, could we come in
22 and start it for them and leave or have the clerks do
23 it?

24 THE COURT: And as long as Ms. Byford was in here
25 at the same time.

VERDICT AND SENTENCING

1 you.

2 Feel free to move around the courtroom as you
3 would like to do. Of course people have got -- there
4 are certain papers here upfront, I don't think that
5 there is anything that you can't see or anything like
6 that, but I would ask you certainly not to look at
7 anything like that. But all of that being said, thank
8 you so much for your service and we will now leave you
9 to it.

10 (Jury begins deliberations at 12:51 p.m.)

11 * * *

12 (The jury enters the courtroom at 1:30 p.m.)

13 THE COURT: Madam Foreperson, it's my
14 understanding that the jury has reached a verdict; is
15 that correct?

16 THE FOREPERSON: Yes, ma'am.

17 THE COURT: Do you mind handing the verdict form
18 to the bailiff, please?

19 (Foreperson complies.)

20 THE COURT: The verdict form appears to be in
21 order. Could I ask you-all to publish it?

22 THE CLERK: Yes, ma'am.

23 THE COURT: Thank you so much.

24 THE CLERK: In the matter of the State of South
25 Carolina versus Gary Martin Wirtz, as to the charge of

VERDICT AND SENTENCING

1 trafficking methamphetamine, 10 grams but less than
2 28 grams, we the jury unanimously find that the
3 Defendant is guilty.

4 As to the charge of possession of a weapon during
5 the commission of a violent crime, we the jury
6 unanimously find the Defendant guilty.

7 Ladies and gentlemen of the jury, if this was your
8 verdict and remains your verdict, please indicate so by
9 raising your right hand.

10 (All jurors comply.)

11 THE CLERK: Let the record reflect that all
12 Members of the Jury have affirmed their verdict.

13 THE COURT: All right. Any matters -- thank you
14 so much. Any matters that we need to take up from the
15 State before I release the jury?

16 MS. SIMMONS: No, Your Honor.

17 THE COURT: Any from the Defense?

18 MS. BYFORD: No, Your Honor.

19 THE COURT: All right then. I speak for all of
20 the attorneys involved in this and the Court to say,
21 thank you so much for your service this week. This
22 does conclude your service here in Oconee County. I
23 normally would come back and speak with you and just
24 have a chance to say goodbye to you, but I'm not going
25 to do that today, I'm not going to hold you up, since

VERDICT AND SENTENCING

1 they do have to split you into separate rooms anyway.
2 I assume that they will be giving you back your
3 personal belongings, any phones or anything like that,
4 before you leave. And if anyone needs a work excuse,
5 they will talk to you about what to do about that.

6 Madam Foreperson, I just need you to remain in the
7 courtroom because I need one more thing from you, I
8 need for you to sign the indictments in this case. All
9 right. Thank you so much. And you are good for three
10 years for jury service, so that is a good piece of
11 news.

12 THE JUROR: Logistically, it was great, they did
13 good. Being the guinea pigs, they did a good job.

14 THE COURT: They did, thank you.

15 THE JUROR: They were second to none.

16 THE COURT: Yes.

17 (The jury exits the courtroom.)

18 (Brief recess.)

19 THE COURT: Ms. Byford, let's certainly say 10
20 days for any post-trial motions, unless you would like
21 to make them now.

22 MS. BYFORD: No, I think that 10 days is fine,
23 Your Honor.

24 THE COURT: All right. Very well. All right. Do
25 you want to move to sentencing?

VERDICT AND SENTENCING

1 MS. SIMMONS: Yes, Your Honor.

2 THE COURT: All right. Yes, ma'am. I know it's
3 25 to 30 years, there is not a lot of latitude in that
4 one.

5 MS. SIMMONS: Yes, Your Honor. If I may briefly,
6 I know that there is not a lot of latitude for Your
7 Honor in this case. Just to kind of let you know how
8 we got here, Your Honor. Mr. Wirtz's record is
9 lengthy. I can go over it if you would like.

10 THE COURT: I think that I know enough of his
11 record from our discussions.

12 MS. SIMMONS: It is extensive, Judge. It goes
13 back to the '90s. Mr. Alderman and I both can tell you
14 since we both have been in the solicitor's office, he's
15 been a constant problem for us, Judge. We attempted to
16 negotiate with him in good faith on this case. He was
17 released on bond, he cut his ankle monitor off and was
18 apprehended, I believe, a couple of weeks later by the
19 Sheriff's Office. At that point in time we did revoke
20 any offers in this case and proceeded to trial.

21 Judge, we just -- we think that we are beyond the
22 point of rehabilitation with Mr. Wirtz. He's presently
23 on probation, or on parole. Ms. Newton would like to
24 handle that today, Judge. He was released from prison
25 in May of 2019. His first re-arrest came to general

VERDICT AND SENTENCING

1 sessions was in June of 2019. By my calculations he
2 made it out of prison about 18 days before he came back
3 to us, Judge. We believe that the sentencing range in
4 this case is appropriate.

