

RECEIVED

Aug 11 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAXIE P. WAGNER,

APPELLANT

APPELLATE CASE NO. 2022-000658

RECORD ON APPEAL

BREEN R. STEVENS
Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3727

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

205 E. Main St.
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 9, 11-12, 2022	1
PRE-TRIAL MOTIONS	8
SUPPRESSION HEARING	18
TESTIMONY	
JOHN GIETZ	
Direct Examination by Mr. Pincelli	19
Cross-Examination by Mr. Williams	23
Re-Direct Examination by Mr. Pincelli	36
ANGELA GUNTER	
Direct Examination by Mr. Pincelli	37
Cross-Examination by Ms. Williams	43
Re-Direct Examination by Mr. Pincelli	50
Re-Cross Examination by Ms. Williams	53
TYLER KENNEDY	
Direct Examination by Mr. Pincelli	54
Cross-Examination by Mr. Williams	57
Re-Direct Examination by Mr. Pincelli	62
Re-Cross Examination by Mr. Williams	63
ADAM HOLT	
Direct Examination by Mr. Pincelli	63
Cross-Examination by Mr. Williams	66
Re-Direct Examination by Mr. Pincelli	69
Re-Cross Examination by Mr. Williams	70
ARGUMENTS	71
TESTIMONY	
JOHN GIETZ	
Direct Examination by Mr. Pincelli	85
Cross-Examination by Mr. Williams	94
Re-Direct Examination by Mr. Pincelli	98
ARGUMENTS	99

RULINGS BY THE COURT	103
ARGUMENTS.....	106
OPENING REMARKS BY THE COURT.....	117
OPENING STATEMENT BY MR. COX.....	124
OPENING STATEMENT BY MS. WILLIAMS.....	126
TESTIMONY	
JOHN GIETZ	
Direct Examination by Mr. Pincelli.....	129
MATTER OF LAW	142
MOTION FOR MISTRIAL	143
RULING BY THE COURT.....	147
TESTIMONY	
JOHN GIETZ (CONT'D)	
Direct Examination by Mr. Pincelli.....	148
ARGUMENTS.....	160
TESTIMONY	
JOHN GIETZ (CONT'D)	
Direct Examination by Mr. Pincelli.....	169
Cross-Examination by Mr. Williams	179
ARGUMENT	212
RULING BY THE COURT.....	213
TESTIMONY	
JOHN GIETZ	
Re-Direct Examination by Mr. Pincelli	219
Re-Cross Examination by Mr. Williams.....	223
ERIN ANTLEY	
Direct Examination by Mr. Pincelli.....	227

PATRICK WARD	
Direct Examination by Mr. Pincelli	234
MATTER OF LAW	243
RULING BY THE COURT.....	247
TESTIMONY	
PATRICK WARD (CONT'D)	
Direct Examination by Mr. Pincelli	256
Cross-Examination by Mr. Williams	267
Re-Direct Examination by Mr. Pincelli	281
Re-Cross Examination by Mr. Williams.....	284
JOHN GIETZ	
Re-Direct Examination by Mr. Pincelli	286
Re-Cross Examination by Mr. Williams.....	289
MARGARET WALKER	
Direct Examination by Mr. Cox.....	294
Cross-Examination by Ms. Williams.....	302
STATE RESTS	304
RENEWAL OF ALL MOTIONS	305
MOTION FOR DIRECTED VERDICT	305
RULING BY THE COURT.....	306
CHARGE CONFERENCE.....	307
ADVICE OF RIGHTS	312
DEFENSE RESTS	314
RENEWAL OF ALL MOTIONS	314
RULING BY THE COURT.....	315
CHARGE CONFERENCE.....	315
DEFENSE RESTS	319

CLOSING ARGUMENT BY MR. PINCELLI	319
CLOSING ARGUMENT BY MS. WILLIAMS	325
CHARGE ON THE LAW	334
RENEWAL OF ALL MOTIONS	351
COLLOQUY.....	351
JURY QUESTION.....	353
VERDICT	354
JURY POLL.....	355
RENEWAL OF ALL MOTIONS	358
MOTION FOR A NEW TRIAL	358
RULING BY THE COURT.....	359
SENTENCING	365
NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE.....	368
ARREST WARRANTS.....	371
INDICTMENTS	373
SENTENCE SHEETS	377
CERTIFICATE OF COUNSEL	381

1 State of South Carolina) In the Court Of General Sessions
2 County of Lexington) Indictment No.: 202-GS-32-01964
3 State of South Carolina,) 01965
4 Plaintiff,)
5 vs.) Transcript of Proceedings
6 Maxie Paul Wagner,)
7 Defendant.)
8 _____)

9
10 May 9th, 11th and 12th, 2022
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable Walton J. McLeod, IV, Judge, and
14 a Jury.

15
16 APPEARANCES:

17
18 Luke Pincelli, Assistant State Solicitor
19 Jordan Cox, Assistant State Solicitor
Attorneys for the State/Plaintiff

20 Robert Theodore Williams, Senior, Esquire
21 Anna Williams, Esquire
Attorneys for the Defendant

22 ALSO PRESENT:

23 Maxie Paul Wagner
24
25

1	INDEX	
2	MAY 9TH, 2022	
3		PAGE
4	MOTIONS	8
5	JURY SELECTION	14
6	SUPPRESSION HEARING	
7	WITNESS	PAGE
8	JOHN GIETZ	
9	Direct Examination by Mr. Pincelli	41
10	Cross Examination by Mr. Williams	45
11	Redirect Examination by Mr. Pincelli	58
12	ANGELA GUNTER	
13	Direct Examination by Mr. Pincelli	59
14	Cross Examination by Ms. Williams	65
15	Redirect Examination by Mr. Pincelli	72
16	Recross Examination by Ms. Williams	75
17	TYLER KENNEDY	
18	Direct Examination by Mr. Pincelli	76
19	Cross Examination by Mr. Williams	79
20	Redirect Examination by Mr. Pincelli	84
21	Recross Examination by Mr. Williams	84
22		
23		
24		
25		

1	MAY 9TH, 2022	
2	WITNESS	PAGE
3	ADAM HOLT	
4	Direct Examination by Mr. Pincelli	85
5	Cross Examination by Mr. Williams	88
6	Redirect Examination by Mr. Pincelli	91
7	Recross Examination by Mr. Williams	92
8	JACKSON V. DENNO HEARING	
9	WITNESS	PAGE
10	JOHN GIETZ	
11	Direct Examination by Mr. Pincelli	107
12	Cross Examination by Mr. Williams	116
13	Redirect Examination by Mr. Pincelli	120
14	MAY 11TH, 2022	
15	OPENING STATEMENT	
16	By The Court	139
17	By Mr. Cox	146
18	By Ms. Williams	148
19	WITNESS	PAGE
20	JOHN GIETZ	
21	Direct Examination by Mr. Pincelli	151
22	Cross Examination by Mr. Williams	201
23	Redirect Examination by Mr. Pincelli	242
24	Recross Examination by Mr. Williams	246
25		

1	MAY 11TH, 2022	
2	WITNESS	PAGE
3	ERIN ANTLEY	
4	Direct Examination by Mr. Cox	250
5	PATRICK WARD	
6	Direct Examination by Mr. Pincelli	258
7	Cross Examination by Mr. Williams	291
8	Redirect Examination by Mr. Pincelli	305
9	Recross Examination by Mr. Williams	307
10	JOHN GIETZ (Recalled)	
11	Direct Examination by Mr. Pincelli	310
12	Cross Examination by Mr. Williams	313
13	MARGARET WALKER	
14	Direct Examination by Mr. Cox	318
15	Cross Examination by Ms. Williams	326
16	STATE/PLAINTIFF RESTS	328
17	MAY 12TH, 2022	
18	WITNESS	PAGE
19	MAXIE PAUL WAGNER	
20	Examination by the Court	336
21	DEFENDANT RESTS	343
22		
23		
24		
25		

1	MAY 12TH, 2022	
2	CLOSING ARGUMENT	PAGE
3	By Mr. Pincelli	343
4	By Ms. Williams	349
5	CHARGE OF THE COURT	358
6	VERDICT OF THE JURY	378
7	SENTENCE OF THE COURT	389
8		
9	Certificate of Reporter	391
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS			
2				
3	COURT'S			
4	NO.	DESCRIPTION	ID	EVDS.
5	1	Photo	256	
6	2	"	256	
7	3	"	390	
8	4	"	390	
9	5	Jury Question	390	
10	6	Judge's Response to Jury Question	390	
11				
12	STATE'S/PLAINTIFF'S			
13	NO.	DESCRIPTION	ID	EVDS.
14	1	Communication Event Report	60	
15	2	Web Activity Inquiry	77	
16	3	SCDMV	87	
17	4	Photo	138	161
18	5	"	138	173
19	6	"	138	173
20	7	"	138	173
21	8	"	138	173
22	9	"	138	173
23	10	NOT USED		
24	11	Photo	138	157
25	12	"	138	157

1	EXHIBITS			
2	STATE'S/PLAINTIFF'S			
3	NO.	DESCRIPTION	ID	EVDS.
4	13	Photo	138	157
5	14	"	138	173
6	15	"	138	161
7	16	Ledger	181	193
8	17	Scale	181	276
9	18	BEST Kit	181	323
10	19	Cell Phone	181	263
11	20	Cell Dump CD	266	271
12	21	Extraction Report	279	279
13	22	Photo of Scale	289	289
14	23	Photo of Defendant	290	290
15				
16	DEFENDANT'S			
17	NO.	DESCRIPTION	ID	EVDS.
18	1	Communication Event Report	75	
19				
20				
21				
22				
23				
24				
25				

1 May 9, 2022

2 * * * * *

3 BAILIFF: All rise. The Honorable Judge Walton J.
4 McLeod the Fourth presiding.

5 THE COURT: Okay. All right. I had a brief meeting
6 with the attorneys about the first case up. Obviously
7 we've got some hearings to do this afternoon, but Mr.
8 Williams was just given a copy of a new true billed
9 indictment for I believe simple possession of marijuana;
10 is that correct? The magistrate court level offense?

11 MR. WILLIAMS: I don't think it's really a true
12 bill. It is a Xerox copy of a true bill.

13 THE COURT: Well, they brought the true bill. I
14 made a Xerox copy in my office.

15 MR. PINCELLI: Madam clerk has a true billed copy of
16 a possession of less than one ounce of marijuana, Your
17 Honor.

18 THE COURT: Okay. And that is a magistrate level
19 offense, normally a 30 day offense.

20 MR. PINCELLI: That's correct, Your Honor.

21 THE COURT: This is the first time Mr. Williams has
22 seen it and he's not waiving 10 days; is that correct?

23 MR. WILLIAMS: That is absolutely correct, because
24 there may be additional motions that we would have to
25 make on this.

1 THE COURT: Well, even the bottom line is by not
2 waiving 10 days, you're still gonna have to deal with it
3 in magistrate court after today.

4 MR. WILLIAMS: We don't mind doing that, Your Honor.

5 THE COURT: Well, the only thing is and I gather
6 just from conversations that obviously the marijuana --
7 We are alone in here, right? You're with the State?

8 LISA HUART: My name is Lisa Huart and I am
9 observing for a rule 4.

10 THE COURT: Welcome. You picked a good time to be
11 here. But I suspect that the marijuana is a part of how
12 this saga began on these drug charges particularly the
13 trafficking ones; is that correct?

14 MR. PINCELLI: It is, Your Honor. The State would,
15 if we're not gonna be able to present this indictment on
16 Mr. Wagner, the State would make a res gestae pretrial
17 motion that we be able to at least address the presence
18 of those drugs found during this traffic stop.

19 THE COURT: Right. And, you know, again, we just
20 had a conversation, you know, but obviously I suspect
21 that the testimony will deal with the odor of marijuana
22 being involved in the inception of this arrest; is that
23 accurate?

24 MR. PINCELLI: That's correct, Your Honor, and the
25 recovery of a small quantity of marijuana.

1 THE COURT: Okay. Mr. Williams.

2 MR. WILLIAMS: Well, obviously, Your Honor, if
3 they're getting into that, then you're talking chain of
4 custody dealing with the marijuana, you're talking about
5 the testing of the marijuana, and again, all of this is,
6 all of that is not res gestae.

7 THE COURT: Well, all of that is not before me at
8 this specific moment. What we're hearing now is a direct
9 indictment whether to allow that to be brought in. I
10 don't think we have to decide that yet. Well, excuse me.
11 We do have to decide that part, but we don't have to
12 decide what was found. The bottom line is the officers
13 in theory will be able to talk about what led them to
14 probable cause to initiate whatever arrest occurred. I
15 haven't seen any documents. I'm just speaking in
16 generalities, but even if the indictment itself doesn't
17 go forward in trial, I suspect there's gonna be testimony
18 about the marijuana which depending upon what we say, I
19 think it's gonna be okay. That's something we probably
20 need to talk about after we pick the jury and during
21 pretrial hearings, okay?

22 MR. PINCELLI: Yes, Your Honor. Thank you.

23 THE COURT: Any questions? Mr. Moore is here to
24 pick his jury too, so I appreciate -- Your client is on
25 his way?

1 MR. MOORE: No, sir. I'm gonna pick it without him,
2 Judge. If we do get to 12:00, all I need is somebody to
3 tell Judge Newton that I'm here, but that's as simple as
4 that.

5 THE COURT: We will stand in the door of the
6 courtroom to protect you from Judge Newton.

7 MR. MOORE: I'll need every bit of that.

8 THE COURT: All right. Anything else for the moment
9 before we bring the panel back in?

10 MR. WILLIAMS: Your Honor, there is one question I
11 have.

12 THE COURT: What's that?

13 MR. WILLIAMS: In that we're talking about whether
14 or not the Solicitor is gonna be able to allege that
15 there is res gestae, I assume that that would be one of
16 the motions that we will be discussing this afternoon.

17 THE COURT: Yes. I'll be working and certainly go
18 into -- I mean, all I know is you have a suppression
19 hearing which I assume will arise out of the arrest. So
20 there will be a story that gets told about what happened
21 the night he was arrested and I suspect it will include
22 the marijuana.

23 MR. WILLIAMS: And I assume that when we're -- I
24 assume if we're picking a jury now, I assume that nothing
25 about marijuana is gonna be referenced?

1 THE COURT: Well, I'm not publishing an indictment
2 to the jury about it.

3 MR. WILLIAMS: Thank you, Your Honor.

4 THE COURT: Now, marijuana is probably gonna have a
5 role in this trial, it just is not gonna be a verdict
6 form hearing.

7 MR. WILLIAMS: Thank you, Your Honor.

8 THE COURT: Anything else before we bring them back
9 in?

10 MR. PINCELLI: Judge, just housekeeping, Your Honor.
11 Judge McCaslin's habit is reading the indictments. Is
12 Hope gonna be doing that today?

13 THE COURT: I'm good either way.

14 MR. PINCELLI: Okay. I just wanted to make sure
15 because I don't have any copy.

16 THE COURT: When I read them, I kind of paraphrase
17 them, a whole lot of legalese sometimes.

18 MR. PINCELLI: That's fine with me, Judge. I just
19 wanted to make sure.

20 THE COURT: On this date in this county the
21 defendant allegedly had X amount of grams of X, whatever
22 that is.

23 MR. PINCELLI: Right. Okay. Thank you.

24 THE COURT: Can I get copies of the indictments?

25 THE CLERK: I gave you the originals.

1 THE COURT: Oh, okay.

2 TODD WAGNER: And, Judge, obviously whoever reads
3 the indictments for the second case, if it alleges the
4 second offense, we obviously don't need to be reading
5 that.

6 THE COURT: All right. Well, please come up here
7 before we do that to make sure I remember not to do that.
8 We've got possession with intent to distribute
9 methamphetamine and a trafficking cocaine. Is there any
10 language in these indictments that are a no-no for either
11 one of them?

12 MR. PINCELLI: Judge, I believe they were first
13 offense so it doesn't say which offense they were, but as
14 long as there's not anything about enhancing, I think
15 we're okay on those.

16 MR. WILLIAMS: They would be first offenses.

17 MR. PINCELLI: Correct.

18 THE COURT: All right. I think I can get through
19 it. We can go ahead with the first one at least.
20 Anything else before we bring them in?

21 MR. WILLIAMS: Nothing from the defense, Your
22 Honor.

23 MR. COX: Nothing from the State.

24 (Whereupon, the jury venire entered the courtroom at
25 11:08 a.m.)

1 THE COURT: All right. Ladies and gentlemen, we are
2 ready to select the jury for our first trial of the week.
3 Is the State ready to call the first case?

4 MR. PINCELLI: The State is ready, Your Honor.

5 THE COURT: All right. You may proceed.

6 MR. PINCELLI: Your Honor, the State calls the State
7 versus Maxie Wagner.

8 THE COURT: All right. Which charges?

9 MR. PINCELLI: With the charges of trafficking
10 cocaine and possession with intent to distribute
11 methamphetamine.

12 THE COURT: All right. Ladies and gentlemen, the
13 State has just called the case of the State versus Maxie
14 Paul Wagner. The indictments here charge the defendant
15 with possession with intent to distribute methamphetamine
16 and trafficking cocaine which occurred on or about
17 February 10th, 2020 here in Lexington County in violation
18 of the law.

19 Now, I remind you that the fact that the defendant
20 was arrested, charged, and indicted in this case is not
21 evidence in this case and cannot be considered by you as
22 evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt. This document is
24 simply the formal written instrument which contains the
25 charges made against the defendant. It is the formal

1 need to know about this case is gonna come right from
2 that witness stand. No need for you to discuss it with
3 anyone or do any indictment research on your own.

4 Otherwise, after you pick the foreperson, you'll be
5 free to go and we'll see you back here at nine a.m. in
6 the jury room Wednesday morning, okay? Have a nice day.

7 (Whereupon, the jury was released for the day at
8 11:44 a.m.)

9 THE COURT: Counsel, anything else before we move on
10 to the next --

11 MR. PINCELLI: If we could just approach with some
12 scheduling, Your Honor.

13 THE COURT: Sure.

14 (Side bar off the record.)

15 THE COURT: All right. We'll see you back at 1:30
16 for that.

17 (Lunch break.)

18 BAILIFF: All rise.

19 THE COURT: Okay. Thank you. Please be seated.
20 All right. So we're here for various pretrial matters in
21 State versus Maxie Wagner. Does the State have all their
22 witnesses they need?

23 MR. PINCELLI: Your Honor, I think we're still
24 waiting any minute now our person from dispatch should be
25 arriving.

1 THE CLERK: She's out in the hall. Excuse me.

2 MR. PINCELLI: Is she out in the hall?

3 THE CLERK: She came up in the elevator with me.

4 THE COURT: Before you go out there, are there any
5 pretrial motions that y'all have talked about and agreed
6 to already?

7 MR. PINCELLI: Yes, Your Honor. There was a motion
8 to not mention gang affiliation or gang names. We'll
9 stipulate to that. We're not going to get anywhere near
10 that.

11 MR. WILLIAMS: And I think we did a little bit more.
12 I think what we're gonna do is I'm probably gonna ask the
13 witnesses on the stand and Anna is gonna argue. I
14 haven't determined what they're doing yet. Oh, he's
15 doing something. Luke's doing whatever he's doing.

16 THE COURT: I think Mr. Cox is here for moral
17 support for Mr. Pincelli.

18 MR. WILLIAMS: We try to organize who's gonna play
19 before we get out on the playground.

20 THE COURT: Are there any other pretrial formality
21 things?

22 MR. PINCELLI: I don't have any objection to --

23 THE COURT: We've got a Jackson v. Denno, right?

24 MR. PINCELLI: Jackson v. Denno. Suppression.

25 THE COURT: The gang thing's been dealt with.

1 MR. PINCELLI: The gang thing's been dealt with.
2 THE COURT: Did you file a motion to sequester?
3 MR. WILLIAMS: I did.
4 THE COURT: Any objection?
5 MR. PINCELLI: We would just like our lead to be
6 able to sit with us otherwise --
7 THE COURT: Lead investigator.
8 MR. PINCELLI: And there were no victims.
9 THE COURT: Okay. All right. And obviously your
10 witnesses, you'll return the favor?
11 MR. WILLIAMS: Yes. We will.
12 THE COURT: Whatever witnesses you may have.
13 MR. PINCELLI: I don't have any objection to one
14 party questioning and one party arguing if they want to
15 split how the attorneys handle it.
16 MR. WILLIAMS: She's smarter than I am.
17 THE COURT: As long as it cuts both ways.
18 MR. WILLIAMS: It does.
19 THE COURT: Okay.
20 MR. PINCELLI: I have been assured we have everybody
21 here that we need, Judge.
22 THE COURT: All right. This is, really it's your
23 motion.
24 MR. WILLIAMS: But I think they have to put, they
25 have to put their people up to prove that it was a good

1 stop and they have to put their people up in regards to
2 whether or not my guy was coerced into making any
3 statements.

4 THE COURT: Are these gonna bleed over on one
5 another?

6 MR. WILLIAMS: They are.

7 THE COURT: Okay. We'll just call it a suppression
8 hearing, but it's more than one thing.

9 MR. PINCELLI: Right. I would like to start with
10 suppression just because our dispatch witness needs to
11 get back to work.

12 THE COURT: All right. You ready to proceed, Ms.
13 Williams?

14 MS. WILLIAMS: Yes, Your Honor.

15 THE COURT: All right. Let's go.

16 MR. PINCELLI: I don't know if they wanted to argue
17 some and then I'll call witnesses. This is their
18 motion.

19 MS. WILLIAMS: Your Honor, the defendant would move
20 to suppress all evidence obtained in this case after the
21 traffic stop. It's our position that the traffic stop
22 was done without probable cause and/or reasonable
23 suspicion and therefore was an illegal traffic stop and a
24 violation of our client's Fourth Amendment Rights.

25 THE COURT: Okay. Very well. Does that encapsulate

JOHN GIETZ - DIRECT BY MR. PINCELLI

41

1 the argument?