5 THE COURT: Okay. Thank you so much. Ms. Byford,
6 I'm inclined -- with how stiff of a penalty this is
7 from the get-go, I am inclined to give him the minimum
8 in this case. There's not a lot of latitude there to
9 begin with.

10 MS. BYFORD: No, ma'am, there's not. Just very
11 briefly. We did have an offer of eight years, which I
12 had strongly advised my client to take. He got out on
13 bond and then the State did revoke. And, you know, I
14 agree, the statute really hems you in. And I
15 completely understand the State wanting to throw the
16 book at Mr. Wirtz, but the book shouldn't weigh 25
17 years.

18 There is nothing we can do about that. Just for
19 the Court's information, he is 41. He will be in his
20 early '60s before he gets out. This is a functional
21 life sentence, so I would ask you to impose the minimum
22 amount.

23 I also ask, Judge, on the possession of a weapon
24 during a violent crime, that you would run that
25 concurrent.

VERDICT AND SENTENCING

1 THE COURT: And how much time does he have credit
2 for in jail? I'm not inclined to give him his HIP
3 obviously.

4 MS. BYFORD: It was like four days anyway, Judge.
5 He has been -- he was in jail from July 31st until he
6 was -- and I can look at the bond date. I should have
7 done that, Your Honor.

8 MS. SIMMONS: And I believe that we may have it.
9 I should have it here.

10 MS. BYFORD: He was re-arrested just about three
11 weeks ago, so it's not.

12 MS. SIMMONS: Judge, he made bond on the
13 trafficking case on August 17th, 2020. And the date of
14 arrest for the ankle monitor is September 23rd, 2020,
15 so he was incarcerated from July 31st of 2019 --

16 MS. BYFORD: I have a calculator. That is
17 correct.

18 MS. SIMMONS: MS. Byford, I am correct, he never
19 got out on the trafficking until the last time, right?

20 MS. BYFORD: That is correct.

21 THE COURT: 7-31 to 8-17?

22 MS. SIMMONS: 8-13, Judge. I am sorry, 8-17. It
23 was set the 13th, he made it on the 17th.

24 MS. BYFORD: But then he got re-arrested --

25 MS. SIMMONS: September 23rd.

VERDICT AND SENTENCING

1 MS. BYFORD: So from September 23rd to now. Those
2 two together, right? Maybe she said that she was
3 inclined to give him --

4 What was that August date, Lindsey, August what?
5 I am sorry.

6 MS. SIMMONS: That he made bond?

7 MS. BYFORD: Yes.

8 MS. SIMMONS: He made bond August 17th, '20 after
9 being there since July 31st of 2019.

10 THE CLERK: It wasn't 2019.

11 MS. BYFORD: No, it is 383 days on the first
12 charge. And then on September 23rd until today, which
13 is -- oops, hang on. So, plus 20 days. It is 403
14 days, Your Honor.

15 THE COURT: 403 days?

16 MS. BYFORD: Yes, it is 403 days. And I apologize
17 for not having that ready for the Court.

18 THE COURT: No, no, that is perfectly fine. All
19 right.

20 Mr. Wirtz, not a lot to say on this one. If you
21 will stand, please. On 2020GS3700226, the sentence of
22 the Court is 25 years, credit for 403 days. And
23 concurrent, 2020GS3700229, possession of a weapon
24 during the commission of a violent crime, five years,
25 credit for 403 days. Good luck to you, sir.

VERDICT AND SENTENCING

1 MS. BYFORD: Thank you, Your Honor. And I do
2 believe that we have a probation -- or you are going to
3 close your case?

4 PROBATION AGENT: We have it scheduled for Friday.

5 THE COURT: Okay.

6 MS. SIMMONS: Ms. Newton, it is my indication that
7 he may be shipped before Friday.

8 THE DEFENDANT: I'll be gone tomorrow.

9 PROBATION AGENT: I'm not sure 100 percent, but I
10 think that there were victims to be notified and that
11 was done on Friday. We probably could do it on a
12 waiver. I'll talk to my supervisor.

13 MS. BYFORD: Yes, I would be happy to sign
14 whatever paperwork I need to sign.

15 THE COURT: Okay. Just check with the victims and
16 let them know the sentence that he's serving, and that
17 should take care of it. Thank you.

18 (Conclusion of the case.)

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	DEFENDANT'S MOTION TO SUPPRESS
STATE	)	
	)	
vs.	)	
	)	
	)	
	)	2020 GS 37 00226; 2020 GS 37 00227;
	)	2020 GS 37 00228; 2020 GS 37 00229
	)	
Gary M. Wirtz	)	
<u>Defendant.</u>	)	

Now comes the Defendant, by and through the undersigned counsel of record, pursuant to Amendment IV of the United States Constitution and Article I Section 10 of the South Carolina Constitution, who moves the Court to suppress the evidence discovered pursuant to an unlawful search by the Oconee County Sheriff's Office.

The Defendant will show unto the Court the following:

The Defendant was pulled over for driving with a cracked a windshield on July 31, 2019. During the course of the traffic stop, the Defendant was placed under arrest for driving under suspension. The arresting officer initially asks the Defendant if they will find anything illegal when they search his car. After the Defendant indicates that he does not consent to a search of the vehicle, the officer tells him they are going to inventory the vehicle. This interaction can be viewed on the video provided to the Court at approximately 18:00 thru 18:30. During the alleged inventory of the vehicle, the officer opens a small black bag located on the driver's seat and finds the methamphetamine that is basis for these charges.

The Defendant will also show that the Oconee County Sheriff Department's written procedures, attached as Exhibit A, contain no provisions regarding the opening of containers inside the vehicle pursuant to an inventory search.

The Defendant respectfully argues that the inventory was pretextual the based on the exchange between the officer and Defendant. The officer asks the Defendant several times "what are we going to find in the car?". The officer then tells the Defendant that they are going to search the car. Not until the Defendant objects and refuses to consent to the search does the officer begin to use the word "inventory".

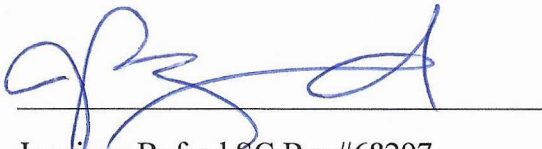
Additionally, the Defendant argues that the container inside the vehicle should not have opened. To open the container constituted an unlawful search under Florida v Wells, 495 U.S. 1, 110 S.Ct 1632 (1990). In *Wells*, the U. S. Supreme Court reaffirms (see Colorado v Bertine, 479 U.S. 367, 107 S.Ct. 738 (1987)) that inventory searches are reasonable and therefore constitutional when they are conducted pursuant to lawful, standardized impoundment procedures.

From *Wells*:

...the Supreme Court of Florida found that the Florida Highway Patrol had no policy whatever with respect to the opening of closed containers encountered during an inventory search. We hold that absent such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment and that the marijuana which was found in the suitcase, therefore, was properly suppressed by the Supreme Court of Florida. (Florida v Wells, 495 U.S. 1, 5 (1990)).

Because the Oconee County Sheriff's Department does not have a policy regarding the opening of closed containers found during an inventory search, the search of containers inside the vehicle is unreasonable and the items found inside the container are not admissible. The attached exhibit clearly does not contain any provisions regarding containers inside of vehicles. The evidence recovered from the black bag in the vehicle is therefore the fruit of an unconstitutional search and must be suppressed.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Jennings Byford', is written over a horizontal line.

Jennings Byford SC Bar #68297
Attorney for Gary M. Wirtz
414-B Pettigru Street
Greenville, SC 29601
(864) 331-0111

Date: October 9, 2020

EXHIBIT A

OCONEE COUNTY SHERIFF'S OFFICE

GENERAL ORDER

SUBJECT: Motor Vehicle Towing and Impoundment Appendix 1 - Sheriff's Office Procedures	NUMBER: G.O. – 012 Appendix 1	PAGES: 3
REFERENCE:	DISTRIBUTION: All Sworn Officers	EFFECTIVE DATE: 09/22/2004
S.C.L.E.A. STANDARDS:	AMENDS / RESCINDS:	

SHERIFF'S OFFICE PROCEDURES:

A. When vehicles should be towed

1. Abandoned vehicles on private property should only be towed and impounded when:
 - i. The vehicle is found to be stolen, or
 - ii. The vehicle was used in the commission of a crime
2. Abandoned vehicles on public right of way will be towed when:
 - i. The vehicle impedes or interferes with the normal and safe movement of other traffic,
 - ii. The vehicle has been stolen or used in the commission of a crime,
 - iii. The vehicle is being vandalized or having parts stolen and the owner cannot be contacted, or
 - iv. The vehicle has been left on the right of way for a period of seventy-two (72) hours and the owner cannot be contacted to advise status or arrange its removal.
3. All vehicles shall be towed when the driver of that vehicle has been arrested, or charged with an offense that does not allow them to operate that vehicle. Except when the driver/owner of the vehicle designates another person within the vehicle (or close by at the discretion of the deputy) to take possession of the vehicle. The designated person must be of responsible age and possess a valid driver's license. In such cases the deputy shall record that persons name address, telephone number and driver's license number in their incident report.

B. Requesting a wrecker service

1. Deputies may not recommend a wrecker company to the public or hold any financial interest or any form of ownership interest in any wrecker service.
2. Wrecker services may be requested by "owner's request", "closest available", or "next on rotation".
 - i. Owner's request may be used where the driver/owner requests a specific company to tow their vehicle, provided the wrecker can arrive within forty-five (45) minutes. When requesting a wrecker in such a manner the fact that it is "owner's request" should be transmitted as such to the communications center.

OCONEE COUNTY SHERIFF'S OFFICE

- ii. Closest available may be used in emergency or exigent circumstances where it is necessary to have a vehicle moved immediately.
 - iii. Next on rotation should be used in all other circumstances, advising the communications center of the exact location of the tow and type of wrecker needed (normal/heavy duty).
3. Deputies shall remain with the wrecker until it leaves with the vehicle or you are released.