2 MS. WILLIAMS: Yes.

3 THE COURT: I think you can call the witness.

4 MR. PINCELLI: Sure. The State calls Investigator
5 John Gietz.

6 THE COURT: I thought we were doing the 911 first?

7 MR. PINCELLI: I feel like I'll probably need to lay
8 the foundation and then call --

9 THE COURT: Okay.

10 Thereupon,

11 JOHN GIETZ

12 after having been first duly sworn, testified as follows,

13 THE CLERK: Please have a seat. Once you're seated,
14 state your full name spelling your last please.

15 THE WITNESS: John Gietz, G-i-e-t-z.

16 DIRECT EXAMINATION

17 BY MR. PINCELLI:

18 Q. Thank you, Investigator Gietz. Are you familiar
19 with the case on Maxie Wagner for trafficking cocaine and PWID
20 methamphetamine?

21 A. I am.

22 Q. How so?

23 A. I conducted the traffic stop on Maxie Wagner.

24 Q. Do you recall the date of that traffic stop?

25 A. Yes. It was February 10th, 2020.

1 Q. All right. And at that time what was the reason for
2 conducting a traffic stop on Mr. Wagner?

3 A. The vehicle he was driving had a suspended
4 license.

5 Q. And how did you learn that that plate was
6 suspended?

7 A. On January 29th, 2020, Investigator Kennedy ran the
8 plate and notified me that the tag was suspended. We had
9 multiple narcotics investigations open on him.

10 Q. So there were multiple narcotic investigations. Can
11 you, is it fair to say he was a target of your narcotics
12 division?

13 A. Yes, sir. And Investigator Kennedy was assisting me
14 with the case.

15 Q. Okay. And again, what was Investigator Kennedy's
16 role in getting that information?

17 A. He contacted me and told me that the tag was
18 suspended. It was a Volkswagen Passat he was driving. Like
19 the tag is [REDACTED].

20 Q. And you did make a stop on February 10th, 2020; is
21 that correct?

22 A. I did.

23 Q. And on scene did you later confirm that that tag was
24 suspended?

25 A. I did.

1 Q. And how did you do that?

2 A. I ran the tag through dispatch, the Lexington County
3 Communication Center.

4 Q. All right. Investigator Kennedy, following the stop
5 based on that suspended plate --

6 MR. WILLIAMS: Objection to that question. That's
7 not Kennedy. Don't mess up the argument.

8 MR. PINCELLI: I apologize.

9 BY MR. PINCELLI:

10 Q. Investigator Gietz, based on the stop based on that
11 suspended plate, how did that traffic stop progress? Can you
12 walk me through what happened when you approached the vehicle?

13 A. Uhm, I walked up to the vehicle and while making
14 contact with the driver Maxie Wagner I could smell the strong
15 odor of marijuana coming from inside of the vehicle as well as
16 I could see red rubber tubing that I know through my training
17 and experience to be used for narcotics use. I had Maxie exit
18 the vehicle and while exiting the vehicle I could see a green
19 plastic Baggie laying on the floorboard of the vehicle which I
20 know from my training and experience to be used for narcotics
21 distribution and then I read Mr. Wagner his Miranda Advisement
22 which he agreed he understood and was willing to speak with
23 me.

24 Q. All right. I'm gonna back you up. You said you saw
25 red tubing and you were familiar with that for narcotics.

1 What do you believe that to be?

2 A. Flex tubing to inject narcotics.

3 Q. Is it safe to say that's paraphernalia?

4 A. Yes, sir.

5 Q. And did you witness any other paraphernalia inside
6 the vehicle?

7 A. Yes, sir. The green plastic Baggie used to store
8 small amounts of narcotics. Also while I was talking to him,
9 he was fumbling around with a razors, long razors probably
10 about five inches long.

11 THE COURT: You're saying razors or erasers?

12 BY THE WITNESS:

13 A. Razors. .

14 BY MR. PINCELLI:

15 Q. Like a straight razor?

16 A. Like a straight razor essentially in the center
17 console of the vehicle.

18 Q. And why did you pull him out of the vehicle?

19 A. For safety concerns and then the probable cause,
20 that odor of marijuana and drug paraphernalia coupled with
21 that would create it.

22 Q. Is that when, following that did you conduct a
23 search of the vehicle?

24 A. I read Ms. Wagner her Miranda Advisement. I spoke
25 to her first and then I read Mr. Wagner his Miranda Advisement

1 and after he agreed to speak with me, I spoke to him and he
2 advised that there were narcotics in the vehicle.

3 MR. PINCELLI: Thank you, Investigator Gietz.

4 That's all I have.

5 CROSS EXAMINATION

6 BY MR. WILLIAMS:

7 Q. All right. Investigator Gietz, let's see, the date
8 of this stop, and that's what we're really talking about is
9 the stop as opposed to the search as the most important
10 beginning part of this, would have been on February the 10th
11 of 2020; is that correct?

12 A. That is correct.

13 Q. And your investigative report indicates that it
14 occurred approximately 17:00 hours; is that also correct?

15 A. That is correct.

16 Q. So he was in what type of vehicle again?

17 A. A Volkswagen.

18 Q. Okay. Was it a car? Was it a -- Can you describe a
19 little more than that?

20 A. It was a Volkswagen Passat.

21 Q. All right. And how long had you been following
22 Mr. Wagner?

23 A. I observed him leaving Kittie Drive which is, I
24 don't know the numerics on Platt Springs Road, but he turned
25 off of Kittie Drive onto Platt Springs Road heading towards

1 Three Fountains. I can't give you exact times.

2 Q. Several miles. For what period of time did you
3 follow him?

4 A. It took me a while to catch up to him.

5 Q. And because you wanted to follow him?

6 A. Yes, sir.

7 Q. All right. And the reason you wanted to follow him
8 is because you suspected that he was involved in drugs, that
9 was the reason, right?

10 A. Correct.

11 Q. And during that time span that he was driving, at
12 any point in time, because it's not noted in your
13 investigative report is at any point in time did he violate
14 any of the traffic rules dealing with speeding, turning on
15 blinkers, or not turning on blinkers or did he commit any
16 driving infractions other than what you said your purpose was
17 to stop him for a suspended tag?

18 A. Not that I referenced in my report.

19 Q. Well, and you referenced just a few minutes ago that
20 Investigator Kennedy was the person that told you that his
21 tags on his vehicle was suspended as of January the 29th of
22 2020; is that right?

23 A. No, sir. That's when he notified me that the tag
24 was suspended.

25 Q. Who notified you?

1 A. Investigator Kennedy.

2 Q. I thought we just said the same thing, but maybe I
3 didn't.

4 A. You said his tag was suspended January 29th, 2020.
5 It was suspended before that I believe.

6 Q. So Investigator Kennedy called you up and told you,
7 well, you know that Maxie Wagner, he's got a car that's got
8 suspended tags on it? Is that how that went down?

9 A. Yes.

10 Q. So you didn't do it in person. You did it over the
11 radio or on a phone?

12 A. Over the phone.

13 Q. And what time of day did he call you and tell you
14 that?

15 A. I don't know. It was probably towards the end of
16 the day I believe probably around 5:00.

17 Q. Are those the records he used, you know, Maxie
18 Wagner, he's got those tags on that vehicle are suspended? Is
19 that what he essentially said?

20 A. I don't recall. It was two years ago.

21 Q. Well, the basis of this stop as you've told the
22 Solicitor was suspended tags that this other investigator told
23 you about?

24 A. Yes. That's correct.

25 Q. So you don't recall anything other than, well, he

1 told me his tags were suspended? How do you remember the
2 date?

3 A. Referencing the report.

4 Q. Well, now, at the time that you stopped my client,
5 you didn't have a report that said that his tags were under
6 suspension, did you?

7 A. Well, I didn't have the report at the time, but I
8 had the phone call saying that the tags were suspended.

9 Q. So for the Judge's edification in this particular
10 area, you had nothing in writing from the Highway Department
11 indicating that Maxie Wagner's tags were suspended on the date
12 and time that you stopped him which was February the 10th,
13 2020 at 5:00, true?

14 A. Yes.

15 Q. And the only inference that you had that the tags
16 were suspended was an alleged statement from Investigator
17 Kennedy who told you on January the 29th, 2020 that his tags
18 were suspended and he had not given you any written
19 documentation from the motor vehicle people to tell you it was
20 suspended?

21 A. Yes. He said he ran the tag.

22 Q. And he hadn't given you any information from the
23 Department of Motor Vehicles to indicate that the tags were
24 suspended?

25 A. That's correct.

1 Q. Okay. Now, you're used to dealing with search
2 warrants I know, aren't you?

3 A. I've written a couple.

4 Q. As a matter of fact, in this particular case there
5 was a search warrant which was done on the cell phone that you
6 secured from a magistrate over at the Lexington County jail
7 and it's your basic format, you have affiant information which
8 is sworn to because you have to swear to that information.

9 A. Okay.

10 Q. And you have a Judge which is signing that and on
11 the form itself it says that this has to be done within 10
12 days, doesn't it? On the search warrant it says that, doesn't
13 it?

14 A. It has to be executed within 10 days.

15 Q. Within 10 days?

16 A. Yes.

17 Q. Why do you think it has to be executed within 10
18 days?

19 MR. PINCELLI: Objection, Your Honor. Speculation
20 or it calls for a legal conclusion.

21 THE COURT: Rephrase your question, Mr. Williams.

22 MR. WILLIAMS: All right.

23 BY MR. WILLIAMS:

24 Q. Investigator Gietz, there is a deadline -- Or I'll
25 tell you what's even better. When you go to the grocery

1 store, you've got an expiration date on your bread, don't
2 you?

3 A. I do.

4 Q. You've got an expiration on your milk, don't you?

5 A. I do.

6 Q. And you've got an expiration on everything that you
7 purchased out of a grocery store and you have an expiration
8 date on a search warrant because it is more than likely to be
9 effective and valid if it's conducted within those 10 days
10 from the time in which the affiant is able to testify about
11 that, correct? I know this isn't -- I'm not trying to trick
12 you up or anything.

13 A. I mean, we're talking about my groceries. I'm not
14 sure what that has to do with a search warrant.

15 Q. You're right. You're right. That doesn't have
16 anything to do with search warrants. I was breaking it down
17 to something even more simpler.

18 A. Okay.

19 Q. But with a search warrant you have somebody being
20 sworn who says that he saw or he has substantial belief that
21 there is something that is proof of a crime and he goes in
22 front of a Judge and he gives him that information and the
23 Judge says, okay. Okay. You have 10 days to do that because
24 things get moved. It gets stale. Evidence gets stale,
25 doesn't it?

1 A. Most evidence. Yeah.

2 Q. That's true?

3 A. Not all evidence, but yes, most evidence becomes
4 stale.

5 Q. I guess we could argue fungible and non fungible,
6 but evidence gets stale and that's why you have to do it
7 within a period of time?

8 A. Okay.

9 Q. So, in this particular case you had nothing in
10 writing from the motor vehicle people, all you had was an
11 alleged statement from Investigator Kennedy saying that the
12 tags on the car were under suspension. Did you even go so far
13 as to read the statute which deals with suspended tags?

14 A. I have read the statute before. Yes.

15 Q. And that statute actually says that the driver's
16 license of the person, the driver's license of the person is
17 suspended also if they have suspended tags.

18 A. Okay.

19 Q. Do you --

20 A. That doesn't always happen. I mean...

21 Q. Why doesn't it always happen?

22 A. I couldn't tell you.

23 Q. Because people make mistakes and they don't send the
24 letters out to suspend tags?

25 A. I have no idea why the mistake happened if it was a

1 mistaken even.

2 Q. So how many people were with you on the date that
3 you did the stop that were physically - because you planned on
4 stopping this car? You planned on stopping it. You had to
5 catch up with him to stop the car, right?

6 A. Yes.

7 Q. Who was with you at the time?

8 A. When I conducted the traffic stop?

9 Q. Yes.

10 A. No one was with me at the time.

11 Q. No one was with you. What type of vehicle were you
12 in?

13 A. An unmarked Chevy Silverado I believe at the time.

14 Q. What type of recording information did you have in
15 that truck with you at the time?

16 A. I didn't.

17 Q. What type of recording information did you have
18 voice recording did you have at the time?

19 A. I'm not required to have that.

20 Q. So, essentially you were there on your own making a
21 stop having been told by somebody with no written
22 documentation so that you could stop and search the vehicle;
23 isn't that true?

24 A. Well, there was reasonable suspicion that his tag
25 was suspended. That's why the stop was conducted.

1 Q. Well, you know, reasonable suspicion is a legal term
2 of art which I won't bore you with.

3 A. Okay.

4 Q. But in your mind you say, well, somebody told me
5 that his license tag was suspended so I can stop him because I
6 have reasonable suspicion based on what this dude told me; is
7 that your definition of it?

8 A. Correct. I also called dispatch and I notified them
9 of the tag and they tell me when the tag is suspended.

10 Q. So tell the Judge when you called dispatch?

11 A. I sorry.

12 Q. It was after you had the car stopped?

13 A. I called dispatch to notify them that the tag was,
14 or notified them of the tag of the vehicle that I had
15 stopped.

16 Q. Was the car still going down the road at the time or
17 had you already stopped him, gone into the car, smelled the
18 marijuana, saw the blue tubing, saw all the other alleged
19 drugs that were in this car and made the determination that
20 now I'll check on my stop to see if it was legal?

21 A. No. I had reasonable suspicion to stop the car.
22 That's why I stopped the car.

23 Q. How many times have you stopped my client without
24 him being arrested?

25 A. I'm not sure if I've ever stopped him without him

1 being arrested. Every time I've stopped him, he's been
2 arrested.

3 Q. Did you ever stop my client outside of Charleston?

4 A. No.

5 Q. That wasn't you?

6 MR. PINCELLI: Object to relevance here.

7 THE COURT: We're in a pretrial. If you can kind of
8 get to where you're going, Mr. Williams.

9 BY MR. WILLIAMS:

10 Q. Well, why didn't you have another officer with you?
11 Why didn't you have some other witnesses who would be
12 available to see what you're testifying to now at this stop?

13 A. I called for an additional unit.

14 Q. You saw the car. Why didn't you have them converge
15 on it? You called for it after you had stopped somebody?

16 A. Correct.

17 Q. After you had stopped, not before?

18 A. Well, the additional unit?

19 Q. Yes.

20 A. I called for additional units.

21 Q. After you had stopped him, true?

22 A. I don't know. You would have to look at the
23 dispatch log.

24 Q. Well, if it shows that you didn't call until after
25 you had stopped him, what would that mean?

1 A. I'm not sure.

2 Q. Tell the Judge, you've talked about these items that
3 are in the car. When you were riding behind the road and you
4 pulled him over, could you see how many individuals were in
5 the car?

6 A. I couldn't.

7 Q. You couldn't see that there was his wife and his
8 small, and his baby in the car or his child in the car at the
9 time?

10 A. I don't believe so.

11 Q. Well, were you surprised when you stopped the
12 vehicle and found that his wife and his child were in the car
13 at the time?

14 A. No.

15 Q. Well, wouldn't that be important to you as an
16 officer to know how many people were in the car before you
17 stopped them? He might have had five or six other gang people
18 in the car.

19 A. Could have. If I had that skill, I would be able to
20 do my job much more effectively.

21 Q. Because you would have to guess about stuff like
22 that?

23 A. Well, that's the thing is, I'm not in a guessing
24 game.

25 Q. Right. So why didn't you call the Highway

1 Department before you stopped him to see if, indeed, his
2 vehicle was under suspension? Why didn't you secure something
3 from the Highway Department before you stopped him to say that
4 his tag was under suspension?

5 A. Because I had a law enforcement officer who I trust
6 his credibility and his credibility has never been called into
7 question telling me that his tag was suspended.

8 Q. So you're saying if one officer is wrong, that's
9 fine, right? How do you know he hasn't changed it? You know
10 how you fix a suspended tag?

11 A. I'm sure you're gonna tell me.

12 Q. You just present evidence to the Highway Department
13 that you have insurance and your tag shouldn't be suspended
14 and it's immediately, immediately driveable.

15 A. Okay.

16 Q. That's what that statute says if you read that
17 statute.

18 A. All right. I don't believe that was done though
19 however.

20 Q. How do you not believe it? Because you just - you
21 have nothing to base that on though. You have not gotten
22 anything from the Highway Department to prove, to indicate
23 prior to the stop that his tag was suspended, correct?

24 A. That's correct, but it's no different than me
25 calling dispatch and advising them of the tag.

1 Q. And why didn't you call dispatch before you stopped
2 him?

3 A. I had to make the stop.

4 Q. Is that what they teach you? They teach you that
5 you make the stop and then you call and see if you have
6 probable cause or reasonable suspicion of a violation of the
7 law?

8 A. No. I had a violation of the law. I had a
9 reasonable suspicion to believe that the tag was suspended.

10 Q. Would it stun you that he had insurance at that
11 time?

12 A. I'm not sure what bearing that has. The tag was
13 suspended. I didn't pull him over for no insurance. I pulled
14 him over for the tag being suspended.

15 Q. That's not why you pulled him over?

16 A. That is why I pulled him over.

17 Q. Where did you see the red tubing?

18 A. I believe -- Give me a second. I'll reference my
19 report. It was sticking out, sticking out between the
20 driver's seat and the door frame.

21 Q. When you first ran up, what were your first words to
22 the defendant?

23 A. I identified myself and I gave him the reason of the
24 stop.

25 Q. Did you immediately tell him to get out of the car,

1 it's an inventory search? Did you use those words?

2 A. No.

3 Q. You looked down like it's written in your report.

4 Do you remember or not remember?

5 A. I do remember. I wouldn't have said that. No.

6 Q. You wouldn't?

7 A. Mmm-mmm.

8 MR. WILLIAMS: That's all the questions I have, Your

9 Honor.

10 THE COURT: Redirect.

11 MR. PINCELLI: Briefly.

12 REDIRECT EXAMINATION

13 BY MR. PINCELLI:

14 Q. Investigator Gietz, how did you learn that Mr.
15 Wagner's plate was suspended?

16 A. Investigator Kennedy called me and notified me on
17 January 29th of 2020 that the tag was suspended.

18 Q. Who is Investigator Kennedy?

19 A. The individual right behind you.

20 Q. What is his position?

21 A. He's an investigator with the Lexington County
22 Sheriff's Department.

23 Q. Do you work with Investigator Kennedy?

24 A. Every day.

25 MR. PINCELLI: No further questions.

ANGELA GUNTER - DIRECT BY MR. PINCELLI

59

1 THE COURT: Recross.

2 MR. WILLIAMS: I don't have any questions for him,
3 Your Honor.

4 THE COURT: All right. Next witness.

5 MR. PINCELLI: The State calls Angie Gunter.

6 THE COURT: You may step down, sir.

7 Thereupon,

8 ANGELA GUNTER

9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. Once you're seated,
11 state your full name spelling your last please.

12 THE WITNESS: Angela Gunter, G-u-n-t-e-r.

13 DIRECT EXAMINATION

14 BY MR. PINCELLI:

15 Q. Good afternoon, Ms. Gunter. Where are you
16 employed?

17 A. Lexington County Communications.

18 Q. What do you do at Lexington County Communications?

19 A. I'm the department chief of communications. I'm
20 over operations of the 911 center.

21 Q. As an employee in that role, do you have the
22 responsibility of overseeing, filing, and custody of
23 records?

24 A. Yes.

25 Q. I'm gonna approach you with a document. Do you

1 recognize what I'm showing you?

2 A. Yes, sir.

3 Q. And what is that?

4 A. It's a CAD report.

5 Q. Can you explain for the Court what a CAD report
6 is?

7 A. It shows the information. Whenever a call is
8 received, we put everything into a CAD, our CAD system, we
9 open up a call card. It shows the nature. Like that's a
10 traffic stop, for instance.

11 MR. PINCELLI: Your Honor, I would like to mark this
12 State's 1.

13 THE COURT: All right. For purposes of this
14 hearing.

15 MS. WILLIAMS: No objection.

16 (Whereupon, State's Exhibit #1 marked for
17 identification.)

18 BY MR. PINCELLI:

19 Q. Ms. Gunter, I'm gonna put what you said is this CAD
20 report up on the screen and have you help me walk through it.
21 So it's a CAD report. You explained what that was. There's a
22 lot of information on here. Let's start with what says event
23 ID. What does that mean to you?

24 A. That's the number of the record per se for this
25 report.

1 Q. Okay. So anything with that number would be related
2 to this specific incident in this report; is that correct?

3 A. That is correct. Mm-hmm. Yes.

4 Q. What is the date associated with this event ID?

5 A. 2/10 of '20.

6 Q. All right. Can you tell me what time the first call
7 was received?

8 A. 17:00.

9 Q. If we turn over to the second of the three pages in
10 this, we have a heading here that says event log. What does
11 that mean?

12 A. Where is that? I'm sorry. Okay. Event log. That
13 shows everything that, everything that we do in the CAD system
14 is time stamped per se so if we had a driver's license in
15 there or a tag information or anything that we do with that
16 call it's time stamped. It automatically does it.

17 Q. So, let's go down to 17:10 and 57 seconds. What
18 does that mean in the event log?

19 A. 17:10 and 57 seconds, that's when a tag was added to
20 the call card, the information.

21 Q. Okay. I'm gonna flip over to the third page on
22 State's 1. This heading says related vehicles. What does
23 that mean to you?

24 A. That, related vehicles is anything that is related
25 to this particular CAD report. If the officer runs it for any

1 reason, we add it into this call part, this CAD report, this
2 case.

3 Q. What can you tell me about the listed related
4 vehicle or vehicles in this report?

5 A. I can tell you that the tag on the 2004 Western
6 Star, whatever that is, I'm not familiar with that, but it's a
7 suspended tag of S3 56-10-240 is a code date, it's a code of
8 why it's suspended.

9 Q. Okay. So 56-10-240, but what does the S3 mean?

10 A. It's suspended.

11 Q. Okay. Suspended plate on that. That plate number,
12 can you read that off for me please?

13 A. [REDACTED].

14 Q. Now we're refer back to the second page where you
15 explained what the event log was. We referenced 17:10 and 57
16 seconds.

17 A. Yes.

18 Q. Under that entry it says unknown number 1, then it
19 says SC added as related vehicle?

20 A. Yes.

21 Q. Who that related vehicle be that plate that you just
22 testified to?

23 A. That would be the related vehicle that was added in,
24 yes.

25 Q. That's that same plate that you testified was run by

1 dispatch and was suspended?

2 A. Mm-hmm.

3 Q. And again, the time that that occurred?

4 A. That was 17:10:57.

5 Q. All right. Then if you will go down to related
6 names, what does that mean here in this report?

7 A. Related names is kind of like the tag, anything
8 that, a related name that the officer gave us in dispatch to
9 run for this call would be entered into the CAD report which
10 is this.