C. Documentation

1. It is the policy of this department to inventory all vehicles towed. Deputies will fill out an inventory form completely on all tows, taking special care to note the following:
 - i. Vehicle Identification Number (VIN)
 - ii. Name and address of the registered owner
 - iii. Name and address of the lien holder(s)
 - iv. Incident report number
 - v. Any damage, defects, etc., with the wrecker operator before the vehicle is towed.
2. Copies of the vehicle inventory form are to be distributed as follows:
 - i. White – Dispatch
 - ii. Yellow – Evidence Sergeant
 - iii. Pink – wrecker driver (this should have the ownership and lien holder information on it, which legally must be provided to the wrecker company).
3. Any time a vehicle is directed to be towed by this agency, a towing information only incident report will also be filed, regardless whether the reason for the tow is criminal or civil. If the tow is due to a situation where an incident report will be filed, a separate towing information only report is not necessary, the appropriate information may be included in the original incident report.
4. Any time a vehicle is towed without the owner/operator's knowledge, i.e. a vehicle improperly on someone else's private property, the wrecker company is required to report this to law enforcement within one (1) hour. Legally we are required to draft a towing (information only) report and provide them with certain information. A copy of the report may be faxed to them or left in the communications center to be picked up, to fulfill our obligation. The following information should be in the report:
 - i. Vehicle Identification Number (VIN)
 - ii. Name and address of the registered owner
 - iii. Name and address of the lien holder(s)
 - iv. Incident report number
5. Officers must complete an information only report whenever a vehicle is placed in an impound lot for another agency.
6. The report case number will be placed on any and all towing documentation.

OCONEE COUNTY SHERIFF'S OFFICE

D. Storage and impound lots

1. Vehicle which should be taken to the wrecker company lot:
 - i. Stolen vehicles will be taken to the wrecker lot and processed the next day by ID unit. The owner of the vehicle has a seven day grace period before the wrecker lot may charge for storage, but the owner must be contacted within 48 hours of recovery. Officers may contact the victim but an investigator will re-contact the victim to release the vehicle.
 - ii. All abandoned vehicle will go to the wrecker company lot as they now can be disposed of through magistrate's court.
 - iii. Traffic related vehicles should go to the wrecker lot with a hold, if necessary.
2. Five Forks Impound
 - i. Will be used by the civil unit and other agencies.
 - ii. Place other agency vehicles on the left and civil on the right.
3. The OLEC Impound lot
 - i. Will be used by the Narcotics Division.
 - ii. Vehicles involved in major crimes, i.e. homicides.
4. Do not block in any vehicle in either impound lot.
5. Any other property placed in an impound lot needs to be logged with dispatch and have an information only report completed. This includes other type vehicles, bicycles, recovered property, lawnmowers, etc.

E. Officers should report any violations of the wrecker policy and procedures to the Criminal Investigations Division Lieutenant.

This general order is for the use of the Oconee County Sheriff's Office only, and in no way enlarges an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims. A violation of these policies or procedures, if proven, can only form the basis of a complaint by this agency.

OCONEE COUNTY SHERIFF'S OFFICE

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OCONEE COUNTY SHERIFF'S OFFICE

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OCONEE COUNTY SHERIFF'S OFFICE

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d. Inventory:

- i. An inventory is different from the vehicle search. It does permit an officer (deputy sheriff) to make a warrantless seizure of contraband or other evidence from a vehicle and has been held reasonable by the courts because of its non-investigatory nature. The concept of inventory is based upon the idea that police (law enforcement) frequently come into possession of property belonging to other people and is further based upon three primary interests:
 - ii. protecting the car owner's property;
 - iii. protecting police (law enforcement) against claims of theft and damage; and
 - iv. protecting police (law enforcement) and the public against dangerous instrumentalities.

e. Threshold Requirements:

- i. Vehicle must be taken into custody (South Dakota vs. Operman, 428 U.S. 364, 1976).
- ii. The inventory must be done pursuant to written departmental (agency) policy guidelines (Florida vs. Wells, 110 S.Ct. 1632, 1990).

f. Scope of the Inventory:

- i. The scope of the inventory extends to the entire vehicle including the trunk and all containers therein consistent with the caretaker purpose.



- ii. When expedient and practical the inventory should be conducted by two officers (deputy sheriffs), and the interior and exterior of the vehicle photographed when necessary. Non-evidentiary items of significant value found in the vehicle should be removed for safekeeping and afforded adequate security. Contraband or evidence found in the vehicle should be immediately seized and preserved in accordance with existing procedures governing the seizure of physical evidence. A receipt should be given for all items removed from the vehicle. If the doors, the glove compartment, the trunk, or any other containers therein are locked or otherwise sealed, great care should be taken to minimize damage to property while gaining access to conduct the inventory (Colorado vs. Bertine, 479 U.S. 367, 1987).
- iii. The inventory should be recorded as required by policy and procedure "Motor Vehicle Towing and Impoundment Appendix 1 - Sheriff's Office Procedures". (Ref: SCLEA 1.5.f)

4. Emergency Searches:

- a. The law recognizes that under certain circumstances, the requirement of a search warrant is waived, and an officer (deputy sheriff) may properly make a warrantless entry and search a place protected by the Fourth Amendment. Immediate, warrantless entry is justified for the following:
 - i. to protect life and safety;
 - ii. to arrest a fugitive in hot pursuit; and/or
 - iii. to preserve evidence being destroyed or removed.
- b. Such entries and searches can be made only under extraordinary circumstances. Officers (deputies) should be prepared to justify their actions by supporting a reasonable belief that an emergency existed. (Ref: SCLEA 1.1.5.e)
- c. Crime Scene Searches. Scenes may not present such exigent circumstances that will permit a warrantless search of the entire premises. Officers (deputy sheriffs) may respond to the emergency and seize evidence in plain sight, but any extended search of premises directed against the person possessing Fourth Amendment protection in that premises, must be done under a search warrant or with the consent of the person in lawful possession (Mincey vs. Arizona, 437 U.S. 375, 1978 and Thompson vs. Louisiana, 469 U.S. 17, 1984).
(Ref: SCLEA 1.5.d)





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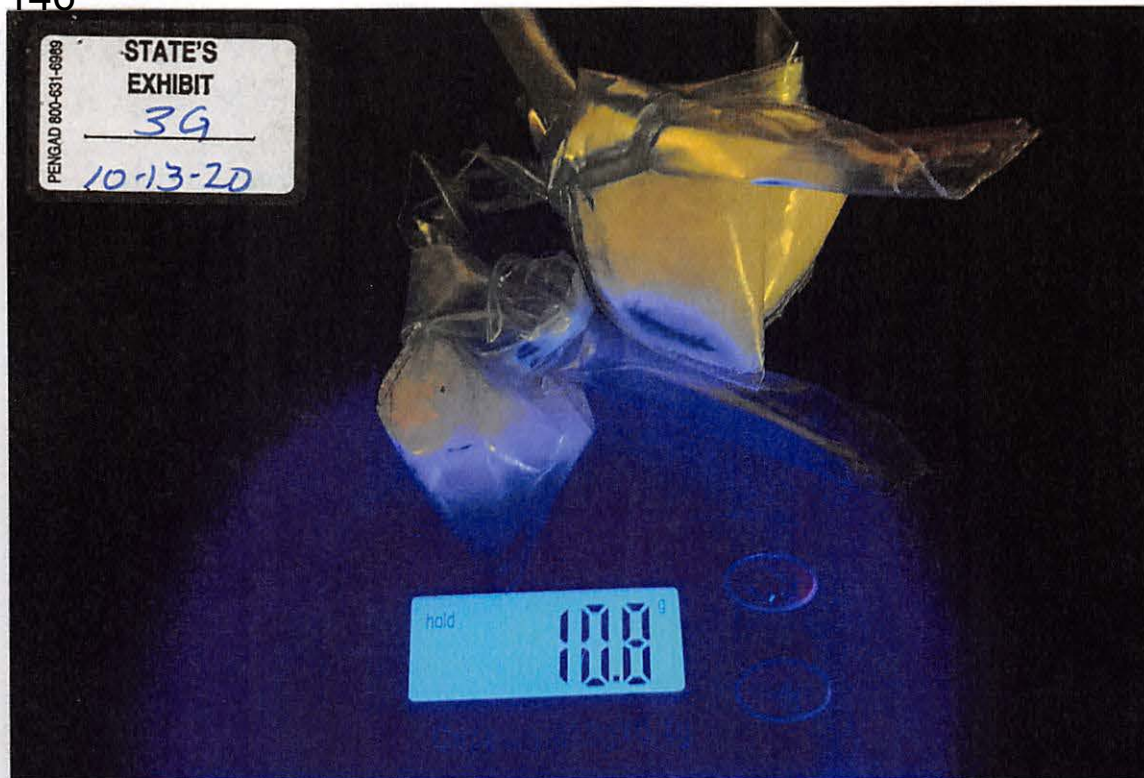
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AUG 10 2021