11 Q. What was the related name given in this report?

12 A. What page are you on again? I'm sorry.

13 Q. Bottom of page 2.

14 A. Page 2. Maxie Paul Wagner.

15 Q. Thank you.

16 A. You're welcome.

17 Q. What's the difference between these notes on this
18 first page and the event log?

19 A. I'm sorry. I have to have my own glasses. I can't
20 read that.

21 Q. Sure.

22 A. Thank you. That's much better.

23 Q. I can zoom in there for you.

24 A. Now what's the difference on what now? I'm sorry.

25 Q. These notes here, I show, you know, notes and on the

1 second page it says event log and we get a little bit of
2 narrative.

3 A. Notes is anything that you can type in or mark like
4 where it says 371 transport one whiskey elevate probation,
5 that is, you could type in 371 and type in notes for that
6 unit. It would be more of a pretext typing for the
7 dispatcher.

8 Q. Okay. So if we go down to this note and that says
9 at the Speed Way?

10 A. That was where his location is at the Speed Way.
11 She pretexted that in there, 371 location is at the Speed
12 Way.

13 Q. So if he said at 17:05 I'm at the Speed Way, the
14 dispatcher would have put that in?

15 A. Yes. That's what was notated. Yes.

16 Q. And then we're moving up one, I see R-Q-S-T-N-O-R?

17 A. Request next on rotation.

18 Q. Okay. What would that mean?

19 A. That means that they want a wrecker to come pick up
20 that vehicle.

21 MR. PINCELLI: Okay. Thank you, Ms. Gunter. That's
22 all the questions I have for you.

23 THE COURT: Cross examination.

24 MS. WILLIAMS: Please the Court.

25 CROSS EXAMINATION

ANGELA GUNTER - CROSS BY MS. WILLIAMS

65

1 BY MS. WILLIAMS:

2 Q. Good afternoon, Ms. Gunter. Okay. So starting back
3 over here, I notice that, we'll go to page 2 of State's 1, it
4 says that the time the call was received was at what time?

5 A. Call received at 17:00.

6 Q. Okay. And then the related vehicle that the
7 Solicitor noted, what time was that entered into the event
8 log?

9 A. That was entered into the event log at 17:10.

10 Q. So that is 10 minutes later, correct?

11 A. Correct.

12 Q. Okay. Ms. Gunter, is the only way to get a vehicle
13 on the related vehicle list which is on page 3 of State's 1,
14 is the only way to do that to run the tags?

15 A. No. This has to be entered by the -- I make sure,
16 if I understand your question correctly though, this has to be
17 entered into by the dispatcher manually.

18 Q. So the related vehicles were added manually?

19 A. Correct.

20 Q. It is not indicative of a tag being run?

21 A. Correct. They have to enter it themselves.

22 Q. Ms. Gunter, are you familiar with a -- Well, let me
23 -- Sorry. Looking on State's 1, page 2 in the middle of the
24 event log, there are different types of three or two letter
25 codes listed there; is that correct?

- 1 A. I'm sorry. Where are you at?
- 2 Q. The typed part. So there are different three letter
- 3 codes listed way down?
- 4 A. Yes. Sorry.
- 5 Q. I'm not asking great questions.
- 6 A. That's okay.
- 7 Q. In general are those codes associated with a certain
- 8 action that takes place in your CAD system?
- 9 A. Yes.
- 10 Q. Okay. Are you familiar with the code QHY? Sorry.
- 11 VHQ?
- 12 A. Yes.
- 13 Q. What does VHQ stand for?
- 14 A. It's a vehicle query.
- 15 Q. And what does that mean?
- 16 A. You are running a vehicle or entering a vehicle.
- 17 You're doing something with a vehicle.
- 18 Q. And it is what code again?
- 19 A. You said the VHQ?
- 20 Q. VHQ.
- 21 A. Yes.
- 22 Q. And that is a vehicle query?
- 23 A. Yes.
- 24 Q. And that is when you run a vehicle?
- 25 A. Yes.

ANGELA GUNTER - CROSS BY MS. WILLIAMS

67

1 Q. Ms. Gunter, do you see the code that indicates that
2 the tags on this vehicle was run in the event log?

3 A. It doesn't show up. No. It doesn't show up in here
4 when she runs it. It's on a different system. It's NCIC.
5 This is CAD. This is when you have to manually put it in. It
6 wouldn't show it on here. When it's ran, it's on the NCIC
7 screen. It's two different screens.

8 Q. Why is there a code that means vehicle query then?

9 A. Because that is when you're putting it into the
10 field, I have to find it, right here, the license tag field,
11 it could be set up and somebody just sees it could be set up
12 where it's automatically ran and it's gone through NCIC. Ours
13 is not. So we'll put it in here and then we add all the
14 vehicle information in, but then the dispatcher has to
15 manually run it on an NCIC screen which is completely separate
16 from CAD, if I'm making sense. Sorry.

17 Q. No. You are. You are. Ms. Gunter, how long have
18 you had this system?

19 A. Years. Probably four or five years. It's been a
20 while. I'm not sure exactly because I don't remember when
21 they installed it.

22 Q. Ms. Gunter, how long have you been with Lexington
23 County Communications?

24 A. I've been with Lexington County over 16 years.

25 Q. Okay. So, do you - would -- I'm getting from your

1 testimony that you do not specifically recall the date of the
2 install of your current system?

3 A. Correct.

4 Q. Do you - to the best of your knowledge and belief
5 did you have this system in 2015?

6 A. This particular system? I don't know. It's been
7 years. It's possible. I would say yes, but again, I don't do
8 the installation. That's not me.

9 MS. WILLIAMS: Your Honor, I would like to approach
10 the witness with a CAD report from 2015 that was done by
11 the Lexington County Sheriff's Department.

12 MR. PINCELLI: Your Honor, my objection, I don't
13 think it's relevant to this case. The witness can't even
14 say it was the same program they were using at the
15 time.

16 THE COURT: The issue is -- It sounds like they're
17 laying a foundation that something was not present on
18 this report, but was there on another one in the past?
19 Is that the point of this?

20 MS. WILLIAMS: The point of the line of inquiry is,
21 I have a Lexington County Sheriff's Department CAD report
22 that has a separate query for when you run a plate that
23 is VHQ and that that code is not on there indicating that
24 the tag was run.

25 THE COURT: Okay.

1 MS. WILLIAMS: That's what I'm trying get it in for
2 or at least to ask her to take a look at it and tell me
3 if she can tell anything from it.

4 BY THE WITNESS:

5 A. I know what you're talking about. I can tell you
6 now we used to have one that you could put it in the CAD
7 report and it would automatically run it. It's not like that
8 anymore. You have to manually do it.

9 THE COURT: She may have answered the question.

10 MR. PINCELLI: That's my objection, Your Honor. If
11 we can't draw a line as to when that happened, there is
12 the explanation. I guess I'm okay with that answer, but
13 if we can't draw a line, I don't think that that is
14 probative to the argument in place with this CAD
15 report.

16 THE COURT: Well, I'll let Ms. Williams proceed to a
17 point of just however totality argument she's gonna make
18 here as far as the CAD report so I'll allow her to make a
19 record on it.

20 MR. PINCELLI: Understood.

21 MS. WILLIAMS: Thank you, Your Honor. May I
22 approach?

23 THE COURT: Yes, ma'am.

24 BY MS. WILLIAMS:

25 Q. If I could get you to take a look at this document

1 which I will then later mark for ID purposes as defense 1. Do
2 you recognize what type of document that is?

3 A. I do. Yes.

4 Q. And what is it?

5 A. It is a CAD report for a GSW or a stabbing that was
6 6/6 of 2015.

7 Q. And was that done by the Lexington County Sheriff's
8 Department?

9 A. Yes. It was.

10 Q. Would you please flip to page 4.

11 A. Yep. The VHQ, vehicle query.

12 Q. So you do see that on there there is a different
13 three letter code indicating that tags were run?

14 A. Correct.

15 Q. And what is that code?

16 A. That's a vehicle, it's a vehicle query SVHQ.

17 Q. Thank you. And can you tell from looking at this
18 document whether or not this is the current system that you
19 use?

20 A. No.

21 Q. Is there any information that you could have that
22 would help you to identify what system, what the difference
23 between the two systems?

24 A. Yes. On the 2015 it would document when we ran it
25 through the CAD system when it was linked to NCIC, and on this

1 2020 it's not. It wasn't connected at the time. This one
2 was, this one is not, because it doesn't have vehicle query
3 that would automatically run it through NCIC. That's how I
4 can tell there's a difference in the system. Does that make
5 sense? I'm not IT so I'm trying to explain it the best I can
6 as far as a former dispatcher.

7 Q. So what I am understanding from your answer is that
8 the reason you know it was on a different system is because it
9 doesn't have, it has the vehicle query?

10 A. On the 2015 it does. On this one it does not.
11 That's how I can tell the difference.

12 Q. Okay.

13 A. If it was ran through - if it was linked together
14 still, this current one that's on the screen right now, it
15 would have vehicle query on it. It does not so I can tell it
16 was a different system, or maybe not even a different system,
17 but they weren't linked together as they were in 2015 like
18 they are not now.

19 Q. Okay. And you have personal knowledge that the two
20 systems are not currently linked now?

21 A. Yes.

22 Q. Okay. Almost finished, Ms. Gunter. Thank you for
23 your patience. Looking back at page 1 of State's 1 looking at
24 the note section, it states that, well, I guess, what is the
25 first note that it says in order of time? So starting the

1 earliest in the call, what's the first manual note?

2 A. At Speed Way.

3 Q. What's the second note?

4 A. Request next in OR.

5 Q. What's the third note?

6 A. One detained.

7 Q. You testified earlier that request NOR means that
8 they're requesting the next --

9 A. The next wrecker in rotation.

10 Q. -- wrecker?

11 A. Yes, ma'am.

12 Q. Okay. So, based on that time line he was requesting
13 the wrecker before he detained the defendant?

14 A. Correct.

15 MS. WILLIAMS: All right. No further questions.

16 Thank you.

17 THE COURT: Redirect.

18 MR. PINCELLI: Briefly. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. PINCELLI:

21 Q. Ms. Gunter, we talked about systems being linked,
22 different codes and you testified that 2020 this system was
23 either different or was not linked so you did not get the same
24 codes?

25 A. Correct.

1 Q. I want to draw your attention to the event log,
2 second page of this document, 17:40 and 14 seconds.

3 A. Okay.

4 Q. What do you see there?

5 A. Clear all around? That one?

6 Q. Yes.

7 A. 17:40:14 clear all around.

8 Q. What does that mean to you on this document?

9 A. That means NCIC and RMS on this subject is clear.

10 Q. Would it have to have been run for it to get that
11 result?

12 A. Yes. You have to run it to make sure it's clear
13 before you can document that it's clear. That is clear.

14 Q. Do you see a VHQ code?

15 A. No.

16 Q. So how could that be?

17 A. Because they have to document the call part when
18 they run it through NCIC and RMS to notate, to verify that
19 it's clear, to document. You have to document everything.

20 Q. But it certainly was run?

21 A. Yes.

22 Q. I'm going to further direct your attention, we
23 talked about this related name section. Down here we also
24 have a clear all around and we have some other information
25 related to Mr. Wagner?

1 A. Yes.

2 Q. Where does that come from?

3 A. That comes from the clear all around, the gang
4 member caution RMS is from our RMS system which is the
5 Sheriff's Department's inhouse record.

6 Q. So does somebody have to search for that to be, for
7 this to be on CAD?

8 A. Yes.

9 Q. So that was also searched?

10 A. Correct.

11 Q. Just like the vehicle was searched?

12 A. Correct.

13 Q. And to confirm that that vehicle had a suspended
14 plate; is that correct?

15 A. Correct.

16 Q. And lastly looking here on the last page of State's
17 1, you told me that S3 meant suspended?

18 A. Yes.

19 Q. And we're talking about the plate on that vehicle,
20 aren't we?

21 A. Yes. The tag is. Yes.

22 Q. So that has no bearing as to whether or not Mr.
23 Wagner had a valid driver's license, does it?

24 A. No. It's two different things.

25 MR. PINCELLI: Thank you. No further questions.

ANGELA GUNTER - RECROSS BY MS. WILLIAMS

75

1 MS. WILLIAMS: Just briefly recross and also so I
2 can mark my exhibit for ID purposes.

3 (Whereupon, Defendant's Exhibit #1 marked for
4 identification.)

5 RECROSS EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Clear all around?

8 A. Mm-hmm.

9 Q. What does that mean again?

10 A. That means NCIC and RMS which is the crime center,
11 the National Crime Information Center to see if they're
12 wanted, if they have any warrants or any kind of anything on
13 them.

14 Q. So if this tag was suspended, but he had no inactive
15 warrants, it would still say clear all around?

16 A. Yes. As far as, this is on the individual they're
17 running. For RMS is a name. They run their name and date of
18 birth. NCIC is their name and date of birth for this is what
19 they're referring to, yes.

20 MS. WILLIAMS: Okay. Thank you, Ms. Gunter. I
21 appreciate it.

22 THE COURT: The witness may step down.
23 Thereupon,

24 TYLER KENNEDY

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. Once you're seated,
2 state your full name spelling your last please.

3 THE WITNESS: Tyler Kennedy, K-e-n-n-e-d-y.

4 DIRECT EXAMINATION

5 BY MR. PINCELLI:

6 Q. Good afternoon, Investigator Kennedy. Where are you
7 employed?

8 A. At the Lexington County Sheriff's Department.

9 Q. And wWhat do you do at the Lexington County
10 Sheriff's Department?

11 A. I'm an investigator on the Net Team.

12 Q. What were you doing back in February of 2020?

13 A. I was an investigator on the Net Team.

14 Q. As an investigator for the Net Team, what are your
15 duties?

16 A. We investigate gang members, narcotics distributors
17 and additional criminals.

18 Q. Did you come to know the name Maxie Wagner through
19 your employment as an investigator on the Net Team for the
20 Lexington County Sheriff's Department?

21 A. I did.

22 Q. How did you come to learn of Maxie Wagner?

23 A. We were aware that he was involved in criminal
24 activity to include drug distribution.

25 Q. Is it fair to say that you were investigating Maxie

TYLER KENNEDY - DIRECT BY MR. PINCELLI

77

1 Wagner?

2 A. That's fair.

3 Q. I'm going to approach you with a document. Do you
4 recognize this document?

5 A. I do.

6 Q. And what is that document show you?

7 A. It shows me that I have access to SCDMV which is the
8 Department of Motor Vehicles and I ran a tag of [REDACTED] on
9 January 29th, 2020.

10 MR. PINCELLI: Your Honor, the State would move this
11 State's 2 for the purposes of this hearing.

12 MR. WILLIAMS: For purposes of this hearing no
13 objection, Your Honor.

14 THE COURT: Yes.

15 (Whereupon, State's Exhibit #2 marked for
16 identification.)

17 BY MR. PINCELLI:

18 Q. Investigator Kennedy, I'm gonna put that up on the
19 screen for you. We are showing, just one more time, can you
20 tell me where does this come from? Did you generate this?

21 A. It's generated based on the information that I ran,
22 however, I did not personally generate that.

23 Q. But from the information that you ran --

24 A. Correct.

25 Q. -- it shows your participation in the search?

1 A. That's correct.

2 Q. So under this name what does that say?

3 A. That shows that that is my user name in the
4 Department of Motor Vehicles that ran that tag.

5 Q. Okay. And then we go to the date accessed. What
6 was that date?

7 A. I ran it on January 29th, 2020 at 3:36 p.m.

8 Q. And if we go to search information, what does that
9 say?

10 A. It shows the vehicle that I ran based on the tag.

11 Q. Okay. And as to the second entry, what's the time
12 on that one?

13 A. At 3:38.

14 Q. Is that just two minutes after the first one?

15 A. That's correct.

16 Q. Okay. What did you learn as a result of running
17 this plate?

18 A. As a result I learned that the vehicle bearing that
19 tag was suspended.

20 Q. Did you share that information with anybody?

21 A. I did.

22 Q. Who did you share that information with?

23 A. Investigator Gietz.

24 Q. When did you share that information?

25 A. The day that I ran the tag.

1 Q. And how did you share that information?

2 A. Via phone call.

3 MR. PINCELLI: No further questions. Thank you.

4 MR. WILLIAMS: May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Investigator Kennedy --

9 A. Yes, sir.

10 Q. -- it's kind of a simple web activity inquiry piece
11 of paper, isn't it? And for the Court's edification, these
12 types of things, web activity inquiry, are things which
13 certain law enforcement and private investigators maybe and
14 certainly other type, you don't even have to be a drug
15 investigator to have access if you're trusted enough to have
16 access with the South Carolina Department of Motor Vehicles'
17 records; is that correct?

18 A. That is.

19 Q. And for that reason you're actually given a
20 particular code, right, that you can use?

21 A. It's a login. Yes, sir.

22 Q. It's a login?

23 A. Yes, sir.

24 Q. So not just anybody can login underneath your name,
25 right?

1 A. That's correct.

2 Q. So, if we were looking at this web activity inquiry,
3 the first thing we note is that you received this on May the
4 5th or Cinco de Mayo or 2022 at 2:00 in the afternoon so
5 that's when this particular piece of paper was printed out,
6 right?

7 A. Just for clarification, I did not receive that piece
8 of paper.

9 Q. So you never received this piece of paper?

10 A. I can see it now, but that was not a piece of paper
11 that I obtained.

12 Q. What piece of paper did you obtain?

13 A. I did not obtain any paper.

14 Q. So if you run a web activity inquiry, that's
15 computerized, right?

16 A. I don't know. I would imagine the DMV did that, but
17 I'm not sure.

18 Q. I'm trying to, you contacted the DMV?

19 A. On January 29th, 2020 via my SCDMV access.

20 Q. And you're saying that because this web activity
21 inquiry has that date on it; is that right?

22 A. Yes. That's when I ran the plate. Yes, sir.

23 Q. How do you know you ran the plate on that date?

24 A. Because I remember doing so.

25 Q. Okay. So when you did that, you say you ran it,

1 where is the information that says that the plate was
2 suspended?

3 A. It's digital.

4 Q. All of this is digital.

5 A. Right.

6 Q. Every bit of it is digital.

7 A. Yes, sir.

8 Q. So, where is the digital on this piece of paper up
9 here that the plate was suspended?

10 A. Are you asking on that piece of paper where it shows
11 it's suspended?

12 Q. Show me any piece of paper that you received on
13 January the 29th that said that the plate was suspended that
14 you received on that day?

15 A. I think I understand what you're asking. I did not
16 receive any piece of paper on January 29th of the suspension
17 other than the digital form itself that I could observe.

18 Q. The digital form?

19 A. Yes.

20 Q. Tell me what that digital form is that you could
21 observe?

22 A. So if you would like to, I can pull up my phone
23 which I have access to the DMV and I can run a plate now and
24 see what the status of the plate is, decal expiration, the
25 vehicle, the make, the model and the VIN number.

1 Q. So you're saying that what you did was you typed
2 into the Motor Vehicle, Department of Motor Vehicles' records
3 and you observed a screen which indicated that the tags were
4 suspended?

5 A. That's correct.

6 Q. But you have no way of preserving that information
7 so that this information can be verified by this Court and by
8 everybody else that that's exactly what occurred on that
9 day?

10 A. Well, it's verified via that true copy that is on
11 the screen currently.

12 Q. But this true copy, all it says is, is that you
13 accessed it. It didn't say what you learned when you accessed
14 it, does it?

15 A. No.

16 Q. So in this particular case what we've learned is
17 that you got a printout done from a web activity inquiry that
18 at some point in time two years ago you accessed a plate?

19 A. That's correct.

20 Q. And that's it?

21 A. Yes, sir.

22 Q. Well, why did you do it twice?

23 A. I'm not familiar with why it shows twice. I
24 remember running the plate, but I have no clue why it shows
25 that it happened twice.

1 Q. Well, you wouldn't have checked it if you got the
2 information that said that it was suspended, you wouldn't have
3 checked it again because you would have been satisfied as that
4 being your information, right?

5 A. I would say that's a fair statement.

6 Q. And again, we have nothing, this Court has nothing,
7 no one has anything to base that this is a verification of the
8 situation that you received except to go inside your mind and
9 believe inside your mind what we see? And that's a form of
10 evidence. I'm not saying that it's not a form of evidence and
11 I don't mean to be derogatory when I say that. But you didn't
12 remember why you ran it twice. Maybe one time you ran it and
13 it indicated that it wasn't under suspension?

14 A. Well, I have no control over the DMV so the fact
15 that it shows twice might have been something on their part.
16 What I'm testifying to is that I ran the plate and knew that
17 it was suspended.

18 Q. Did you see it twice? Did you see it was suspended
19 twice?

20 A. On my phone screen?

21 Q. Right.

22 A. It's possible that maybe the tab got closed and the
23 next time that I pulled up the Internet it was ran again
24 because I pulled up the tab again. That's a good possibility,
25 but I don't know for sure that that's what happened.

1 MR. WILLIAMS: That's all I have, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. PINCELLI:

5 Q. Investigator Kennedy, a lot has just been made of
6 how many times this was run. Can you read these dates on
7 State's 2? What's that date?

8 A. January 29th, 2020 at 3:36 p.m.

9 Q. What's the second time?

10 A. January 29th, 2020 at 3:38 p.m.

11 Q. Would you agree with me that's a difference of two
12 minutes?

13 A. That's correct.

14 Q. Again, what did you learn from running this?

15 A. I learned that the plate bearing [REDACTED] was
16 suspended via the Department of Motor Vehicles.

17 Q. Who did you communicate that to?

18 A. Investigator Gietz.

19 Q. At what time?

20 A. Right after I ran it.

21 Q. And how did you communicate that?

22 A. Via phone call.

23 MR. PINCELLI: No further questions.

24 RECROSS EXAMINATION

25 BY MR. WILLIAMS:

ADAM HOLT - DIRECT BY MR. PINCELLI

85

1 Q. And those two minutes can be a lifetime, can't
2 they?

3 A. Two minutes can be a long time.

4 Q. A lifetime?

5 A. Depends on what kind of event's happening in those
6 two minutes.

7 MR. WILLIAMS: That's all I have, Your honor.

8 THE COURT: All right. Next witness. You may step
9 down, sir.

10 MR. PINCELLI: The State calls Investigator Holt to
11 the stand.

12 Thereupon,

13 ADAM HOLT

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. Once you're seated,
16 state your full name spelling your last please.