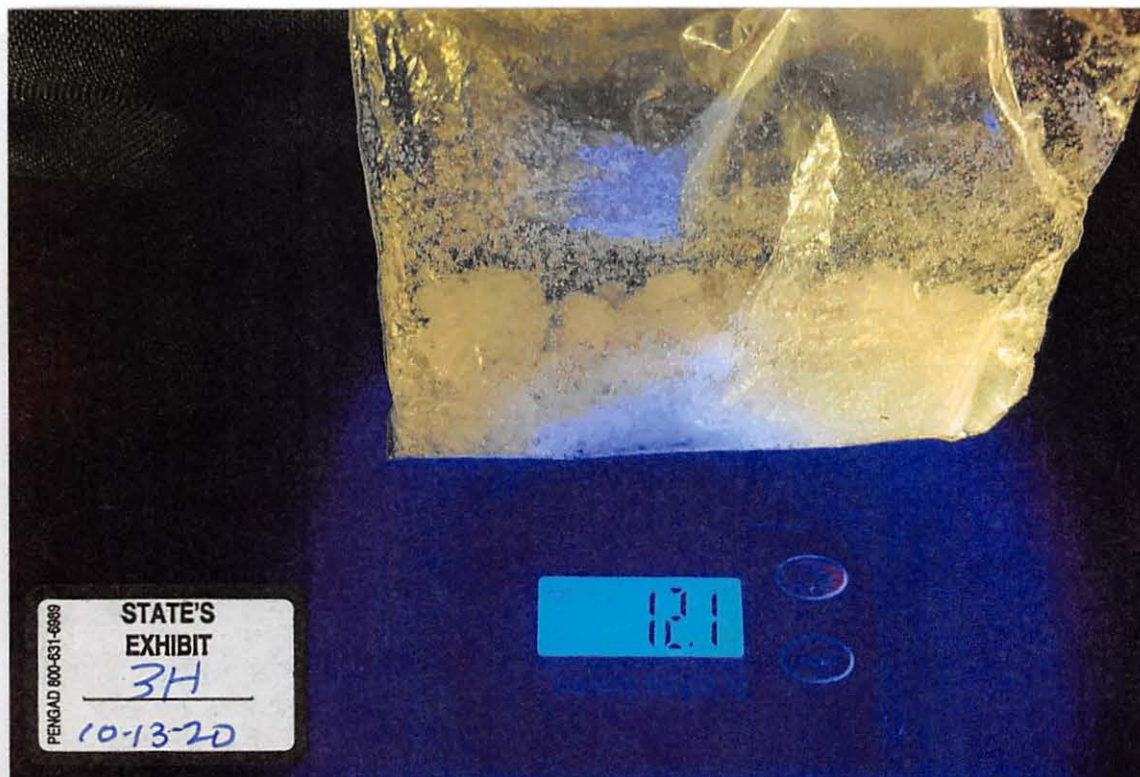
CLERK OF COURT
OCONEE COUNTY, SC







CERTIFIED TRUE COPY
at
AUG 16 2021
CLERK OF COURT
OCONEE COUNTY, SC





Anderson-Oconee Regional Forensics Laboratory

Justin Pelfrey
Oconee County Sheriff's Office
300 South Church Street
Walhalla, SC 29691

DRUG ANALYSIS DEPARTMENT

Date: 12/13/2019
Lab Number: L19-001266
Incident Date: 07/31/2019
Agency Case #: P2019-03183
Control #: C33602
Suspect:
Wirtz, Gary Martin
Rowland, Virginia Ann

This is an official report issued by a certified analyst. The items in this report were examined with the assurance that the submitted specimens have not, nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L19-001266

The following evidence was submitted to the Anderson/Oconee Regional Forensics Laboratory by David Philpott of the Oconee County Sheriff's Office on 8/9/2019:

Item A : Sealed drug evidence kit

Control #: C33602

CERTIFIED TRUE COPY
att
AUG 16 2021
CLERK OF COURT
OCONEE COUNTY, SC

Item A.01 : Clear plastic ziploc bag containing crystalline substance.

Results:

Methamphetamine found 11.28 grams Schedule: II

Item A.02 : Three (3) knotted blue tinted plastic baggies each containing crystalline substance.

Results:

No analysis performed

STATE'S
EXHIBIT
5
10-13-20
PENGAD 800-431-6988

Item A.03 : Clear plastic ziploc bag containing three (3) white, round tablets with "8" imprinted on one side and an arrow logo imprinted on the other side.

Results:

Buprenorphine found Schedule: III

Item A.04 : Clear plastic ziploc bag containing one (1) white, round tablet with "54 411" imprinted on one side.

Results:

Buprenorphine indicated Schedule: III

Item A.05 :

Clear plastic ziploc bag containing a partial orange oval tablet.

Results:

No analysis performed

I am a Forensic Chemist employed by the Anderson/Oconee Regional Forensics Laboratory at the Anderson County Sheriff's Office, and certified by the Anderson/Oconee Regional Forensics Laboratory as a chemical analyst qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in the State of South Carolina by Title 44, Chapter 53 of the SC Code of Laws and Rule 61-4 of the SC Department of Health and Environmental Control. I have 13 years and 8 months experience and have been qualified as an expert witness in recognized courts of law no less than 38 times.

The following legally reliable forensic laboratory procedures were used to conduct this analysis:

Published Literature
FT-IR Spectroscopy

Mass Spectroscopy
Color Tests

Gas Chromatography

Meredith L. Lanford

Meredith L. Lanford

Forensic Chemist

12/13/2019

Date

WITNESSES

Oconee Co Sheriff's Dept.

Justin A. Pelfrey



ARREST WARRANT NUMBER

2019A3710400680

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

FEB 10 2020

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2020-GS-37-00226

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

FEB 10 2020

TERM

THE STATE

VS.

GARY MARTIN WIRTZ

INDICTMENT FOR

TRAFF METH 10G BUT <28G 3RD

SC Code: § 44-53-375(C)

CDR Code: 0452

WES

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2020 FEB 10 P 2:51

ENTERED
88
COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

FEB 10 2020

At a Court of General Sessions, convened on _____, the
Grand Jurors of Oconee County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE 10G BUT <28G 3RD

The defendant, Gary Martin Wirtz, did on or about July 31, 2019, in Oconee County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of ten (10) grams or more but less than twenty-eight (28) grams of Methamphetamine, a Schedule II controlled substance as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WILLIAM E STOLARSKI
ASSISTANT SOLICITOR

ARREST WARRANT

2019A3710400680

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

THE STATE

19003183

against

Gary Martin Wirtz

Address:

Westminster, SC 29693-

Phone: SSN: [REDACTED]

Sex: M, Race: W, Height: 5 6 Weight: 155

DL State: SC DL #: [REDACTED]

DOB: 3/1979 Agency ORI #: SC0370000

Prosecuting Agency: Oconee County Sheriff

Prosecuting Officer: Justin A Pelfrey - S00018

Offense: Drugs / Trafficking in meth or cocaine base - 10 g or more, but less than 28 g - 3rd or sub. offense

Offense Code: 0452

Code/Ordinance Sec: 44-53-0375(C)(1)(c)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant GARY WIRTZ

on 8-1-19

Signature of Constable/Enforcement Officer

RETURN WARRANT TO:

Walhalla Magistrate
208 Booker Drive
Walhalla, SC 29691

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 519

Personally appeared before me the affiant Justin A Pelfrey who

being duly sworn deposes and says that defendant Gary Martin Wirtz

did within this county and state on or about 7/31/2019 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee)

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth or cocaine base - 10 g or more, but less than 28 g - 3rd or sub. offense (Fel., 25Y to 30Y)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID, ON 7-31-19, KNOWING, INTENTIONALLY AND WITHOUT THE AUTHORITY TO DO SO, POSSESS MORE THAN 10 GRAMS, BUT LESS THAN 28 GRAMS OF METHAMPHETAMINE, A SCHEDULE II CONTROLLED SUBSTANCE. THIS INCIDENT OCCURRED AT 5671 WEST OAK HIGHWAY, WESTMINSTER, SC IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT IS ON FILE. CASE #19003183

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Affiant's Address 300 S Church Street

Walhalla, SC 29691-

Affiant's Telephone (864)638-4111

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/31/2019 defendant Gary Martin Wirtz

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in meth or cocaine base - 10 g or more, but less than 28 g - 3rd or sub. offense (Fel. 25Y to 30Y)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 8/1/2019

Signature of Issuing Judge

Blake A. Norton (Magistrate)

Judge Code: 5033

(L.S.)

Judge's Address 208 Booker Drive

Walhalla, SC 29691-

Judge's Telephone (864)638-4125

Issuing Court: ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

CERTIFIED TRUE COPY

JUL 21 2021

CLERK OF COURT
OCCONEE COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF OCONEE
STATE VS.GARY MARTIN WIRTZAKA: Gary Martin WirtzRace: WhiteSex: MAge: 40DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Westminster, SC 29693DL# [REDACTED]SID# SC01015101INDICTMENT/CASE#: 2020-GS-37-226AAW: 2019A3710400680Date of Offense: 07/31/2019S.C. Code §: 44-53-375(C)CDR Code #: 0452

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Traff Meth/Crack 10g but <28g 3rdIn violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0452☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS☐ \$17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Anthony Gundy, Assistant SolicitorSC Bar # 70907

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 30 days/months/years or☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections 103 days☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ OrderedPTUP Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms: Obtain GED ☐☒ Set by SCDPPPS 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 FundOther: ☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge: DHLLJudge Code: 2162Sentence Date: 10/13/20Clerk of Court/Deputy Clerk: Beverly H. WhiffledCourt Reporter: Monica Manley

SCCA/217 (04/2018)

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$	150.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)	\$	\$	8.25
TOTAL		\$	283.25

WITNESSES

Oconee Co Sheriff's Dept.

Justin A. Pelfrey

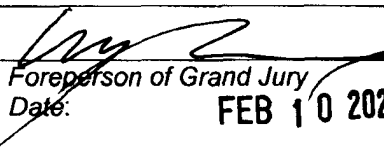


ARREST WARRANT NUMBER

2019A3710400683

ACTION OF GRAND JURY

TRUE BILL



Foreperson of Grand Jury

Date:

FEB 10 2020

VERDICT

Foreperson of Grand Jury

Date:

DOCKET NO. 2020-GS-37-00229

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

FEB 10 2020

, TERM

THE STATE

VS.