17 THE WITNESS: My name is Investigator Adam Holt. My
18 last name is H-o-l-t.

19 DIRECT EXAMINATION

20 BY MR. PINCELLI:

21 Q. Good afternoon, Investigator Holt. Where are you
22 employed?

23 A. I'm employed at the Lexington County Sheriff's
24 Department.

25 Q. And how long have you been employed there?

1 A. Since 2017.

2 Q. Back in 2020 February of that year what was your
3 role with the Sheriff's Department?

4 A. At that time I was investigating crimes with the Net
5 Team.

6 Q. And did you have an opportunity on February 10th,
7 2020 to respond to a traffic stop made by Investigator
8 Gietz?

9 A. I did.

10 Q. What was your role in that traffic stop?

11 A. I responded to assist with anything he needed and I
12 waited for the tow to come and removed the tag from the
13 vehicle due to it being suspended.

14 Q. And is that a common practice to remove a plate that
15 has been suspended?

16 A. Yes.

17 Q. And why did you do it again in this case?

18 A. Because the tag was suspended and it needed to be
19 removed and turned into the Department of Motor Vehicles.

20 Q. I'm gonna approach you with a document. Do you
21 recognize this document?

22 A. Yes. I do. It looks like a receipt for showing
23 when the tag was turned in.

24 Q. Where was that from?

25 A. From the Department of Motor Vehicles.

ADAM HOLT - DIRECT BY MR. PINCELLI

87

1 MR. PINCELLI: Your Honor, I would like to admit
2 this as State's 3 for the purposes of this hearing.

3 MR. WILLIAMS: Your Honor, we don't have any
4 objection to that.

5 THE COURT: So admitted.

6 (Whereupon, State's Exhibit #3 marked for
7 identification.)

8 BY MR. PINCELLI:

9 Q. Investigator, you testified you did remove the plate
10 on scene. What did you do with that plate following?

11 A. Once it was removed it was placed into my vehicle.

12 Q. And then per your role with law enforcement what do
13 you do with those removed plates?

14 A. Eventually, not immediately, normally common
15 practice is after you collect a certain amount of plates or
16 you have business at the DMV you will go and turn in what you
17 have in your vehicle.

18 Q. Does the DMV accept any and all plates that you turn
19 in?

20 A. They do.

21 Q. And what does this document show us?

22 A. Uhm, this document shows us the plate was turned in,
23 it's showing the DMV put it in their system. It was turned in
24 on March 4th, 2020.

25 Q. And again, what was your reason for taking,

1 removing, and turning in this plate?

2 A. Because the plate was suspended by the South
3 Carolina Department of Motor Vehicles.

4 MR. PINCELLI: No further questions. Thank you.

5 MR. WILLIAMS: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Is it Investigator Holt?

10 A. Yes, sir.

11 Q. Investigator Holt, the document, obviously these are
12 something that the Solicitor acquired from the Motor Vehicle
13 Division, certified copies and when you look at this document,
14 it's got the plate number, it's got the validation number,
15 it's got the expiration date. What is the expiration date?

16 A. Looks like it's October 2021.

17 Q. It's got the issued date, correct?

18 A. It does.

19 Q. And that's 10/23/2019?

20 A. That what it appears.

21 Q. And the only thing I guess of importance in this
22 hearing is the fact that the surrender reason it says PVOL
23 plate turned in, right?

24 A. Yes. That's what it says there.

25 Q. What does that stand for?

1 A. I couldn't tell you. I can tell you the plate
2 turned in means that the plate was turned in.

3 Q. It doesn't say on this when you handed the plate,
4 when you handed it to them, they took your plate, but it
5 doesn't say that this is being handed in because the tag was
6 suspended, does it?

7 A. No. I don't believe it does say it up there.

8 Q. Let me ask you, I'm not gonna -- You've seen
9 pictures of the tag, right? Because you were there. You took
10 the tag off and you took it to the Highway Department?

11 A. Yes.

12 Q. I'm gonna ask you to just refresh your memory about
13 that tag. Does that look like the tag we're talking about?

14 A. I mean, I don't remember exactly the tag, but you
15 look up here and reference the tag that was turned in. I
16 don't see the tag number on the document up there. My eyes
17 aren't good enough for it.

18 Q. Well, let's see if I can help you. I don't think I
19 can help you either. It says, it's got a VIN number on it.

20 A. Yeah. There it is right there. Above the expire
21 date it says [REDACTED] which is the same tag that's on there.

22 Q. Same tag. So that tag looks familiar to you?

23 A. Yeah. I believe so.

24 Q. And what's interesting about this tag, it was on the
25 back of a Volkswagen, right? A clean tag?

1 A. A clean tag?

2 Q. Clean. It didn't have mud or anything on it. It
3 was easily discernible. You could see it?

4 A. In that picture, yes, I could see it.

5 Q. Y'all took the picture?

6 A. I'm just telling you I can see it on that. I don't
7 remember from two years ago looking at the license plate.

8 Q. It's got the sticker showing that it doesn't expire
9 until October of 2020, doesn't it?

10 A. If that's what the sticker says.

11 Q. You want to see it?

12 A. Yes. Sure.

13 Q. I'm not trying to be tricky.

14 A. I got you. Yes. It says October 2020.

15 Q. There is nothing about the license tag itself to
16 indicate that it's suspended, is there?

17 A. On this piece of paper, no.

18 Q. How about on a picture of the tag itself? This is
19 what you would see as you were going down the road, right?

20 A. Right. But a tag isn't suspended purely due to the
21 expiration. It could be suspended for multiple reasons. So
22 it doesn't have a sticker that say I'm suspended on the tag.

23 Q. No. But there's nothing on here to indicate that
24 there's anything wrong with the tag either, is there?

25 A. No. Not that I can see from that picture.

ADAM HOLT - REDIRECT BY MR. PINCELLI

91

1 MR. WILLIAMS: To give reason to stop it. That's
2 all the questions I have, Your Honor.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

5 BY MR. PINCELLI:

6 Q. Investigator Holt, as an investigator with the Net
7 Team, do you ever make traffic stops?

8 A. Yes.

9 Q. If you want to know something about a plate or a
10 vehicle, what would you do to garner more information?

11 A. I would run the tag.

12 Q. Might you call dispatch?

13 A. Yes.

14 Q. Would they be able to tell you something about that
15 plate?

16 A. Yes. They would.

17 Q. And then what would you do with that information?

18 A. I would investigate that further depending on if
19 they told me, if I was behind it for the traffic stop and they
20 told me that the tag was suspended, then I would stop that
21 vehicle.

22 Q. If you confirmed that the plate was suspended, what
23 would you or somebody else do on scene?

24 A. We would remove that tag and turn it into the DMV.

25 Q. Would it necessarily matter what sticker is on that

1 plate?

2 A. No. It has no bearing on that.

3 MR. PINCELLI: Thank you.

4 THE COURT: Recross.

5 RECROSS EXAMINATION

6 BY MR. WILLIAMS:

7 Q. One question. And you clearly remember the last
8 sentence that you just said when you were responding to the
9 Prosecutor, if you were behind that vehicle, you would run the
10 tag and then make a determination as to whether or not you
11 would stop it or not.

12 A. Okay.

13 Q. You don't deny that you just said that, do you?

14 A. I'm sure I did.

15 Q. You're sure you do deny it?

16 A. No. I'm sure I did say that, if you're telling me.

17 We have a court reporter.

18 MR. WILLIAMS: That's all the questions I have, Your
19 Honor.

20 THE COURT: All right. The witness may step down.

21 MR. PINCELLI: Your Honor, the State has no further
22 witnesses for this motion.

23 THE COURT: Witnesses for the defense?

24 MS. WILLIAMS: No witnesses for the defense, but if
25 the Court is ready to hear our argument.

1 THE COURT: I'm happy to hear some argument.

2 MS. WILLIAMS: Your Honor, a traffic stop can take
3 place two ways. The first is probable cause to believe
4 that a traffic violation has taken place or is taking
5 place. I'm not sure what the exact nouns are on that or
6 verbs. The second is reasonable suspicion that occupants
7 are involved in criminal activity. So, I wanted it to be
8 clear when I began that when the State stood up at the
9 beginning, he stated, he asked Investigator Gietz what
10 was your reason for pulling this vehicle over and he
11 stated that he had probable cause to believe that the tag
12 was suspended and I'm only pointing this out because
13 later on in his testimony when he was responding to dad,
14 he used the term reasonable suspicion that his tag was
15 suspended and those are two different things.

16 And, in fact, the case I brought to show this is
17 State v. Burgess which is a Theo Williams Appellate Court
18 case and I have that if Your Honor or Mr. Rankin would
19 like that. Rankin. I apologize. Luke would want that.
20 So, to begin with, in order to effectuate a traffic stop
21 you must have probable cause that a traffic violation
22 took place or reasonable suspicion that the occupants are
23 involved in criminal activity. The testimony today has
24 been solely related to probable cause to believe that a
25 traffic violation occurred. So we're looking at that,

1 whether or not the investigator had probable cause.

2 The testimony has stated that he received a phone
3 call on January 29th, 2020 from Investigator Kennedy
4 stating, and in that call Kennedy told him that Maxie's
5 tag was suspended. January 29th. We wait to February
6 10th and the testimony has been consistent that February
7 10th is when he pulls Maxie's vehicle. In fact, he
8 starts it at Kittie, I believe it's Kittie Way maybe.

9 INVESTIGATOR GIETZ: No. It's Kittie Drive.

10 MS. WILLIAMS: Kittie Drive. He starts it at Kittie
11 Drive.

12 THE COURT: Right off Platt Springs, right?

13 MS. WILLIAMS: And follows him and pulls him off on
14 Platt Springs Road. There has been no evidence offered
15 by the State that the investigator reran the tag. There
16 has been none. In fact, there has been testimony that
17 it's very easy to run the tags. One of the investigators
18 offered to pull it up on his phone because he has that
19 capability. They stated that they would call dispatch
20 and run it, and you can do that before you would, in
21 fact, the same investigator stated that if he were in the
22 situation and he saw a tag, he would call dispatch, get
23 it run and then initiate the traffic stop.

24 So, the issue in this case is when the traffic stop
25 occurred in relation to Investigator Gietz getting this

1 information that Maxie's tag was suspended. That was 12
2 days beforehand. It was one phone call 12 days
3 beforehand and as such it's the defense's position that
4 that information is stale. Probable cause under State v.
5 Winborne, probable cause --

6 THE COURT: Let me ask you a quick question before
7 you go there.

8 MS. WILLIAMS: Sure.

9 THE COURT: Just for -- We all agree that it's not
10 legal to drive a car with a suspended tag?

11 MS. WILLIAMS: Yes, Your Honor, we agree.

12 THE COURT: I'll let you address that more.

13 MS. WILLIAMS: Okay. But the issue is whether or
14 not the cop, the investigator had probable cause to
15 believe that the tag was suspended, whether or not he had
16 that knowledge in his head, probable cause level
17 knowledge. So, staleness. State v. Winborne, and I will
18 state that this has to do with probable cause as it
19 relates to a search warrant. As you can imagine, in the
20 State of South Carolina there is absolutely no case law
21 dealing with staleness and probable cause for a traffic
22 violation. It is an exceedingly niched subject.

23 So, starting with that, in order for an affidavit in
24 support of search warrant to show probable cause it must
25 state facts so closely related to the time of the

1 issuance of the warrant as to justify a finding of
2 probable cause at that time. The reason for this rule is
3 that probable cause with time dissipates and the conduct
4 of the -- without -- I'm adding these words. These are
5 not in the case. So the words without is temporal
6 analysis are not in the case, but the conduct of the
7 citizen throughout the entire period of his past life
8 would furnish grounds for continuous and repeated
9 searches of his premises. And again, that's State v.
10 Winborne, it's 273 S.C. 62. It's a 1979 case.

11 THE COURT: 273 S.C. 62?

12 MS. WILLIAMS: Yes, sir. And I have a copy of that,
13 too. So, common sense, right, probable cause has to
14 dissipate, otherwise something you did when you were, you
15 know, 15 or whatever would generate a probable cause for
16 someone to pull you over later and search your vehicle,
17 it doesn't make sense. You have to have a time and as
18 additional testimony was elicited, that on a search
19 warrant, that search warrant must be executed within 10
20 days.

21 Now, I have no, I'll be honest with Your Honor, I
22 have no idea why the 10 day time limit, but 10 days.

23 THE COURT: From the serving of a warrant?

24 MS. WILLIAMS: The serving of a warrant, yes. I
25 apologize. So the serving of a warrant 10 days. So,

1 Investigator Gietz gets a phone call from a co-worker
2 that Maxie's tags are suspended 12 days prior to
3 initiating the traffic stop. Your Honor, we wouldn't be
4 having this hearing if he had called CAD and run the tags
5 before he did the traffic stop, but he did not and that
6 Fourth Amendment Right against unreasonable search and
7 seizure is so very important and the thing is the cases
8 where they don't find drugs, they don't get here. You
9 don't hear those cases because they don't do anything
10 with them. Unfortunately, the only cases that come
11 before the Court about unreasonable searches and seizures
12 are usually where they have found something.

13 This is not my idea. That comes from United States
14 v. McCoy. I wish it was. So, in order to protect those
15 rights, you have to hold the investigators to the same
16 standards in every single case and in this case the
17 investigator did not have probable cause to stop the
18 vehicle.

19 THE COURT: Well, so your contention essentially is
20 that 12 days --

21 MS. WILLIAMS: The information was -- I apologize,
22 Your Honor. I'm not trying to cut you off.

23 THE COURT: You're position is the probable cause
24 simply just didn't exist at the 12 days.

25 MS. WILLIAMS: He didn't run - he didn't stop Maxie

1 on January 30th. He stopped him on February 10th and who
2 knows whether or not the tag -- You can't -- That's
3 complete speculation to know whether or not Maxie would
4 have fixed the tag in that 12 day period or not.

5 THE COURT: Okay. Does your argument change any if
6 you're talking only about reasonable suspicion?

7 MS. WILLIAMS: It does not. Thank you for asking,
8 Your Honor. If we are arguing about reasonable --

9 THE COURT: You said a lot of both is all I'm
10 saying.

11 MS. WILLIAMS: Well, I believe they were conflated
12 with regard to concept, but it does not change. So
13 reasonable suspicion under the same State v. Burgess case
14 that he did, is based on knowledge plus behavior. So,
15 for example, in State v. Burgess, I don't know what
16 division of law enforcement it was, but he was in his
17 vehicle and he observed cars going to a known drug
18 location which was a Hardee's and he observed one vehicle
19 parked and the people not eat, and then he observed
20 another vehicle parked like compos wonkas next to it, he
21 observed an individual get out of the first vehicle and
22 get into the second one, sit in the back seat, exchange
23 something, then he got back in his vehicle and left and
24 the law enforcement officer in that particular case using
25 his knowledge and experience which is the term that they

1 like to bring up a lot, so using his knowledge and
2 experience goes, oh, that doesn't look like they were
3 eating a burger, that looks like it was a drug deal.

4 So, based on his knowledge and experience he
5 followed that first car where the individual had
6 exchanged things and pulled it over having reasonable
7 suspicion that a criminal activity had taken place
8 because he had knowledge and he observed an activity. I
9 do not think that you can argue that riding down the road
10 is in any way suspicious. There's no additional
11 component to push it there like there was in this other
12 case.

13 THE COURT: Let me have the State respond and then
14 we'll have some more discussion.

15 MR. PINCELLI: Thank you, Your Honor. Your Honor, I
16 think you corrected the standard, but the basis of
17 defense's argument mostly was about probable cause. What
18 they're asking you to do is make new law based on the
19 incorrect standard of a traffic stop which would be
20 staleness for probable cause on a traffic stop.

21 Your Honor, I'm gonna direct you to Kansas v.
22 Glover. That's the Supreme Court case from 2020, 140
23 Supreme Court 1183. I'm just gonna quote briefly. Under
24 this Court's precedence the Fourth Amendment permits an
25 officer to initiate a brief investigative traffic stop

1 when he has a particularized and objective basis for
2 suspecting the particular person stopped of criminal
3 activity.

4 Your Honor, the facts of that case, if you're not
5 familiar, a member of law enforcement knew a driver drove
6 a specific type of truck, I believe it was a red pickup
7 truck in this case, but law enforcement knew that that
8 driver had a license that was suspended unlike this case,
9 not the plate, his license, so he's not supposed to be
10 driving at all. They didn't know who was driving the
11 vehicle, but they knew he was the registered owner. They
12 had probable suspicion to stop that truck the Supreme
13 Court says, but they didn't know he was driving, but they
14 knew the registered owner wasn't supposed to be driving
15 at all and they were allowed to make that leap. They had
16 the particularized and objective basis for suspecting
17 criminal activity just like Officer Gietz had the
18 particularized an objective basis from 12 days prior
19 knowing that the plate on Maxie Wagner's vehicle was
20 suspended.

21 Your Honor, this same case goes on to state what
22 that standard is, the level of suspicion, the standard
23 requires is considerably less than proof of wrongdoing by
24 a preponderance of the evidence, and obviously less than
25 is necessary for probable cause.

1 Your Honor, it goes on to say about the inference
2 that the investigator has to make, the inference that law
3 enforcement has to make about what is suspicious about
4 the stop, such as the case with all reasonable
5 inferences, the reasonable suspicion inquiry falls
6 considerably short of 51 percent accuracy. The supreme
7 Court is saying the guess that the law enforcement
8 officer has to make doesn't even have to be right most of
9 the time. It's not probable cause. It is reasonable
10 suspicion and in this case we have the objective basis.
11 We had Investigator Kennedy testify that he ran the
12 plate, he saw it was suspended, he said he called
13 Investigator Gietz. Investigator Gietz said, yes, I
14 learned that from Investigator Kennedy.

15 We had CAD confirm from Angie Gunter from dispatch.
16 She came, she looked at the CAD report and she said, yes,
17 it was, in fact, suspended on that day which is where my
18 argument comes from, Your Honor. 12 days prior we have
19 an objective fact, Investigator Kennedy runs the plate,
20 knows it's suspended because Maxie Wagner was a target of
21 law enforcement. This is pretextual and we're not hiding
22 that at all. In fact, we could have added a separate
23 hearing arguing like the Burgess case, they were just
24 talking about suspicious activity.

25 In fact, there were reports that Maxie Wagner is a

1 drug dealer. There were reports that he was dealing
2 drugs out of a certain bag that in fact was found in that
3 car, but we're not even doing that. We're talking about
4 specifically this traffic stop that we know the plate was
5 suspended from. Investigator Gietz knew the plate was
6 suspended because he learned that 12 days prior. It's
7 not a large leap to say in 12 days a known drug dealer
8 didn't update his insurance information with the DMV and,
9 in fact, he did not because CAD ran it and the plate was
10 still suspended.

11 I think we have far exceeded the reasonable
12 suspicion standard that is appropriate for a brief
13 traffic stop. Now where that traffic stop goes from
14 there frankly doesn't matter for the purposes of a
15 suppression hearing. We're talking about why that car
16 was stopped. It was stopped because of the plate
17 suspension. Now, there's immediately probable cause
18 after that, the odor of marijuana, the view of
19 paraphernalia, removing him from the vehicle for Terry
20 reasons because of the razor blades, then there's the
21 search of the vehicle, but the stop itself is reasonable
22 suspicion and I think we've proved that.

23 In Delaware v. Prouse, another Supreme Court case,
24 1979, 99 Supreme Court 1391, the State has a vital
25 interest in ensuring that only those qualified to do so

1 are permitted to operate motor vehicles and licensing,
2 registration and vehicle inspection requirements are
3 being observed. You can stop a car because you think the
4 license is suspended and that is what was done here.
5 There's a reason --

6 THE COURT: Let me ask you this: Just this is a
7 hypothetical. No one has told me the answer to this
8 question, but even assume for the moment the license was
9 not suspended, that it was a glitch in the system, a
10 computer glitch, does that affect the outcome?

11 MR. PINCELLI: Your Honor, I would argue not, and I
12 believe the Supreme Court Kansas v. Glover would support
13 me. I quoted earlier the reasonable suspicion inquiry
14 falls considerably short of 51 percent accuracy. You
15 have to have the suspicion for the stop. You can't be
16 right all the time. You're including objective fact with
17 common sense basis. The objective fact was 12 days prior
18 I knew this plate was suspended. Common sense says 12
19 days later this drug dealer probably didn't update his
20 DMV records. It doesn't have to be right. It has to be
21 suspicious.

22 THE COURT: Without going back and forth now, there
23 was testimony about a statement. Are we also gonna talk
24 about, are there more witnesses for Jackson v. Denno
25 purposes?

1 MR. PINCELLI: No, Your Honor.

2 THE COURT: Okay. So the only statement I heard was
3 he said there were narcotics involved.

4 MR. PINCELLI: Right. We'll expand -- I would like
5 to expand on that in a separate hearing to get specific
6 statements in.

7 THE COURT: Yeah. Okay. We'll get to that.

8 MR. PINCELLI: I'm sorry. I might have
9 misunderstood your question.

10 THE COURT: Got it. Anything else for the moment?
11 All right. Ms. Williams.

12 MS. WILLIAMS: Yes, Your Honor. I feel that it is
13 -- So, to begin with, we're all of a sudden talking about
14 reasonable suspicion and I get that. That's exactly what
15 I would have done if I was the State, I would have
16 immediately shifted from probable cause, oh, shoot, we
17 don't have that. Let's go to reasonable suspicion
18 because it's a lower standard. But fortunately --

19 THE COURT: So your point is probable cause. I
20 mean, your argument is that 12 days past it's gone stale,
21 but assume if it's 12 hours past.

22 MS. WILLIAMS: Your Honor, we would likely not be
23 here today.

24 THE COURT: I know that, but I'm just saying our
25 issue is not the probable cause as much as the gap in the

1 time, right? I mean, that's -- If an officer is told by
2 another officer, hey, the defendant's tag is expired and
3 you see them 12 hours later, to your point we probably
4 wouldn't be sitting here, okay? So it's not as much the
5 cause as much as the half life of the cause or the
6 asserted probable cause, has it gone stale. So as I
7 understand it your biggest contention is the gap in time,
8 right?

9 MS. WILLIAMS: Yes.

10 THE COURT: Okay. Keep talking. I just wanted to
11 make sure.

12 MS. WILLIAMS: Yes. That is the proverbial nail on
13 the head, it's the gap in time. But, Your Honor, he
14 argued that, well, whether there was probable cause or
15 not, there is reasonable suspicion and then he cited a
16 Supreme Court case Kansas v. Glover which looks at the
17 United States Constitution is my understanding and I
18 could be botching this, but the South Carolina
19 Constitution affords greater protection so you're allowed
20 to narrow the scope of protections on a state level and
21 we also have one about searches and seizures and that's
22 State v. Burgess case which was, you know, created the, I
23 don't know if it created the traffic stop, but it at
24 least articulates it, breaks it down to accordingly a
25 police officer may stop a vehicle when the officer has

1 probable cause to believe a traffic violation has
2 occurred, or, when the officer has reasonable suspicion
3 the occupants are involved in criminal activity. What it
4 does not state is reasonable suspicion that a traffic
5 violation has occurred. It gives a higher standard for
6 the traffic violation than it does for criminal activity
7 and I think that's important in this case because if I'm
8 understanding the Solicitor's argument correctly, he
9 ended on reasonable suspicion that the tag was still
10 suspended. A suspended tag is a traffic violation not a
11 quote "criminal activity" that people can be involved in
12 and the Court distinguishes between those two in that
13 case. So I would argue that whether or not he had
14 reasonable suspicion that the tag was suspended is an
15 inaccurate representation of what the standard is.

16 THE COURT: Okay.

17 MS. WILLIAMS: Thank you. How many witnesses you
18 gonna have?

19 MR. PINCELLI: Just one, I think.

20 THE COURT: Okay.

21 MS. WILLIAMS: That works for us, Your Honor.

22 THE COURT: Let's go with that.

23 MR. PINCELLI: The State calls Investigator Gietz.

24 THE CLERK: All right. Already under oath, Your
25 Honor.

JOHN GIETZ - DIRECT BY MR. PINCELLI

107

1 THE COURT: All right.

2 DIRECT EXAMINATION

3 BY MR. PINCELLI:

4 Q. Investigator Gietz, were you involved in a traffic
5 stop on February 10th, 2020?

6 A. I was.

7 Q. And who did you stop?

8 A. Maxie Wagner.

9 Q. Did you have an opportunity to -- I'll just start
10 from the beginning. What did you observe when you approached
11 the vehicle?

12 A. Rubber tubing in the driver's side door. There was
13 the odor of marijuana coming from the vehicle. Maxie was
14 driving the vehicle. I had him exit the vehicle and then I
15 also observed a green plastic bag on the floorboard of the
16 driver's side.

17 Q. I think earlier, and maybe I just missed it, earlier
18 you testified you also saw loose razors?

19 A. Yes. Loose razors in the center console cut out.

20 Q. What did you do as a result of those observations?

21 A. I had Maxie exit the vehicle, I conducted a Terry
22 frisk just to make sure he didn't have any additional weapons
23 that could harm me especially since he was fumbling around
24 with razors in the center console. After that I read his wife
25 Miranda, asked her a few questions, and then I read Maxie his

1 Miranda Advisement from a card provided by the Lexington
2 County Sheriff's Department.

3 Q. You said you read him Miranda. Before you read him
4 Miranda, was he told he was put under arrest?

5 A. No.

6 Q. Was he placed in handcuffs?

7 A. No.

8 Q. Where did that interaction occur?

9 A. After I found the -- Do you mean the arrest?

10 Q. When you read him Miranda.

11 A. Oh, he was separated off to the side next to the
12 vehicle.

13 Q. About how long did the entire interaction take
14 place?

15 A. Just a couple of minutes.

16 Q. Okay. You said you read him Miranda from something
17 that you have?

18 A. Yes, sir.

19 Q. Do you have it with you today?

20 A. I do. Would you like me to read it?

21 Q. I would please.

22 A. It is my duty to advise you you're investigation by
23 the Lexington County Sheriff's Department and that you have
24 the right to remain silent. Anything you say will be used
25 against you in court. You have the right to have a lawyer and

1 consult with your lawyer before and while answering questions,
2 and if you cannot afford a lawyer, one will be provided to you
3 without cost to you. Do you understand your rights as
4 explained to you? Are you willing to talk to me without a
5 lawyer present?

6 Q. Is that the card you read from that day?

7 A. Yes, sir.

8 Q. Did you read that verbatim just like you did today
9 in Court?

10 A. Yes, sir.

11 Q. At the end of that, there are two questions?

12 A. Yes.

13 Q. How did Mr. Wagner respond to those questions?

14 A. He said he understood his rights and he was willing
15 to speak to me without a lawyer present.

16 Q. At any time did you threaten him or coerce him,
17 promise him anything?

18 A. No.

19 Q. Did he seem to be under the influence of drugs or
20 alcohol?

21 A. No.

22 Q. Did he seem to have any mental impairments that
23 would stop him from understanding what you were asking?

24 A. No.

25 Q. And he did indicate that he wanted to speak

1 with you; is that correct?

2 A. That is correct.

3 Q. What did he say to you?

4 A. He said that there was additional drug paraphernalia
5 in the car to include loaded syringes. When I say loaded, I
6 mean syringes with narcotics in there. He also told me that
7 there was methamphetamine in the car and that he uses
8 methamphetamine and then as we continued and I conducted a
9 probable cause search of the vehicle, he also said that there
10 was cocaine in addition to methamphetamine in the car.

11 Q. If Maxie Wagner, the defendant here, if he told you
12 something, would you have indicated that on your report?

13 A. Yes.

14 Q. Do you have your report in front of you?

15 A. I don't. It's sitting on the table right there.

16 Q. I'm going to hand it to you. I don't want you to
17 read from it, but I'm gonna ask you some questions about it so
18 I want it in front of you.

19 A. Okay.

20 Q. (Proffering.) In your report you state Maxie said
21 he understood and was willing to speak to me without a lawyer
22 present. You testified that's correct?

23 A. Correct.

24 Q. First it says you asked him if there were drugs in
25 the car and he responded no; is that correct?

1 A. That is correct.

2 Q. Then you explained you were gonna search the
3 vehicle. Did he change his answer?

4 A. Correct.

5 Q. What did he tell you as a result of that
6 statement?

7 A. He said that there were drugs in the car and that
8 they belong to him. He also stated he used methamphetamine
9 and there were loaded needles in the car.

10 Q. After that, did you conduct a search of the
11 vehicle?

12 A. I did.

13 Q. What did you find as a result of that search?

14 A. The drug paraphernalia that I believe was drug
15 paraphernalia turned out to be drug paraphernalia. I found
16 the green ziploc bag that I know through my training and
17 experience to be used to store narcotics for distribution,
18 also the red flex tubing that I know through my training and
19 experience to be used for the use of hypodermic needles in
20 methamphetamine, heroin, injectable narcotics. I also found a
21 black backpack containing a green leafy substance that I know
22 through my training and experience to be marijuana and I found
23 a large plastic bag of white powdery substance that I know
24 through my training and experience to be cocaine as well as
25 additional drug paraphernalia.

1 Q. I'm gonna stop you there. Did you find any loaded
2 needles?

3 A. I did.

4 Q. And Maxie Wagner had told you there were needles in
5 the car; is that correct?

6 A. Yes.

7 Q. Did you ask him about those needles?

8 A. Yes. I asked him what was in the hypodermic needle
9 and he said it was methamphetamine.

10 Q. You also said you recovered a large plastic bag of
11 white powdery substance?

12 A. Correct.

13 Q. Did you receive a statement about that white powdery
14 substance?

15 A. Yes. I asked Maxie what was in the bag and he said
16 cocaine.

17 Q. Did you continue to ask Mr. Wagner questions about
18 the drugs found?

19 A. I did. I asked him if he was selling drugs and to
20 which he responded quote, "I have to. I can't get any other
21 job." I asked him where he had been selling and he said the
22 mile which I know through investigations to be the Mile High
23 Club which is, I'm not sure, on Airport Boulevard, I believe.
24 After he was arrested, while I was taking him to Lexington
25 County Detention Center, he attempted to change his story and

1 say that everything was for personal use and tried to change
2 his job status saying that he picked up little jobs. He
3 couldn't tell me who he worked for other than it was people.

4 Q. I'm gonna stop you there. You said that
5 conversation took place on the way to the detention center; is
6 that correct?

7 A. Correct.

8 Q. How long was that between when you read Miranda and
9 this second engagement about the drugs?

10 A. I would have to look at a CAD, but it was after I
11 finished conducting my investigation during the stop.

12 Q. Would it be safe to say it was within one hour?

13 A. That's correct. Yes.

14 Q. Did in between that time that you read Miranda and
15 you indicated that Mr. Wagner understood his rights and was
16 waiving those rights to speak with you, in between that time
17 and this conversation in your car on the way to the detention
18 center, did Mr. Wagner in any way indicate that he wanted to
19 cease communication?

20 A. No. He continued to communicate with me. He never
21 said that he didn't want to talk to me and he never invoked
22 his right to counsel.

23 Q. He never asked for an attorney and he never said
24 stop talking to me?

25 A. That is correct.

1 Q. How about this conversation here, how did this even
2 come back up when you're driving to the jail? Did he engage
3 with you or was this further questioning by you?

4 A. Oh, yeah. He -- We were talking and it was, he
5 initiated this conversation and he's the one that brought up
6 the fact about the little jobs. We actually had a moment of
7 silence and he said, you know, that's when he started like
8 coming up with this fictitious story, what I believe to be a
9 fictitious story about who he was working for and what he was
10 doing.

11 Q. Okay. Before that conversation in the car and after
12 you asked him to identify things from the search of that
13 vehicle, did you ask him if he had anything on his person?

14 A. I did.

15 Q. Did he respond to that question?

16 A. Yes. He told me, let's see, yes, I asked Maxie if
17 there was anything else on his person and he told me I have a
18 bag of meth in my pocket.

19 Q. Did you search his person?

20 A. I did.

21 Q. What did you find?

22 A. In his left front pocket right next to a iPhone with
23 a red case I found a plastic bag of methamphetamine, clear
24 plastic bag as well as a decent quantity of cash, U.S.
25 currency.

1 Q. So he spoke with you before the search; is that
2 correct?

3 A. Correct.

4 Q. Before you searched the car. He spoke to you during
5 the search of the car; is that correct?

6 A. Correct.

7 Q. He spoke to you after the search of the car while on
8 scene; is that correct?

9 A. That's correct.

10 Q. And then he spoke to you on the way to Lexington
11 County Detention Center; is that correct?

12 A. That is correct.

13 Q. At any time during those interactions,
14 communications did he ask for a lawyer?

15 A. Not at any time.

16 Q. Did at any time say he wanted to stop talking
17 with you?

18 A. Not at any time.

19 Q. And you said he had indicated previously that he
20 understood the rights that you read from that card to him?

21 A. That's correct.

22 MR. PINCELLI: Thank you. No further questions for
23 this witness.

24 MR. WILLIAMS: May it please the Court.

25 THE COURT: Yes, sir.

1 CROSS EXAMINATION

2 BY MR. WILLIAMS:

3 Q. Clearly once he was stopped he was not free to go,
4 correct?

5 A. That is correct.

6 Q. So, and I think you observed whatever you observed
7 when you got him out of the car and then at that point in time
8 you read him his Miranda Warnings; is that correct?

9 A. That is correct.

10 Q. And after you completed his Miranda Warnings -- Oh,
11 but you didn't talk to him first though, you talked to his
12 wife first, didn't you?

13 A. That is correct.

14 Q. So, he was there with his wife and you actually read
15 his wife the Miranda Warnings?

16 A. I did.

17 Q. And she said she didn't know if there were any drugs
18 in the car or not, right?

19 A. She said she wasn't sure.

20 Q. Okay. But she was also in the car, right?

21 A. That is correct.

22 Q. And she was also a possible defendant if you had
23 wanted to charge people, right?

24 A. Not after Maxie told me that everything in the car
25 belonged to him.

1 Q. Right. So after you got through putting her under
2 Miranda Warnings --

3 A. Mm-hmm.

4 Q. -- and she said she didn't know about anything, any
5 drugs in the car, then you then spoke to Maxie reading him his
6 Miranda Advisement from the card provided to you, correct?
7 That's the next thing you move onto?

8 A. That's correct.

9 Q. And then you asked Maxie if there were any drugs in
10 the car and he said no?

11 A. That's correct.

12 Q. And then you explain to Maxie that you were gonna
13 search the car and now would be the time to tell me if there
14 was anything in the vehicle. Why would that be the time to
15 tell you if there's anything in the vehicle?

16 A. I was giving him a chance to be honest.

17 Q. How does that help him, if it's his drugs? If he's
18 the one who actually had the drugs, how does that help him?

19 A. I'm not sure how it would help him.

20 Q. But it was the time to tell you. So, at that point
21 in time that's when these statements start flowing. Maxie
22 said there were drugs in the car and they belonged to him,
23 right?

24 A. That's correct.

25 Q. And Maxie said that he had started using

1 methamphetamine and there were loaded needles in the car,
2 correct?

3 A. Yes.

4 Q. Which is the same thing that he allegedly said on
5 the ride to the Sheriff's Department about that they were
6 private use, they were used for his own person, correct?

7 A. Well, the methamphetamine.

8 Q. Well, I mean, that's what I just read out. Maxie
9 said he had started using methamphetamine, there were loaded
10 needles in the car, so that would have been his personal use,
11 right?

12 A. He also said that he sold drugs too.

13 Q. Well, let's look at that. So, you're leading this
14 instruction, aren't you? This question taking. I asked Maxie
15 what was in the hypodermic needle and he said methamphetamine,
16 right?

17 A. Correct.

18 Q. Later down in the paragraph you said I asked Maxie
19 what was in the bag and he said cocaine?

20 A. That's correct.

21 Q. Later down I asked Maxie if he was selling drugs.
22 He says, I have to. I can't get another job?

23 A. Correct.

24 Q. And then you ask him, I asked Maxie if he had
25 anything else on his person. He says, I have a bag of meth in

1 my pocket?

2 A. Correct.

3 Q. And that's the way it went down just like that?

4 A. Essentially, yes.

5 Q. Well, at any point in time did you ever pull out a
6 statement card or, that contains the Advisement of Rights
7 where he could read the Advisement of Rights and actually give
8 a full statement about what his culpability is in anything?

9 A. No, sir.

10 Q. And at any point in time did you ever record his
11 conversations?

12 A. No, sir.

13 Q. And at any point in time did you indicate that you
14 were gonna arrest his wife if he didn't claim ownership?

15 A. No, sir.

16 Q. And the only thing he says about driving down the
17 road, he says, all of that is for personal use and he did not
18 designate whether that is methamphetamine or cocaine, did
19 he?

20 A. What do you mean?

21 Q. You had said earlier that he had said that he had
22 used methamphetamine, but in your narrative in your report you
23 say Maxie attempted to backtrack about selling drugs and said
24 all of that is for personal use. There's no distinction
25 there for methamphetamine, cocaine, or whatever else, right?

1 A. No. There's not.

2 MR. WILLIAMS: That's all the questions I have, Your
3 Honor.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. PINCELLI:

7 Q. You just talked about the ride to the jail, the
8 communications you had. Is it correct that statement was, all
9 of that is for personal use?

10 A. Give me one second. I'm gonna have to find the
11 exact quote. Yes. "All of that is for personal use",
12 quote.

13 Q. Okay. Did he say anything else while he was in the
14 vehicle?

15 A. Yes.

16 Q. What was that?

17 A. He mentioned that he was gonna wipe both phones when
18 I had talked about turning his phones in. I asked him how he
19 got money if he didn't have a job. He said he picks up little
20 jobs. Quote, "I pick up little jobs." I asked him where he
21 got the jobs from and he said quote "people."

22 Q. But he never indicated that he wished to stop
23 communicating with you; is that correct?

24 A. Oh, no. Not at any time.

25 MR. PINCELLI: No further questions. Thank you.

1 THE COURT: Any recross?

2 MR. WILLIAMS: None, Your Honor.

3 THE COURT: All right. The witness may step down.
4 Is that your only witness?

5 MR. PINCELLI: Yes, Your Honor.

6 THE COURT: All right. Any brief argument on
7 Jackson v. Denno?

8 MR. WILLIAMS: Not on our behalf I don't think.
9 Probably not on the Solicitor's behalf either.

10 MR. PINCELLI: No, Your Honor.

11 THE COURT: Okay. Is there anything else I need to
12 deal with other than the suppression?

13 MR. PINCELLI: Your Honor, given the opportunity to
14 conduct a little bit of research, I have a brief argument
15 to follow up on the suppression.

16 THE COURT: All right. Now would be the time
17 because I'm about to take a break and do my own.

18 MR. PINCELLI: Your Honor, I'm looking at State v.
19 Simmons, that's a South Carolina Supreme Court from 2020,
20 the cite is 430 S.C. 1. Your Honor, that deals with
21 staleness. If we are to assume that the standard is
22 probable cause and the State would still argue that a
23 criminal act could be a suspended plate, the reasonable
24 suspicion is good enough to stop a vehicle, if we were to
25 go to probable cause and if the issue on probable cause

1 is staleness, State v. Simmons gives examples of how long
2 things are before they get stale. They talk about
3 computer searches.

4 I'm sorry, Your Honor. They give examples. You
5 know, they say although this Court has not addressed
6 staleness in the context of a child pornography case,
7 which this one was, they find instructive, Federal
8 Appellate Courts, they talk about four month delay,
9 that's not stale, seven month delay, that's not stale.

10 Your Honor, I would argue the reason we're finding a
11 hard time getting a definition of staleness for something
12 like this is because it's not stale and because probable
13 cause and staleness, that's not an argument that's
14 appropriate for a traffic stop. That's the State's
15 argument, Your Honor. I mean, if we are going to
16 approach it as staleness is the important issue here,
17 then I would still assert that if we're talking months in
18 other types of cases, that a week and a half or so is not
19 stale in our case here.

20 THE COURT: Okay. Ms. Williams.

21 MS. WILLIAMS: Briefly. If I understood Solicitor's
22 case correctly, I want to make sure, is was a csc case;
23 is that correct?

24 MR. PINCELLI: That's correct.

25 THE COURT: Child - I think it was child pornography

1 which obviously is not analogous to this type of case,
2 but I think he only meant for the purpose of just
3 approaching the staleness general issue.

4 MS. WILLIAMS: Right. And so I would argue that
5 probable cause changes based on the nature of the thing
6 that has taken place. Probable cause for criminal sexual
7 conduct is certainly going to be -- I would argue that it
8 has a longer time period based on the nature of the crime
9 versus a traffic violation. And as to the Solicitor's
10 point that staleness and probable cause are not the
11 correct standards because there is no, and I might be
12 misrepresenting his point, that there was something about
13 the reason there is such a hard time finding a case that
14 applies is because it's not the proper standard, I
15 believe.

16 THE COURT: He said the reason it's tough to find a
17 case that addresses staleness is because it's not
18 staleness. That was his argument.

19 MS. WILLIAMS: That was his argument. I would, I
20 would counter --

21 THE COURT: You would respectfully disagree.

22 MS. WILLIAMS: I would respectfully disagree that
23 the reason you can't find a case that points to this is
24 because it is so gosh darn easy to avoid this question
25 altogether. You can run the tag then and there. It is

1 not because it is not stale. It's been 12 days. It's
2 never made it this far because it simply doesn't happen
3 because usually the investigator will run the CAD report
4 there or run it on his phone. It's not usually a
5 question. In this case it is.

6 THE COURT: Wasn't the testimony that they called it
7 in at the scene?

8 MS. WILLIAMS: They called it in at the scene 10
9 minutes after they had initiated the traffic stop, Your
10 Honor.

11 THE COURT: And the response they received was what?

12 MR. WILLIAMS: Was that it was suspended, but at
13 that point it doesn't matter. The stop has already
14 occurred, the illegal seizure has happened.

15 MR. PINCELLI: And if you will entertain just a very
16 brief response. The State's argument would be the
17 traffic stop is reasonable suspicion. They gather more
18 probable cause for an extended stop based on confirming
19 that based on the odor of marijuana and everything else.

20 THE COURT: Okay. Let me take a break, folks. It's
21 3:20. Anything before I --

22 MS. WILLIAMS: No, Your Honor.

23 THE COURT: Thank you. Okay. I'll try to be back
24 in here in about 15 minutes, okay?

25 (Short break.)

1 THE COURT: Thank you. All right. Interesting
2 arguments really. So the main thing we got to get
3 through here is this motion to suppress, essentially
4 everything that occurred in the search itself which
5 occurred right after the defendant's vehicle was pulled
6 over by Investigator Gietz; is that correct? Okay.
7 Gietz?

8 INVESTIGATOR GIETZ: Yes, sir.

9 THE COURT: Okay. A lot of the argument focused on
10 this information about the suspended tag, whether it was
11 stale or when does it become stale for that matter. I do
12 think to Ms. Williams' point, I think there are certainly
13 a variety of different context. I can see how ultimately
14 it can become stale and the question is, is it stale in
15 the current case. Looks like from our arguments that the
16 information here came from, and that Mr. Gietz relied on,
17 came from a fellow law enforcement officer who also
18 testified that he had run the report 12 days prior to the
19 arrest of the defendant, or approximately 12 days prior
20 and then after the initial search - excuse me, after the
21 initial traffic stop occurred, we've got this overlap
22 where there is the odor of marijuana and there's the
23 sight of the car, of the defendant's vehicle where he can
24 see, he testifies he can see drug paraphernalia.

25 One thing we did all agree on was it's not legal to

1 drive around with an expired tag. It's just a matter of
2 what was the status of the information on the date that
3 the traffic stop occurred. One of the questions I
4 brought up, maybe not articulately, but was that even if
5 the information had been erroneous, does the State get
6 some sort of, or at least law enforcement in making these
7 arrests under reasonable suspicion or probable cause,
8 some level of leeway.

9 One case most recently from 2018 citing a Supreme
10 Court case, State v. Sheridan, the rationale underpinning
11 this conclusion is that to be reasonable is not to be
12 perfect, and so the Fourth Amendment allows for some
13 mistakes on the part of government officials, giving them
14 fair leeway for enforcing the law in the community's
15 protection.

16 A lot of information out there ultimately did their
17 traffic stop, you know, cross the line from a Fourth
18 Amendment context or Fourth Amendment point of view and
19 it's my ruling that they did not. It was not an
20 unreasonable search and seizure under the Fourth
21 Amendment. I think once the stop occurred, probable
22 cause was certainly supported by the smell of marijuana,
23 the Baggies in plain view. Obviously we heard a litany
24 of events that occurred to include Miranda being read to
25 at least two of the people out there, Mr., we've used the

1 word Maxie the entire time. This is, out of all my
2 hearings I've never had first names used so much by both
3 sides, but Mr. - Ms. Maxie as y'all called her, the
4 defendant's wife, was Mirandized as well.

5 Ultimately I just don't think it runs afoul of the
6 Fourth Amendment. I certainly appreciate defendant's
7 arguments and moving to suppress contents that were
8 recovered from the search, but I think the search was
9 founded upon reasonable suspicion that the driver of that
10 vehicle was committing an infraction of, a crime.
11 Driving a car with a suspended tag. After the situation
12 changed at the scene where you've got the odor of drugs
13 and the sight of drugs, there was a call in to show, or
14 to confirm the status of the tag which resulted it being
15 removed and various other things.

16 So, that's a very long wordy response to say the
17 motion to suppress is denied. As far as Jackson v.
18 Denno, I didn't really hear any argument. It appeared to
19 me that he was properly given his Miranda Rights; that he
20 wasn't coerced in giving any statements to law
21 enforcement. At any time he did not invoke his right to
22 counsel or his right to remain silent, didn't give any
23 statements that would not be determined by me as non
24 voluntary. Of course, the jury could make the ultimate
25 decision on whether they think the statement was

1 voluntary, but from a pretrial standpoint I find based on
2 the totality of the circumstances that the statement was
3 voluntary. The jury can determine what weight they think
4 it deserves and the totality of the circumstances the
5 motion to suppress is denied. Anything else for today?

6 MS. WILLIAMS: Nothing from the defense, Your
7 Honor.

8 THE COURT: All right.

9 MR. PINCELLI: Your Honor, just briefly, we don't
10 have a formal filed motion based on the ruling on the
11 indictment for simple possession of marijuana not coming
12 in. I would like to get a ruling on, and we're prepared
13 to give you argument, on how far we can get into the
14 presence of marijuana and the odor of marijuana in the
15 vehicle.

16 THE COURT: If there's a chance that you and
17 Mr. Williams may be able to reach an agreement, my
18 inclination would be that you can talk about the smell of
19 marijuana, but we don't need to get into the amount
20 involved in the car. I don't want to create too much of
21 a distraction, just the fact that he smelled marijuana
22 which most people have smelled it at some point in their
23 life.

24 MR. WILLIAMS: The complicating factor behind that,
25 Your Honor, is obviously for it to be marijuana it must

1 be tested to be marijuana because nowadays there is
2 marijuana which is legal and believe it or not it smells
3 the same way so...

4 THE COURT: I learn something new everyday.

5 MR. PINCELLI: How do you know?

6 MR. WILLIAMS: Well, it's, Danny Ford will grow you
7 some marijuana I believe in terms of, I think that's what
8 he does up there. He's got a special charter that allows
9 him to grow cannabis. It may not have the same THC.

10 THE COURT: I'm glad Judge Manning is not here to
11 hear that. He wouldn't tolerate that.

12 MR. WILLIAMS: I don't know about that, but the
13 point of the whole argument here is that, Your Honor,
14 since the indictment has not been served on the defendant
15 and I took it to be that Your Honor was not allowing them
16 to go forward with trying the case of simple possession
17 of marijuana.

18 THE COURT: Well, what I tried to indicate to you
19 this morning was that there will not be a verdict form
20 for simple possession of marijuana. We're not here to
21 determine guilt or innocence of whether he possessed any
22 amount of marijuana other than the fact that the
23 arresting officer smelled the odor of marijuana. Now,
24 whether it was magic marijuana, but wasn't actually
25 marijuana by new growing standards, the smell of

1 marijuana in my opinion gives some reasonable suspicion
2 that something else is going on too. The crime --

3 MR. WILLIAMS: Your Honor, as far as Your Honor goes
4 with that statement, I'm not so sure that that is
5 totally, I mean, it's a fair ruling.

6 THE COURT: I may not be articulating it correctly,
7 but I'm just trying to say that I won't - I can't just
8 eliminate marijuana from -- In chambers, you know, Mr.
9 Pincelli used the word *res gestae*. I mean --

10 MR. WILLIAMS: Well, I guess what I'm, what I'm --

11 THE COURT: I would like to limit it ideally in a
12 way that y'all can agree upon.

13 MR. PINCELLI: My argument, Your Honor, I think, it
14 sounds like you've ruled on the odor of marijuana being
15 acceptable.

16 THE COURT: Yeah.

17 MR. PINCELLI: And I would argue it certainly would
18 be a *res gestae*. My only additional argument without
19 proving it's marijuana, without proving it's an illegal
20 substance, I would like for my officer to be able to
21 testify he did find a green leafy substance. It could
22 have been legal marijuana. Mr. Williams can make that
23 argument. It's a credibility issue if he smells
24 marijuana and we don't produce it.

25 MR. WILLIAMS: And then I guess in closing argument

1 I could just argue, well, he's not been charged with
2 marijuana and let the jury just, you know...

3 MR. PINCELLI: I think that would be patently false,
4 Your Honor. There is an indictment now for marijuana.

5 THE COURT: Well, that's just not a charge we're
6 handling here.

7 MR PINCELLI: Right.

8 THE COURT: I mean, you know, I was trying to be as
9 fair as I could to both sides but, I mean, I don't think
10 we can -- I don't think the investigating officer should
11 have to testify in a vacuum, you know, that, you know,
12 any time someone pulls up to a group of, whether it's
13 from law enforcement vehicle or you're going to
14 somebody's house, if you smell the odor of marijuana, it
15 gets your attention.

16 MR. WILLIAMS: Your Honor, the fair thing would have
17 been for law enforcement to charge my client when he was
18 arrested with the charge of marijuana versus wait until
19 the day of trial and then at that point in time indict
20 him for it.

21 THE COURT: Well --

22 MR. WILLIAMS: That would be the fair thing.

23 THE COURT: I'm trying to be as fair to both sides
24 as I could so I may have failed, but that's what I tried.
25 So again, y'all have not talked about it. See if you can

1 at least bridge some sort of agreement. I think it
2 should be limited. If y'all can't agree on how much,
3 then I'll have to make a decision, but we don't need a --
4 Marijuana has to at least be in some sort of testimony
5 just to give the lead up to what else was found in the
6 car I think.

7 MR. PINCELLI: Right, Judge, and I don't want to go
8 so far as to waste the Court's time and proffer
9 testimony. I'm looking to say that there's an odor of
10 marijuana, that's the reason for the search. I would
11 also like to elicit testimony that said --

12 THE COURT: He thought he saw marijuana in the car.

13 MR. PINCELLI: That's it. That's it. One sentence,
14 one answer. I don't want to go any further. I'm not
15 trying to say he's a marijuana dealer, I'm not trying to
16 say he's a marijuana addict, or that marijuana is the
17 Devil. Just that there was a green leafy substance found
18 consistent with the appearance marijuana. That is what I
19 smelled earlier.

20 MR. WILLIAMS: So there won't be any witnesses who
21 testify to the chain of custody as to the green leafy
22 material and where it went and whether or not it was
23 tested or not tested and no discussion by any of those
24 other witnesses as to whether or not marijuana was
25 involved in this case.

1 MR. PINCELLI: I'm trying to strike a happy medium.
2 We can certainly do that. The same witnesses who also
3 tested those substances can confirm it, but like you
4 said, there will be no verdict form. I feel no
5 obligation to prove that beyond a reasonable doubt so I
6 wouldn't call those witnesses to speak about that.

7 MR. WILLIAMS: Well, I'm not moving for a directed
8 verdict of not guilty on the charge of marijuana. I
9 might argue double jeopardy later on.

10 THE COURT: You've already won it because it's not
11 going forward. That part is not going forward. So I
12 know there's a reasonable resolution there which y'all
13 are 90 percent there so just close the gap. You don't
14 have to do it here in front of me either.

15 MR. WILLIAMS: I think we can do it. I think we can
16 do it. Your Honor, here's the deal, Your Honor. It's
17 not a deal, but I don't want to give a waiver in regards
18 to my objection. Your Honor is not charging him with
19 that. Your Honor is not charging him with marijuana.
20 You're not. So the only thing we would take a position
21 to say they should not be allowed to talk about
22 marijuana. Your Honor rules against me, they can talk
23 about the smell of marijuana and that's fine.

24 THE COURT: Okay. So basically you can't --

25 MR. WILLIAMS: Yes.

1 THE COURT: -- agree because you've got to look
2 after your case. I understand. All right. Sometimes
3 you have to remind me of that. You can't agree on
4 everything. All right.

5 MR. PINCELLI: I understand the Court. I believe
6 the Court's position and Mr. Williams's position. Just
7 lastly so I'm square, I don't want to say anything --

8 THE COURT: I'll help you. The State can talk about
9 the existence of the odor of marijuana. The State can
10 elicit testimony from the witness who saw what he
11 believed to be marijuana basically when y'all are
12 inspecting the car and it's stops there. And you're not
13 seeking a conviction for marijuana. You're not here to
14 ask the jury to worry about marijuana.

15 MR. WILLIAMS: What he does, I'm gonna stand up and
16 impose an objection and you'll say overruled.

17 THE COURT: Subject to previous ruling, overruled.

18 MR. PINCELLI: Can I ask the Court to estop Mr.
19 Williams from making the argument in closing that his
20 client was never charged with marijuana found in the
21 vehicle.

22 THE COURT: Well, that wouldn't be right because he
23 is charged, it's just not being heard today or this
24 week.

25 MR. PINCELLI: Thank you, Judge. I think we're

1 square on that one. I think that's all from the State.

2 We will be ready Wednesday, Your Honor.

3 THE COURT: You know, for a trial, a 403 credit you
4 picked a good one. All right. We told the jury to be
5 back at 9:00 so hopefully we can start at 9:15 and charge
6 the jury. Best guess, it's Monday, do you anticipate
7 being finished in a day or a day and a half or what?

8 MR. PINCELLI: The State will probably rest at the
9 end of Wednesday.

10 THE COURT: Okay.

11 MR. WILLIAMS: Sometime Thursday we will be through,
12 Your Honor.

13 THE COURT: Okay. I'm not asking for y'all. I'm
14 asking me because --

15 MR. WILLIAMS: Would you like it to be longer, Your
16 Honor?

17 THE COURT: I'm not saying that. It takes a while
18 for you, Mr. Williams. That's not what I'm saying. I
19 don't know how I feel about starting a jury trial
20 Thursday afternoon, but we'll talk with the other
21 lawyers. We'll cross that bridge when we get there.

22 MR. PINCELLI: It's possible that the State's
23 presentation might go quicker than anticipated.

24 THE COURT: The bottom line is for tonight we don't
25 need to let the jury know for jury number two may need to

1 be here Thursday, all right?

2 THE CLERK: I'll tell them to call back after 6:30
3 Wednesday evening.

4 THE COURT: Okay. All right.

5 MR. WILLIAMS: Your Honor, I will say this for the
6 benefit of the Solicitor as well as the Court, I guess.
7 I know the jury has not been sworn, but out of an
8 abundance of caution we did receive permission from the
9 bonding company, even though obviously the jury has not
10 been sworn, that they will stay on his bond.

11 THE COURT: You did receive that?

12 MR. WILLIAMS: We did.

13 MR. PINCELLI: Do you have a copy of that?

14 MR. WILLIAMS: But he said he wasn't gonna object to
15 it anyway.

16 MR. PINCELLI: I'm not objecting. I did receive an
17 email for your edification. He's also on bond --

18 MR. WILLIAMS: I try to anticipate stuff.

19 MR. PINCELLI: He's also on bond for --

20 MR. WILLIAMS: For other charges.

21 MR. PINCELLI: -- several offenses as well.

22 MR. WILLIAMS: So he's got several bonding companies
23 that would be after him if he didn't show up.

24 THE COURT: All right. So we'll leave him where he
25 is.

1 MR. WILLIAMS: Thank you, Your Honor.

2 THE COURT: Anything else for today?

3 MR. PINCELLI: Been a pleasure. Thank you, Judge.

4 THE COURT: Always a pleasure. See you on Wednesday
5 morning.

6 (Whereupon, court was adjourned at 5:00 p.m. until
7 May 11, 2022.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 May 11, 2022

2 (Whereupon, State's Exhibits #4 through #15 marked
3 for identification.)

4 BAILIFF: All rise. Court is now in session.

5 THE COURT: All right. So the jury is all here.
6 They were here on time. Looks like we can start at 9:15.
7 I spoke with the lawyers briefly off the record this
8 morning, so we will proceed forward with the trial.
9 We'll bring in the jury and swear them, give them opening
10 charge, and then turn it over to the lawyers. I do have
11 several pleas I'm supposed to hear today and tomorrow. I
12 can't tell you the time. I know they're in the
13 afternoon. I'll try to get updated information on that
14 so ideally you can sort of plan around it, but we'll see.

15 I believe you have already started pre-marking some
16 exhibits. Anything else I'm leaving out?

17 MR. WILLIAMS: Your Honor, perhaps a rehash.
18 Sequestration granted. I don't think there was anything
19 else that I'm not sure what is on the record or not.

20 THE COURT: Well, the box of evidence can sit there,
21 if y'all are fine with that.

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: Isn't that what y'all talked about?

24 MR. PINCELLI: No. That was our next --

25 THE COURT: We don't have to have a custodian

1 sitting in here next to the box.

2 MR. WILLIAMS: Oh, yes, sir. That's correct.

3 THE COURT: Okay. Let's bring them. Our foreperson
4 was 157, Mr. Petree. So 157 is our foreman. All right.
5 Thank you.

6 (Whereupon, the jury entered the courtroom at 9:12
7 a.m.)

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen, welcome back. Hope you had a nice extended
10 break. It's now Wednesday morning. We're about to begin
11 the trial of this case. First of all, juror number 157,
12 thank you for agreeing to serve as foreman. Before we
13 begin the trial of the case, I'll have some opening
14 remarks to give you, but before I even do that, I'll ask
15 the Clerk of Court to now swear you in.

16 (Whereupon, the jury was duly sworn by the Clerk of
17 Court at 9:13 a.m.)

18 THE COURT: Okay. Before we begin the actual trial
19 of the case, I thought it might be helpful if I explain
20 to you basically how a trial proceeds. First the State
21 will make an opening statement. An opening statement is
22 not evidence. It is simply an outline to help you
23 understand what that party expects the evidence will
24 show. The defendant may, if he wishes, present an
25 opening statement, but does not have to for reasons I

1 will explain.

2 Following the opening statements you will hear
3 testimony and evidence in this case. This will consist
4 of testimony from State's witnesses as well as any
5 physical exhibits which will be introduced into evidence.
6 Following the completion of the testimony, the attorneys
7 will again have an opportunity to make what is called a
8 closing statement or summation to you. This is an
9 opportunity for the attorneys to summarize the case from
10 their respective points of view. Again, these arguments
11 are not evidence.

12 Following the closing arguments by the attorneys, I
13 will instruct you on the law of South Carolina as it
14 pertains to the issues that have arisen in this case.
15 When I have completed my instructions to you, you will
16 then be permitted to begin your deliberations in order to
17 reach a verdict.

18 Now, ladies and gentlemen, you are the jury in this
19 case. I want to take a moment to tell you about your
20 duty as jurors. At the end of the trial I'll give you
21 more detailed instructions and those instructions will
22 control your deliberations. It will be your duty to
23 decide from the evidence what the facts are. You and you
24 alone are the judges of the facts. You will hear the
25 evidence, decide what the facts are, and then apply those

1 facts to the law that I will give to you. That is how
2 you will reach a verdict. In doing so you must follow
3 that law whether you agree with it or not.

4 The evidence will consist of the testimony of
5 witnesses, documents, and other things received into
6 evidence as exhibits and any facts on which the lawyers
7 agree or which I may instruct you to accept. You should
8 not take anything I may say or do during the trial as
9 indicating what I think of the evidence or what your
10 verdict should be.

11 Now, this is a criminal case brought by the State of
12 South Carolina. The State charges the defendant with
13 trafficking cocaine and possession with intent to
14 distribute methamphetamine. The charges against the
15 defendant are contained in the indictments. The
16 indictments are not evidence of anything. It's simply
17 the description of the charges made by the State against
18 the defendant.

19 The defendant has pled not guilty to the charges and
20 is presumed innocent unless and until proven guilty
21 beyond a reasonable doubt. Proof beyond a reasonable
22 doubt is proof that leaves you firmly convinced of the
23 defendant's guilt. The defendant has the right not to
24 testify and never has to prove innocence or present any
25 evidence. The burden of proof is always upon the State

1 of South Carolina.

2 Now, the following things are not evidence and you
3 must not consider them as evidence in deciding the facts
4 of the case. One; statements and arguments of the
5 attorneys. Two; questions and objections of the
6 attorneys. And three; any testimony I may instruct you
7 to disregard.

8 Evidence may be direct or circumstantial. Direct
9 evidence is testimony by a witness about what that
10 witness personally saw, heard or did. Circumstantial
11 evidence is indirect evidence; that is it is proof of one
12 or more facts from which one can find another fact. You
13 are to consider both direct and circumstantial evidence.
14 The law permits you to give equal weight to both. It is
15 up to you to decide how much weight to give any evidence.

16 There are rules of evidence which control what can
17 be received into evidence. When a lawyer asks a question
18 or offers an exhibit into evidence, a lawyer on the other
19 side, if the lawyer on the other side thinks that it is
20 not permitted by the rules of evidence, that lawyer may
21 object. If I overrule the objection, the question may be
22 answered or the exhibit may be received. If I sustain
23 the objection, the question cannot be answered or the
24 exhibit cannot be received. Whenever I sustain an
25 objection to a question or deny a motion to admit an

1 exhibit into evidence, you must ignore the question or
2 the existence of the exhibit and you must not guess what
3 the answer would have been or what the exhibit would have
4 shown.

5 Sometimes it may be necessary for me to request that
6 you leave the courtroom while I discuss the attorneys'
7 legal questions that come up during the trial. If this
8 occurs, you should not speculate about our discussions or
9 the reason that you were asked to leave the room. This
10 is simply a procedure that the law requires when certain
11 legal issues arise. There also may be occasions where I
12 ask the attorneys to approach the bench so that I can
13 discuss a legal issue with them in private. I will do
14 this as often as possible so that you will not be
15 required to leave the courtroom more than is absolutely
16 necessary.

17 Again, if I ask the attorneys to step up to the
18 bench or if I ask you to leave the courtroom, please
19 don't think that anybody is trying to hide anything from
20 you or keep evidence from you. This is simply a
21 procedure used by all the lawyers and by all courts to
22 determine and decide legal issues.

23 In deciding the facts in this case you have to
24 decide which witnesses to believe and which witnesses not
25 to believe. You may believe everything a witness says or

1 only a part or none of it. In deciding what to believe
2 you may consider a number of factors including the
3 following; the witness' ability to see, hear or know the
4 things testified to; the quality of the witness' memory;
5 the witness' manner while testifying; whether the witness
6 has an interest in the outcome of the case or any motive,
7 bias, or prejudice; whether the witness was contradicted
8 by anything the witness said or wrote before the trial or
9 by other evidence; or how reasonable the witness'
10 testimony was when considered in light of the other
11 evidence which you believe.

12 Now, until I advise you to begin your deliberations,
13 you must have not discuss this case with anyone including
14 your fellow jurors, friends, family members, or anyone
15 involved in the case. This includes face-to-face
16 discussions, telephones, emails, text messages, social
17 media, anything of that nature. Also, it's important
18 that you don't do any independent research of the parties
19 or anyone involved in this case at all. As I told you on
20 Monday, all of the evidence you're gonna hear in this
21 case is gonna come from that witness stand. There's no
22 need for you to look into anything outside of this
23 courtroom.

24 I don't see anybody having a note pad, but I don't
25 want you to take any notes. I want you to focus all your

1 attention on the witness stand so you can hear and see
2 the evidence as it's being presented. You will have
3 plenty of time to discuss the evidence at a later time.

4 It's important that you keep an open mind and not
5 decide any issue or fact in the case until all of the
6 evidence has been presented, the parties have made their
7 closing arguments, and I have instructed you on the law
8 in this case.

9 It is your solemn responsibility to determine the
10 guilt or innocence of the defendant and your verdict must
11 be based solely on the evidence as it's presented to you
12 during in this trial and the law as I instruct you during
13 and at the close of this case.

14 As I told you on Monday, we'll shoot to take a mid
15 morning break, obviously a lunch break, a mid afternoon
16 break. Ordinarily I shoot for 90 minutes. Oftentimes
17 it's less, sometimes it's a little more depending on
18 where we are with the witness testimony, but we're
19 starting early. I appreciate everyone being on time. If
20 something comes up, someone absolutely needs to take a
21 break, just wave your hand at me or the bailiff and we
22 can do that, okay? Otherwise, at this point please give
23 your complete and undivided attention to the attorneys as
24 they make opening statements. Yes, sir.

25 MR. COX: Thank you, Your Honor. May it please the

1 Court.

2 THE COURT: Yes, sir.

3 MR. COX: Members of the jury, good morning. As you
4 heard from the Judge, you are here in a drug case. Now,
5 this is a serious case, but I believe as you will see
6 from the evidence in this case that it's a fairly
7 straight forward case so I'm gonna get right to the
8 point. You will learn that on February 10th of 2020
9 Investigator Gietz of the Lexington County Sheriff's
10 Department conducted a traffic stop on a vehicle here in
11 Lexington County. After he walked up and began speaking
12 to the driver, he made some observations that through his
13 training in law enforcement made him realize that he
14 needed to investigate this stop a little bit further.

15 You're gonna learn that there was a search of this
16 vehicle, that items were found in this vehicle and,
17 members of the jury, you're gonna learn that those items
18 were drugs. The defendant was the driver of that vehicle
19 Maxie Wagner. He is sitting here charged before you with
20 trafficking in cocaine and possession with intent to
21 distribute methamphetamine.

22 Now, each of those charges individually, we, the
23 State, have to prove elements beyond a reasonable doubt
24 in order for you to be able to find him guilty. Now in
25 trafficking cocaine we have to prove essentially three

1 things. The Judge is gonna tell you at the end of this
2 case exactly what those three things are and what the law
3 in South Carolina on these charges are, the three things
4 that we're gonna prove to you that Maxie Wagner possessed
5 an amount of cocaine 28 grams to 100 grams, okay? That's
6 the first charge.

7 The second charge, possession with intent to
8 distribute methamphetamine, we're gonna prove to you that
9 Maxie Wagner again possessed methamphetamine with an
10 intent to distribute. So we're gonna prove each of those
11 elements with both of those charges to you through a few
12 different ways. We're gonna first, in just a moment
13 you're gonna hear from Agent Gietz. He's gonna be one of
14 the witnesses that's gonna take that stand. Each witness
15 that comes before you is gonna give their recollection
16 about what happened that day, about what was seized, what
17 they observed, what their role in this case was. You're
18 gonna hear from witnesses who took possession of what
19 they believe would be drugs, what kind of testing was
20 done to confirm that, and what other testing they did in
21 order to determine the weight of those drugs.

22 Members of the jury, that's what you're gonna hear.
23 You're gonna hear from Agent Gietz statements that were
24 given to him on the scene. You're gonna hear from Agent
25 Gietz about items that he seized other than the drugs

1 that helped him make these charges.

2 Members of the jury, once you hear all those
3 witnesses speak and once you see all of the evidence that
4 we put before you, you're gonna have the opportunity to
5 determine if we have proved our case beyond a reasonable
6 doubt. The Judge is gonna tell you exactly what that
7 means again in this trial, but beyond a reasonable doubt
8 does not mean beyond all doubt, it does not mean beyond a
9 shadow of a doubt or beyond any possible doubt. No. Any
10 doubt you have on this case must be based on reason. To
11 find someone beyond a reasonable doubt you must be firmly
12 convinced of their guilt.

13 Members of the jury, we believe at the end of this
14 case once you've heard all the testimony, deliberate, and
15 reviewed the evidence, you will be able to find Maxie
16 Wagner is guilty of trafficking cocaine and possession
17 with intent to distribute methamphetamine. Thank you.

18 MS. WILLIAMS: May it please the Court.

19 THE COURT: Yes, ma'am.

20 MS. WILLIAMS: Good morning. I'm a little more
21 wordy than the Solicitor, so you will have to forgive me.

22 Ladies and gentlemen, that's Maxie (indicating.)
23 Now, in the story that the Solicitor just told, he told
24 you that it would be very straightforward and before I
25 get any further I apologize. I refer to him as Maxie not

1 out of any disrespect for him. I've just come to know
2 him over the course of this case and so it is more
3 natural for me to say Maxie. Saying Mr. Wagner it would
4 sound strange so I apologize.

5 Getting back to the straightforward story of the
6 Solicitor, what he said is just that. It's a story. As
7 the Judge told you earlier, it's not evidence and it
8 can't be considered in the jury room. What is
9 straightforward in the law are the rules that we all have
10 to go by so this whole set up, all of this here is set by
11 a number of rules and how the trial works. Right now
12 clearly I am talking and the Solicitor has just spoken.
13 Rule number 1, we've already talked about, nothing I say
14 is evidence. Nothing the Solicitor says is evidence,
15 period.

16 The evidence part is next which brings me to rule
17 number 2. We don't have to prove anything. Maxie
18 doesn't have to prove anything. The State, on the other
19 hand, as he told you, has to present evidence of every
20 element of the crime, every element of the crime, and
21 they have to present evidence of each of those elements
22 in such a way that it confirms to you beyond a reasonable
23 doubt, that's rule number 3, beyond a reasonable doubt of
24 our client's guilt. I suspect that they will not be able
25 to do that.

1 Now, what is reasonable doubt? Reasonable doubt is
2 the kind of doubt that causes a reasonable person to
3 hesitate to act, to hesitate between choosing possibility
4 A and possibility B, or even possibility C through F. If
5 it leaves you firmly convinced with A and all those
6 others not firmly convinced. And the Judge is going to
7 charge you, again, as everyone said, the Judge is going
8 to charge you on all of this and what he says is rule
9 number 4, literally the law, so if I say something
10 different, disregard what I said and then to you guys and
11 your rules and what your role is.

12 As the Judge told you, you are the finders of the
13 facts and you ultimately get to determine what is true
14 and what is not true and one of the things you get to do
15 to be able to do that is to look at the credibility of
16 the witnesses. The Judge told you that some of the
17 things that you can consider when you're considering
18 credibility means whether or not they're telling the
19 truth or maybe they're bending something a little bit.
20 One of the things you get to consider is do they have an
21 interest in the outcome of the case. Do they have an
22 interest in the outcome of the case.

23 Ladies and gentlemen, I'm going to ask you to focus
24 on that particular point. I'm going to ask that you
25 please keep the word credibility in the back of your mind

JOHN GIETZ - DIRECT BY MR. PINCELLI

151

1 as you look at the evidence in this case. I'm going to
2 ask that you please keep the State's burden, reasonable
3 doubt, in the back of your mind as you listen to the
4 evidence of this case, and in the end I'm going to ask
5 you to please find Maxie not guilty on both counts.
6 Thank you.

7 THE COURT: The State ready to call their first
8 witness?

9 MR. PINCELLI: Yes, Your Honor. The State calls
10 Investigator John Gietz to the stand.
11 Thereupon,

12 JOHN GIETZ
13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. Once you're seated,
15 state your full name spelling your last please.

16 THE WITNESS: John Gietz, G-i-e-t-z.

17 DIRECT EXAMINATION

18 BY MR. PINCELLI:

19 Q. Good morning, Investigator Gietz. Investigator,
20 where are you employed?

21 A. Lexington County Sheriff's Department.

22 Q. And how long have you been with law enforcement?

23 A. I was hired by the Lexington County Sheriff's
24 Department in 2013. I started in corrections for about a year
25 and a half and then I went to the road in 2017. I was

1 assigned to the narcotics enforcement team specifically
2 focused on gangs and then put on the gang unit, and now I'm
3 a part time special agent with the FBI as well as the
4 Lexington County Sheriff's Department.

5 Q. So in February 2020 would you have been a narcotics
6 agent?

7 A. Yes.

8 Q. And in February, on February 10th, 2020, did you
9 make a traffic stop on a Maxie Wagner?

10 A. I did.

11 Q. Do you see Maxie Wagner in this courtroom today?

12 A. I do. He's over there.

13 Q. Can you describe what he's wearing for us?

14 A. A purple shirt.

15 Q. Thank you. Investigator, let's go to that day
16 February 10th, 2020. Can you explain where that traffic stop
17 took place?

18 A. At the 4200 block of Platt Springs Road in Lexington
19 County. The stop concluded at a gas station right in Three
20 Fountains.

21 Q. And what was the purpose of that stop?

22 A. The tag on the vehicle was suspended. It was on a
23 Volkswagen Passat bearing [REDACTED].

24 Q. During the course of this stop, did you or anybody
25 else have an opportunity to take photographs?

1 A. Yes. During the stop photographs were taken.

2 Q. I'm gonna approach you with a group of photographs
3 that are marked State's 4 through 15. Without describing the
4 content of these photographs, can you tell me if these
5 accurately portray what you saw on scene that day
6 (proffering)?

7 A. They do.

8 MR. PINCELLI: Your Honor, at this time the State
9 would move State's 4 through 15 photographs from the
10 traffic stop into evidence.

11 MR. WILLIAMS: Your Honor, we would object and have
12 a matter to take up with the Court outside the presence
13 of the jury. Or I can just argue it right here, if you
14 want me to.

15 THE COURT: Speak with me real quick.

16 (Side bar off the record.)

17 BY MR. PINCELLI:

18 Q. And Investigator Gietz, thank you for your patience.
19 We started out speaking about a traffic stop that you made on
20 Maxie Wagner on February 10th, 2020. You testified that stop
21 occurred at the 4200 block of Platt Springs Road in Lexington
22 County. I believe you also testified that that was for a
23 suspended plate. Can you tell me more about that stop as it
24 occurred?

25 A. So, I approached the vehicle from the passenger

1 side. I made contact with the driver advising the driver who
2 I was and why I had stopped him. Mr. Wagner was the driver of
3 the vehicle. While speaking to Mr. Wagner and requesting the
4 required documentation in order to drive in South Carolina, I
5 could smell the strong odor of marijuana coming from inside
6 the vehicle. As I continued to speak with him, I could see
7 red flex tubing that I know through my training and experience
8 to be used for intravenous injection of narcotics.

9 Q. And where was that red flex tubing that you saw?

10 A. Between the driver's seat and the driver's door.

11 Q. Okay. What else did you notice while you were
12 speaking with Mr. Wagner?

13 A. Mr. Wagner began reaching for some razor blades in
14 the center console. It was a, I say center console, it was
15 more of a cut out of the center console that was exposed so I
16 had Mr. Wagner exit the vehicle and the passenger Ms. Wagner
17 exit the vehicle.

18 Q. All right. Let me stop you right there. You said
19 razor blades. Can you expand on that? What are you speaking
20 about razor blades?

21 A. They were long razor blades approximately five
22 inches.

23 Q. Investigator, I'm gonna approach you with several
24 photographs. Now, you have already explained that these were
25 accurate depictions of what you saw on scene. State's 13, can

1 you describe what is in that photograph?

2 A. That is the red flex tubing that I know through my
3 training and experience to be used for intravenous narcotics
4 use.

5 Q. Again, where did you find that in the car? Where
6 did you observe that?

7 A. In between the driver seat and the driver's door.

8 Q. Okay.

9 A. It was sticking out where it could be seen.

10 Q. State's 12, what is in that photograph?

11 A. It looks like the razor blades and the cut out as
12 well as looks like trace amounts of methamphetamine scattered
13 around the shifter.

14 MR. WILLIAMS: Objection to that, Your Honor,
15 in regards to what it looks like in regards to
16 methamphetamine or no methamphetamine.

17 THE COURT: Okay. Overruled. Let's keep our
18 questions - our answers specifically to the question as
19 possible.

20 THE WITNESS: Yes, sir.

21 BY MR. PINCELLI:

22 Q. In regards to the razor blades noted in State's 12,
23 is this the condition that you witnessed them in --

24 A. Yes, sir.

25 Q. -- during your conversation with Mr. Wagner?

1 A. Yes, sir.

2 Q. All right. State's 11, what is that a picture of?

3 A. Those are the razor blades that I took photos of
4 showing them at a more accurate depiction of their size and
5 length.

6 MR. PINCELLI: Okay. Your Honor, at this time the
7 State would move 11, 12 and 13 into evidence.

8 MR. WILLIAMS: Your Honor, in regards to State's
9 Exhibit number 13, the objection on this particular
10 photograph it appears to be some sort of red item on top
11 of a hood.

12 THE COURT: I haven't seen it.

13 MR. WILLIAMS: (Proffering.) The objection goes to
14 the description that he says it was between a driver's
15 door and a, the seat, the driver's seat. It wasn't
16 positioned that way so it's not an accurate reflection in
17 regards to what he observed when he stopped him.

18 THE COURT: Looks like it's on the hood.

19 MR. WILLIAMS: It does, unless he's driving sitting
20 outside the car.

21 MR. PINCELLI: Your Honor, Investigator Gietz has
22 testified to what he saw and where he saw it and this is
23 an accurate depiction of what he saw.

24 MR. WILLIAMS: The implication of the photograph
25 indicates that it's longer in size, that it's more

JOHN GIETZ - DIRECT BY MR. PINCELLI

157

1 observational, if you will, Your Honor. It's not a
2 reflection of what he's testified to in regards to what
3 he actually saw when he stopped the vehicle.

4 THE COURT: Okay.

5 (Side bar off the record.)

6 THE COURT: All right. So State's Exhibit 12 is
7 admitted without objection. State's Exhibit 13 and 11
8 are admitted subject to objection.

9 BY MR. PINCELLI:

10 Q. All right. Investigator Gietz, we just talked about
11 some razor blades and flex tubing. Can you again describe, a
12 red piece of flex tubing, why was that of concern for you
13 during a traffic stop?

14 A. It shows the presence of possible narcotics in the
15 vehicle.

16 Q. And again, for my education and the jury, how could
17 a piece of red flex tubing be used for narcotics?

18 A. It's used to tie off the arm to create a bigger vein
19 to inject narcotics into the vein.

20 Q. For intravenous drug use?

21 A. Correct.

22 Q. And you noticed this where when you encountered it
23 initially?

24 A. It was sticking out between the driver's seat of him
25 and the driver's door so I could see it sticking out. I knew

1 what it was as soon as I saw it.

2 Q. At a point later during the stop did you move that
3 to take a better photograph of it?

4 A. I did. Where it was positioned there was no way to
5 take a picture of it without it falling out of the car.

6 Q. So I'm showing you State's 13. Where is that
7 taken?

8 A. On the hood of the Volkswagen Passat he was stopped
9 in.

10 Q. And this is the piece of flex tubing?

11 A. Or should I say the roof?

12 Q. And I'm sorry. This is what you observed in the
13 door?

14 A. That is.

15 Q. Okay. I'm now showing you State's 12. We spoke
16 about this. What are we looking at in State's 12 here?

17 A. Those are the razor blades in the cut out of the
18 center console.

19 Q. Am I pointing to it right here?

20 A. You are.

21 Q. All right. I'm gonna show you, again, did you move
22 those objects to get a better photo of them as well?

23 A. I did not. After.

24 Q. For this photograph?

25 A. For this photo I did not move them, however, I moved

1 them to the roof of the vehicle to take a better photograph so
2 you can get an accurate depiction of their size.

3 Q. Okay. Then State's 11, what are we looking at?

4 A. Those are the razor blades taken from the center
5 console.

6 Q. And along with the flex tubing, why were razor
7 blades of note to you during a traffic stop?

8 A. It's a safety issue. You ask for somebody driver's
9 license, registration, proof of insurance and they start
10 grabbing for razor blades in the center console, it can give
11 you an uneasy feeling so I had, in addition to the odor of
12 marijuana, I had Mr. Wagner step out of the vehicle.

13 Q. After you had Mr. Wagner step out of the vehicle,
14 did you observe anything else inside the vehicle?

15 A. I did. A green plastic Baggie that I know through
16 my training and experience is used to divide narcotics into
17 easier distribution.

18 Q. And that green plastic Baggie, where did you
19 initially see that Baggie?

20 A. On the floorboard of the driver's seat or the
21 driver's side of the vehicle, the driver's seat floorboard.

22 Q. Was it photographed in that location?

23 A. It was.

24 Q. Much like the razor blades, was it also moved and
25 taken a photograph again?

1 A. It was.

2 Q. All right. I'm approaching you with two
3 photographs, State's 15 and 14. Let's start with State's 15.
4 What are you looking at here?

5 A. That is the plastic, green plastic bag taken, the
6 photo of the green plastic bag taken on the floorboard of the
7 driver's side of the vehicle.

8 Q. All right. And again, what's the significance of
9 that green plastic bag?

10 A. Based on my training and experience it's used to
11 divide narcotics into smaller portions for easier
12 distribution.

13 Q. State's 14 that we're looking at, what is this?

14 A. That is the same plastic bag this time taken a
15 picture of it on the roof of the vehicle.

16 Q. And again, what would be the purpose of moving that
17 and taking another picture?

18 A. To get a more accurate description of what the bag
19 looked like.

20 Q. Is it fair to say you just needed a better
21 photograph of it?

22 A. Correct.

23 Q. Of what you just described as being on top of the
24 car --

25 A. Mm-hmm.

JOHN GIETZ - DIRECT BY MR. PINCELLI

161

1 Q. -- I think I inaccurately said that was State's 14.
2 That's State's 4. State's 15, again, this was the plastic bag
3 on the floorboard; is that correct?

4 A. Yes, sir.

5 MR. PINCELLI: Your Honor, at this time the State
6 moves 15 and number 4 into evidence.

7 MR. WILLIAMS: Your Honor, in regards to 15 which is
8 a picture of what appears to be a plastic bag on some
9 sort of floorboard, obviously if he's the one that took
10 it and all that, we don't have an objection to that, Your
11 Honor. Again, on number 4, this is just a picture of a
12 plastic bag that I think he said that it has been moved
13 to a location where it could be taken, a better picture
14 could be taken so that would be the objection on this
15 particular item.

16 THE COURT: All right. So I understand. State's
17 Exhibit 15 is admitted without objection. State's
18 Exhibit 4 is admitted subject to objection.

19 MR. PINCELLI: Thank you, Your Honor.

20 BY MR. PINCELLI:

21 Q. Investigator Gietz, we talked about, let's see,
22 State's Exhibit 15. Is this the floorboard of the vehicle
23 Maxie Wagner was driving?

24 A. It is.

25 Q. Is this that I'm pointing to on State's 15, is that

1 the plastic Baggie in question?

2 A. It is.

3 Q. Moving on to State's number 4, is that again that
4 same plastic Baggie you referenced?

5 A. It is.

6 Q. And in the top corner what are we looking at
7 there?

8 A. The razor blades.

9 Q. Are those the same razor blades that we saw a
10 picture of earlier?

11 A. Yes, sir.

12 Q. So you just keep putting things on top of the car to
13 get a better photo; is that fair to say?

14 A. That is fair to say.

15 Q. So at this time, Investigator Gietz, we started with
16 a suspended plate traffic stop, then you said you observed a
17 small Baggie, razor blades, and flex tubing. How did this
18 stop progress from there?

19 A. Uhm --

20 Q. Did you ask Mr. Wagner to exit the vehicle?

21 A. Yes. I asked Mr. Wagner and Ms. Wagner to exit the
22 vehicle, both were separated. By then additional units had
23 arrived on the stop. I made contact. I conducted a Terry
24 frisk of Maxie just based off of the razors that he had and
25 making sure that he didn't have any additional weapons. Then

JOHN GIETZ - DIRECT BY MR. PINCELLI

163

1 I spoke to Ms. Wagner reading her her Miranda Advisement from
2 a card provided to me by the Lexington County Sheriff's
3 Department. While speaking to her, she said that she didn't
4 know if there was narcotics in the vehicle, and then I asked
5 her --

6 MR. WILLIAMS: Your Honor, I'm gonna object to that.
7 That's hearsay.

8 THE COURT: Sustained as to Ms. Wagner.

9 BY MR. PINCELLI:

10 Q. Okay. Investigator Gietz, did you have an
11 opportunity to speak to Mr. Wagner?

12 A. I did. I read him his Miranda Advisement from the
13 same card that was provided to me by the Lexington County
14 Sheriff's Department. While speaking to him initially he said
15 that there were no narcotics in the vehicle. I told him I was
16 going to do a search of the vehicle based off of the odor of
17 marijuana and then the drug paraphernalia that was observed in
18 plain view. After I stated that to him, Maxie told me that
19 there were drugs in the vehicle and that they belonged to him.
20 Maxie said that he started using methamphetamine and there
21 were loaded needles in the car.

22 Q. All right. You stated to Mr. Wagner you were going
23 to do a search. Did you conduct a search?

24 A. I did.

25 Q. All right.

1 A. So I conducted a probable cause search based on
2 Maxie's post Miranda statements, the drug paraphernalia
3 observed in plain view, and the odor of marijuana. While
4 conducting that search, I found additional drug paraphernalia,
5 the red tubing, of course, a loaded needle with a yellowish
6 clear liquid so naturally being concerned about what's in it,
7 I asked Maxie what was in the hypodermic needle. He told me
8 it was methamphetamine. Specifically he stated
9 methamphetamine. I continued to search the vehicle. I found
10 a black Molly backpack. In that backpack I found a black
11 digital scale, a bag of money, and then a plastic bag with a
12 green leafy substance that I knew through my training and
13 experience to be marijuana and then a large plastic bag with a
14 white powdery substance that I know through my training and
15 experience to be cocaine.

16 MR. WILLIAMS: Your Honor, I have a matter of law to
17 take up with the Court outside the presence of the jury.

18 THE COURT: Ladies and gentlemen of the jury, we'll
19 need to take a short break. We'll get you back out here
20 as soon as possible. Please don't discuss the case.
21 Thank you.

22 (Whereupon, the jury entered the jury room at 9:53
23 a.m.)

24 THE COURT: Okay.

25 MR. WILLIAMS: Your Honor, it's my understanding as

1 we dealt with the new indictment which was allegedly,
2 well, it wasn't allegedly, it was prepared on Monday of
3 this week which still has not been served on my client,
4 that the State, if it got into anything dealing with
5 marijuana because there was quite some discussion about
6 whether or not they were gonna introduce any drug
7 results, any charge showing the marijuana, anything to
8 indicate that there was a substance there that was
9 marijuana, that the only thing, the only thing the State
10 was going to elicit and could elicit would be the fact
11 that there was a smell that smelled like marijuana so --

12 MR. PINCELLI: Judge, that is --

13 MR. WILLIAMS: If I could, Your Honor, if I could
14 finish here.

15 MR. PINCELLI: I'm sorry. I apologize. I thought
16 you were done.

17 MR. WILLIAMS: So my objection, Your Honor, and is a
18 motion for a mistrial is that now my client is placed in
19 the effort of having to defend a charge which he's not
20 been served with which has been mentioned in this trial
21 and which is throughout the entire record that he has of
22 being chain of custody to include whatever, and it's not
23 proper to be here in this trial, there's no way he can
24 defend himself on this, so we would move that now by
25 discussing this material in here that he is entitled to a

1 mistrial on these particular charges. The State has had
2 these items since February of 2020. Today's date is May
3 the 11th of 2022, so we would move to dismiss the charges
4 -- I'm sorry -- for a mistrial based on the fact that
5 it's improper to have it used in this particular case.

6 THE COURT: Okay. My notes indicate that the State
7 can elicit testimony regarding marijuana smell and green
8 like substance in the car, so my intent would be, he
9 smelled marijuana, he felt he saw it and that was the end
10 of it. I didn't think there was much more. What else
11 did he say?

12 MR. WILLIAMS: Your Honor, so what Your Honor
13 actually said was that you said green material. What he
14 actually testified to was he saw what he believed to be
15 marijuana which is different from green plant like
16 material. You have introduced another charge against my
17 client which he subsequently was indicted for on Monday
18 and he wasn't supposed to testify insofar as the
19 substance being marijuana.

20 THE COURT: Okay.

21 MR. WILLIAMS: And I could be wrong. We could play
22 it back, Your Honor, but I think that's what he said.

23 THE COURT: Well, while I'm looking, Mr. Pincelli,
24 anything you want to tell us?

25 MR. PINCELLI: Thank you, Your Honor. I also

1 recollect your ruling there was the odor of marijuana and
2 we were gonna be able to explain there was a green leafy
3 plant like material inside the car. I believe
4 Investigator Gietz testified that there was a green plant
5 like material and then he said from his training and
6 experience what he believed to be marijuana. I mean, he
7 said the word marijuana, but I don't know how he says
8 odor of marijuana and then he says green -- I think he's
9 just following up on the same thought. I don't think
10 that brings us anywhere past your ruling and that's the
11 last question I'm gonna ask him about the substance.

12 THE COURT: Yeah. I'm scanning. Right. I said we
13 couldn't talk about any testing of the substance or what
14 it weighed or how much of a quantity. He smelled it,
15 looks like he smelled it and something looked like was
16 just -- So if I said green material or green leafy
17 material, you know, I know I said I don't think we can
18 get around the fact of having marijuana mentioned in the
19 trial but, of course, it's not gonna go past essentially
20 what led to the smell and the search so, you know, I
21 didn't see anything, I didn't think that was a clear
22 violation of my pretrial ruling. However, just from our
23 conversation, that's the end of the marijuana
24 testimony.

25 MR. PINCELLI: It is, Your Honor. Just for

1 preservation of the record, during pretrial, we did
2 discuss res gestae. I believe this issue is so
3 intimately tied to the setting and circumstances of this
4 case, I think it would leave a void that would, it would
5 hinder the jury's ability to understand what's going on.
6 He smelled marijuana. He sees something that he thinks
7 is marijuana. That was the reason he searched the
8 vehicle. We're not gonna say anything else about it.
9 We're gonna get on with the rest of the search which I
10 believe was in line with your ruling.

11 MR. WILLIAMS: Your Honor, res gestae has got
12 absolutely nothing to do with what this police officer
13 has just said. Res gestae has to do with a remark or
14 something made in an excited utterance if you will, Your
15 Honor. So to use res gestae as a description of a
16 violation of the Constitutional Rights of my client is
17 not appropriate.

18 THE COURT: I'll be happy to think about res gestae.
19 I'm thinking about what I said 48 hours ago. I just
20 don't find that this is a glaring violation of that. I
21 mean, I guess, in hindsight I could have described
22 exactly what would be said, but I wanted, I thought it
23 was appropriate. He mentioned the smell of marijuana and
24 the appearance of, you know, what appeared to be
25 marijuana. Whether I said material or green material or

1 leafy material but, you know, the fact that law
2 enforcement thought they saw marijuana in the car to
3 support what they smelled seconds earlier when they did
4 the course of the traffic stop, so I think that's the end
5 of the marijuana testimony inferences so the motion for
6 mistrial is respectfully denied. Your ruling is clear
7 and we'll see what happens.

8 MR. WILLIAMS: Thank you, Your Honor.

9 MR. PINCELLI: Thank you, Judge.

10 THE COURT: But I think we need a short break before
11 we bring the jury back in. It's 10:00.

12 MS. WILLIAMS: Your Honor, we need a short break.

13 THE COURT: Fine. Let's take five minutes. Give
14 the jury five minute heads up and we'll get them back in
15 five minutes.

16 (Short break.)

17 THE COURT: Anything else before we bring the jury
18 back in?

19 MR. PINCELLI: I think we're gonna have similar
20 objections to the photos that we move to admit.

21 MR. WILLIAMS: But nothing, but nothing unusual
22 about that meaning that we basically the stuff where it's
23 staged, we would object to them going in in that
24 situation.

25 THE COURT: Okay. So you can object to certain

1 exhibits based on prior arguments. We'll just put them
2 in. All right. We ready to roll?

3 MR. PINCELLI: Yes, Your Honor. Thank you.

4 THE COURT: Bring them in.

5 (Whereupon, the jury entered the courtroom at 10:07
6 a.m.)

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen of the jury, welcome back. Hope you had time
9 to refresh yourselves on the break. We'll just continue
10 where we left off. The State can proceed.

11 MR. PINCELLI: Thank you, Your Honor.

12 BY MR. PINCELLI:

13 Q. Investigator Gietz, we were talking about a search.
14 I believe you testified about a black backpack. What else did
15 you locate inside that backpack?

16 A. I mentioned the large bag of cocaine. I think
17 that's where we left off. In that there were two small
18 plastic bags of a white powdery substance and a bag with a
19 crystal like substance. I recognized the white powdery
20 substance through my training and experience to be cocaine and
21 the crystal like substance through my training and experience
22 to be methamphetamine. I also located a black and gray iPhone
23 with a black grip on the back.

24 Q. And did you locate a scale during the search?

25 A. I did. I referenced that before. It was a black

1 digital scale.

2 Q. Okay. And I don't recall. Did you reference
3 finding any money along with his drugs and scale?

4 A. I did. Yep.

5 Q. Okay. I'm approaching you now with some more
6 photographs.

7 A. Oh, I also located a ledger inside, a drug ledger.

8 Q. Okay.

9 MR. WILLIAMS: Objection to, objection to the
10 description that he gave.

11 THE COURT: The word?

12 MR. WILLIAMS: No. He said he found a drug ledger.

13 THE COURT: I didn't hear that. I heard ledger he
14 said.

15 MR. PINCELLI: I believe he followed up and said
16 drug ledger, Your Honor.

17 THE COURT: Okay. All right.

18 MR. PINCELLI: I'll ask more on his opinion on that
19 later. If there's an objection, I would like to develop
20 it.

21 MR. WILLIAMS: It is an objection because he didn't
22 write the ledger so he can't say what it was.

23 THE COURT: Okay. Well, I'll sustain the objection,
24 but you can reask the question to the extent of his
25 personal knowledge of what it is.

1 BY MR. PINCELLI:

2 Q. I'm going through these photos with you. This is
3 State's Exhibit 5. Do you recognize that photo?

4 A. That is the black Molly, I describe it as a Molly
5 backpack found in the vehicle driven by Mr. Wagner.

6 Q. Okay. Is that in the vehicle where you found it?

7 A. Yes.

8 Q. Okay. That was State's 5. This is State's 6.
9 What's that a photograph of?

10 A. As the black Molly bag is being opened, pictures of
11 the contents inside of the bag.

12 Q. Okay. State's 7?

13 A. That appears to be, yep, that is the same bag that's
14 photographed there that's partially opened containing the sum
15 of money located.

16 Q. All right. State's 8?

17 A. That is the red bag that was located inside the
18 Molly backpack with the white powdery substance and crystal
19 like substance.

20 Q. State's 9?

21 A. This is the ledger.

22 Q. And State's 14?

23 A. And this was an additional bag inside of it
24 containing the hypodermic needles.

25 MR. PINCELLI: All right. Your Honor, at this time

1 the State would move State's 5, 6, 7, 8, 9 and 14 into
2 evidence.

3 MR. WILLIAMS: And I think we can simplify this. As
4 to 5, Your Honor, basically I have alleged the pictures
5 were taken after something had happened to them so as to
6 5 it does not apply.

7 THE COURT: So 5 is without objection.

8 MR. WILLIAMS: As to 14 it does apply.

9 THE COURT: Okay.

10 MR. WILLIAMS: As to number 8 it does apply. As to
11 number 7 it does apply. As to number 6 it does apply.
12 And as to number 9 it applies.

13 THE COURT: All right. So State's Exhibit 5
14 admitted without objection. State's Exhibits 6, 7, 8, 9
15 and 14 admitted subject to defendant's objection.

16 MR. PINCELLI: Thank you, Your Honor.

17 BY MR. PINCELLI:

18 Q. Investigator Gietz, let's go over these photographs
19 for the jury. This is State's 5. Is this the black backpack
20 you described?

21 A. Yes. It is.

22 Q. All right. This is State's Exhibit 6. What is
23 that?

24 A. That's the same bag just opened.

25 Q. What was the purpose of taking that photograph?

1 A. So I could show that those contents found inside the
2 backpack were indeed in this backpack at the time.

3 Q. So we could explain step by step what happened?

4 A. Correct. Chronological order of handling the
5 evidence.

6 Q. Okay. State's 7, what is this?

7 A. That is the bag seen in the Molly backpack that you
8 can see it was already opened containing the money.

9 Q. Do you recall how much money you recovered on scene?
10 Reference your report. Just take a moment.

11 A. \$1628.25.

12 Q. Looking back at State's 6, do you see the bag where
13 the money came from in this photograph?

14 A. I do.

15 Q. Am I pointing to it right here?

16 A. You are.

17 Q. Again, that's the bag with the money in it. We were
18 looking at in State's 7?

19 A. That's correct.

20 Q. State's 8, investigator, what are we looking at
21 right here?

22 A. That's the bag that you can see from the previous
23 photo that contained the narcotics.

24 Q. Okay. So the previous photo State's 6 am I pointing
25 to this bag right here?

JOHN GIETZ - DIRECT BY MR. PINCELLI

175

1 A. Yes. You are.

2 Q. All right. And this is the bag that had the white
3 powdery substance?

4 A. That is correct.

5 Q. Based on your training and experience, what did you
6 believe that to be?

7 A. Cocaine.

8 Q. All right. State's 9, without getting too detailed
9 in your explanation just yet, what did you believe this to
10 be?

11 A. A ledger. It also appears to have a white powdery
12 substance covering it.

13 Q. Okay. Are you referring to these speckles?

14 A. I am.

15 Q. State's 14, what are we looking at?

16 A. That's an additional bag found in the backpack that
17 contained hypodermic needles.

18 Q. Okay. Now, what did you do with all these items?
19 Did you just stop when you photographed them or did you
20 collect anything?

21 A. Yes. I collected those and later submitted them to
22 the Lexington County evidence center.

23 Q. When you collect them, what do you do? What's the
24 procedure you take when you collect things?

25 A. Well, as you can see from the photos I make sure

1 that I'm wearing gloves. You don't know, the substance could
2 be tainted with other substances, Fentanyl or things that are
3 hazardous to my person. After I collect them, I place them
4 into a bag depending on what the substance is, and then seal
5 it and make sure it's signed so I can submit it into the
6 evidence center.

7 Q. And what's the purpose of submitting those items
8 believed to be drugs to the evidence center?

9 A. So we put those in a BEST Kit and that's to have
10 them be tested by our chemist to confirm that they are in fact
11 the substance that I believe through my training and
12 experience to be those substances.

13 Q. Investigator, I'm approaching you with a bag. From
14 the exterior of this can you tell what this is or where it
15 came from?

16 A. Yes. It came from the traffic stop that was
17 conducted on Mr. Wagner on February 10th, 2020.

18 Q. And what --

19 A. And it was submitted into evidence.

20 Q. Okay. And what does the description of this item
21 state?

22 A. It says it's a drug ledger.

23 MR. WILLIAMS: Your Honor, objection.

24 BY THE WITNESS:

25 A. Also says --

JOHN GIETZ - DIRECT BY MR. PINCELLI

177

1 THE COURT: He's reading the front of the, front of
2 the - back - the envelope. Overruled.

3 BY MR. PINCELLI:

4 Q. And underneath is there a second item that's
5 described inside this package?

6 A. Yes. A digital scale with residue.

7 Q. All right. Can you open this package?

8 A. (Witness complies.)

9 Q. Now, is that sealed?

10 A. It is sealed with my signature and dated to prevent
11 any tampering.

12 Q. Is there any other identifying information on the
13 outside of that bag?

14 A. Correct. It has the case number and it says drug
15 ledger.

16 Q. Okay. Is there anything else inside of this bag?

17 A. There is a WeightMax black digital scale, appears to
18 have a mixture of a white powdery substance that looks like
19 cocaine and a crystal like substance looks like
20 methamphetamine.

21 Q. And how about that bag, is that sealed?

22 A. It is sealed with my signature and dated with
23 February 10th, and it says scale with the case number attached
24 to this stop.

25 Q. And are those, those appear to be in the same

1 condition as when they were sealed the date of this stop?

2 A. Yes.

3 MR. PINCELLI: Your Honor, at this time I would like
4 to admit what's been described as a ledger and scale into
5 evidence.

6 MR. WILLIAMS: And, Your Honor, we would object
7 because there's been no description as to where those
8 items have been maintained throughout the entire time
9 period they were seized, if they were indeed seized.

10 THE COURT: There was - okay.

11 (Side bar off the record.)

12 BY MR. PINCELLI:

13 Q. All right. Investigator Gietz, you also seized the
14 drugs or what you believe to be drugs from that backpack and
15 packaged those into a packet for evidence?

16 A. I did.

17 Q. I'll present you with another package. Can you tell
18 what that is?

19 A. It appears to be BEST Kit C005667. BEST Kits are
20 what we use to store drugs in to submit for testing.

21 Q. And can you, before you describe this specific item,
22 can you explain to the jury a little bit more about a BEST Kit
23 and what the purpose of a BEST Kit is?

24 A. So a BEST Kit is a plastic bag essentially created
25 to seal narcotics in. It's tamper proof. It has tamper proof

1 tape on the top. I don't know if you guys can see the green
2 strip right here.

3 Q. Just describe it and not present this one yet. Just
4 speak about the BEST Kit for me.

5 A. Okay. So we seal it in this. It has the
6 information of who sealed it and the case number, that it was
7 seized in Lexington County, put the narcotics in it and it
8 gets submitted into evidence to be tested.

9 Q. All right. So specifically for this item that
10 you're holding in your hand, what identifying marks can
11 you see to let you know what this is?

12 A. It has the case number and it also has my name on it
13 saying that I'm the person that sealed the BEST Kit and then a
14 signature that I was the one, in fact, to have sealed the BEST
15 Kit as well as a signature on the top so it can't be tampered
16 with even with tamper proof tape and then a date right here,
17 the date it was sealed which is February 10th, 2020.

18 Q. And again, what are the items in that package or
19 what was believed to be?

20 A. So this --

21 Q. Rather than publish, just talk to me about it. Put
22 that down for a minute.

23 A. Okay. So it's cocaine, looks like methamphetamine
24 and additional packaging with more methamphetamine in it.

25 Q. All right. And where did you find those items?

1 A. In the black Molly backpack inside the Volkswagen
2 Passat driven by Mr. Wagner.

3 Q. Okay. Did you have an opportunity to search
4 Mr. Wagner's person?

5 A. Yes. I did. Uhm, after, uhm, we determined that
6 narcotics were in the vehicle, he had narcotics in the vehicle
7 and he was arrested, we did a search incident to arrest.
8 Prior to the search incident to arrest, I asked Mr. Wagner if
9 he had anything else on him. He said specifically I have a
10 bag of meth in my pocket.

11 Q. Was that seized from Mr. Wagner?

12 A. Yes. It was taken out of his left pocket and along
13 with the methamphetamine there was folded cash and then an
14 iPhone with a red case.

15 Q. I'll approach you with one more package. Can you
16 identify this package for me?

17 A. It says iPhone 11 and a case.

18 Q. And what does the writing on the outside of that
19 package indicate to you?

20 A. It has the case number from the traffic stop that
21 was conducted on February 10th, 2020 with Mr. Wagner driving.
22 It says iPhone with case and it has my signature sealing it
23 and dating it at the top.

24 Q. Okay. And again, what's the purpose of having all
25 these items sealed and with your signature and with the

1 date?

2 A. To maintain the chain of custody and to make sure
3 that they weren't tampered with in any way prior to the
4 case.

5 Q. Where do you take these items after they're sealed
6 and after you package them?

7 A. I secure them in the locker or turn them over to an
8 evidence custodian in the Lexington County Evidence Center.

9 MR. PINCELLI: Your Honor, at this time I would like
10 to move what's been described as a iPhone in a red case,
11 the BEST Kit with the drugs as well as what's been
12 described as a ledger and a scale into evidence.

13 THE COURT: What were the numbers?

14 MR. PINCELLI: They are not marked yet, Your
15 Honor.

16 THE COURT: All right.

17 MR. PINCELLI: They will be 16 through 19, Your
18 Honor.

19 (Whereupon, State's Exhibits #16 through #19 marked
20 for identification.)

21 THE COURT: Which is which?

22 MR. PINCELLI: Let's say the ledger is 16, the scale
23 is 17, the drugs are 18, and the phone is 19.

24 THE COURT: Ledger, scale, drugs and iPhone.

25 MR. WILLIAMS: Again, Your Honor, the objection goes

1 to chain.

2 THE COURT: Okay.

3 MR. WILLIAMS: There's been no testimony in regards
4 to where they've been since they were seized. We don't,
5 I don't know that anyone has explained where they've
6 been.

7 MR. PINCELLI: Your Honor, if we need to make
8 arguments, I'm prepared to do that.

9 THE COURT: All right. We'll talk about that. Let
10 me take a brief break, ladies and gentlemen, so I can
11 talk to the attorneys about something and I'll get you
12 right back in here as soon as possible.

13 (Whereupon, the jury entered the jury room at 10:28
14 a.m.)

15 MR. PINCELLI: Your Honor, we marked that phone for
16 ID. The ledger and the scale, they're sealed. Nobody
17 has touched it. It's just been sitting in evidence. We
18 have established that they're sealed, the condition is
19 the same.

20 THE COURT: Is there any --

21 MR. WILLIAMS: That's, that's what, what I just
22 mentioned to him. I said, you know, the drugs and stuff
23 like that, we know they've been opened up. We know
24 someone has tested them and all that so just throw up the
25 evidence people in regards to what they've done, where it

1 was, that kind of thing like we normally do.

2 MR. PINCELLI: If we just mark those for ID now, I
3 don't think we have an issue.

4 MR. WILLIAMS: There we go.

5 MR. PINCELLI: But as far as the scale and the
6 ledger, I would like those admitted now and publish it to
7 the jury.

8 THE COURT: Well, the scale, is the scale.

9 MR. PINCELLI: Right.

10 MR. WILLIAMS: And if he's gonna testify he's had
11 the scale and he marked it and put it back, then cool.

12 THE COURT: I have a question about the ledger.
13 It's been sealed up, but obviously he can testify as to
14 the contents? He's already reviewed them because there's
15 pictures; is that right?

16 MR. PINCELLI: They're photographs taken on scene.

17 THE COURT: Okay. Of the --

18 MR. PINCELLI: Of the contents, the pages.

19 THE COURT: Is there anything in the pages -- You've
20 reviewed the pages?

21 MR. WILLIAMS: I have.

22 THE COURT: Okay. So there's nothing in there that
23 is inflammatory or deals with any issues outside of --

24 MR. WILLIAMS: I have reviewed what the photograph
25 shows. I have not reviewed the ledger itself. So

1 whatever photographs that were given to us in discovery,
2 I looked at the photographs.

3 THE COURT: That would be the, what was provided to
4 you is what we're just gonna go through anyway, right?

5 MR. WILLIAMS: Say that again, Judge.

6 THE COURT: We're not going to do anything in excess
7 of what was already provided to you; is that right?

8 MR. PINCELLI: That's correct, Your Honor.

9 THE COURT: And there's nothing in the pages that
10 have to do with things that could be inflammatory?

11 MR. PINCELLI: In complete candor to the Court, I
12 have also not opened up that ledger. I've only seen
13 those photographs. If we should take a moment to open
14 that and review the pages to make sure we're not gonna
15 get into trouble here.

16 THE COURT: Why don't I look at the pages too.

17 MR. PINCELLI: Okay.

18 THE COURT: I trust y'all, but I want to make sure
19 there's no hidden secret code or something in there.

20 (Short break.)

21 THE COURT: So we were on a short break here. We
22 were discussing the ledger which was recovered from the
23 vehicle that is now in evidence. We've opened it to look
24 at it and can compare it to the pictures provided in
25 discovery to the defendant. The pictures all match the

1 ledger. The ledger contains the names of - or the
2 initials of various people with specific amounts of
3 money, but there doesn't appear to be any other narrative
4 in the ledger itself. There are also after there's four
5 or five pages, the rest of the pages are blank so there
6 is no discernible risk of the jury being able to
7 interpret something they wouldn't otherwise see in the
8 pictures which I suspect in a moment will be sought to be
9 admitted as well; is that correct, Mr. Pincelli?

10 MR. PINCELLI: Your Honor, I didn't plan on
11 admitting the pictures. I was just gonna publish that to
12 the jury just because I believe I can flip through it and
13 show it on the overhead.

14 MR. WILLIAMS: Actually the book may be easier to
15 deal with.

16 THE COURT: Well, I would actually like at least the
17 pictures being made a Court's Exhibit just in case.

18 MR. PINCELLI: Okay. Can we do that at a later
19 break because I don't have the pictures printed out in my
20 material.

21 THE COURT: Just the ones you have are fine just in
22 case some crazy thing that happens with that book, we
23 have at least got them backed up with the record that
24 shows the pictures match.

25 MR. PINCELLI: Sure. Your Honor, in regards to the

1 opening, you've already made that part of the record.
2 Can we give an instruction to the jury, Investigator
3 Gietz just testified to how things were sealed and
4 initialed and everything else and I don't want any
5 indication that this was not handled in a proper manner.

6 THE COURT: You can say the bag was opened at the
7 Court's direction.

8 MR. PINCELLI: Okay. I think we're stipulating to
9 ID the drugs and the phone at this time for Court's ID.

10 THE COURT: And then we'll bring back additional
11 witnesses to further corroborate.

12 MR. PINCELLI: That's correct, Your Honor. And then
13 can we mark everything else outside the presence of the
14 jury right now?

15 THE COURT: Yes. Please do so.

16 MR. WILLIAMS: Your Honor, I'm gonna run to the
17 little boys room.

18 THE COURT: All right. And let's mark as much as we
19 can that hasn't been marked that you anticipate seeking
20 to admit.

21 MR. PINCELLI: 16 is the ledger, 17 is the scale, 18
22 is the BEST Kit of drugs marked for ID only. 19 is the
23 iPhone with a red case that has been marked 19 for ID
24 only.

25 THE COURT: Okay. Talk to me.

1 MR. PINCELLI: Judge, at this time I plan on
2 publishing to the jury the contents of that ledger. It's
3 the State's intent to ask Investigator Gietz based on his
4 training and experience what this ledger would be related
5 to. It's my belief he would answer something along the