GARY MARTIN WIRTZ

INDICTMENT FOR

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME**

SC Code: § 16-23-0490

CDR Code: 0549

WES

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2020 FEB 10 P 2:51

ENTERED
COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

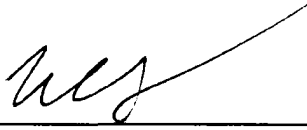
INDICTMENT

At a Court of General Sessions, convened on FEB 10 2020, the
Grand Jurors of Oconee County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Gary Martin Wirtz, did, on or about on or about July 31, 2019, in Oconee County, South Carolina, while committing the crime of Trafficking Methamphetamine, a crime of violence, have in his possession a Ruger LCP pistol. All in violation of 16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WILLIAM E STOLARSKI
ASSISTANT SOLICITOR

ARREST WARRANT

2019A3710400683

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

THE STATE

19003183

Gary Martin Wirtz

Address:

Westminster, SC 29693-

Phone:

SSN:

Sex: M Race: W Height: 5 6 Weight: 155

DL State: SC DL #:

DOB: 1/1979 Agency ORI #: SC0370000

Prosecuting Agency: Oconee County Sheriff

Prosecuting Officer: Justin A Pelfrey - S00018

Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

GARY WIRTZ
8-1-19B.R. Danielson
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Walhalla Magistrate
208 Booker Drive
Walhalla, SC 29691

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Justin A Pelfrey who

being duly sworn deposes and says that defendant Gary Martin Wirtz

did within this county and state on or about 7/31/2019 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee)

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT, ON 7-31-19, DURING THE COMMISSION OF TRAFFICKING METHAMPHETAMINE, GREATER THAN 10 GRAMS, BUT LESS THAN 28 GRAMS, A VIOLENT CRIME, DID POSSESS A FIREARM OR DISPLAY A KNIFE WHILE COMMITTING SAID VIOLENT CRIME. THIS INCIDENT OCCURRED AT 5671 WEST OAK HIGHWAY, WESTMINSTER, SC IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT IS ON FILE. CASE #19003183

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Affiant's Address 300 S Church Street

Walhalla, SC 29691-

Affiant's Telephone (864)638-4111

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/31/2019

defendant Gary Martin Wirtz

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Oconee) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 8/1/2019

Signature of Issuing Judge
Blake A. Norton (Magistrate)

Judge Code: 5033

(L.S.)

Judge's Address 208 Booker Drive

Walhalla, SC 29691-

Judge's Telephone (864)638-4125

Issuing Court: ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

CERTIFIED TRUE COPY

JUL 21 2021

CLERK OF COURT
OCONEE COUNTY, SC

COUNTY OF OCONEE

STATE VS.

GARY MARTIN WIRTZ

AKA: Gary Martin Wirtz

Race: White

Sex: M

Age: 40

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Westminster, SC 29693

DL# [REDACTED]

SID# SC01015101

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Bethany Blundy, Assistant Solicitor SC Bar # 70224

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 5 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC Department of Corrections 403 days☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$_____ plus 20% fee: \$_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☒ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve WE 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: _____

*Fine:

\$

\$14-1-206 (Assessments 107.5%)

\$

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

\$56-5-2995 (DUI Assessment)

\$12

\$

\$56-1-286 (DUI Breath Test)

\$25

\$

Proviso (Public Def/Prob)

\$500

\$

\$14-1-212 (Law Enforce. Funding)

\$25

\$

\$14-1-213 (Drug Court Surcharge)

\$150

\$

\$50-21-114 (BUI Breath Test Fee)

\$50

\$

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

\$

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk: Beverly H. WhitfieldCourt Reporter: Mona O'neal

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2020-GS-37-229AW: 2019A3710400683Date of Offense: 07/31/2019S.C. Code §: 16-23-0490CDR Code #: 0549

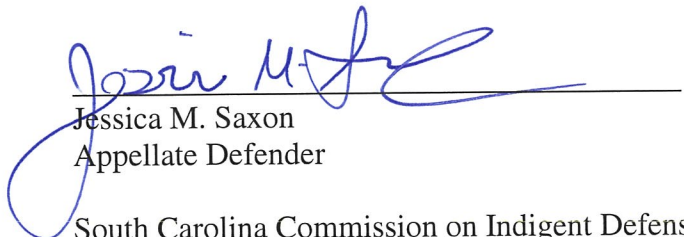
SENTENCE SHEET

Presiding Judge: [Signature]Judge Code: 2162Sentence Date: 10/13/20

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

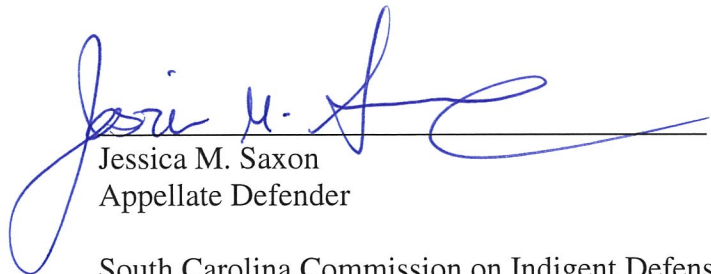
GARY M. WIRTZ,

APPELLANT.

APPELLATE CASE NO. 2020-001388

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 7th day of March, 2022.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT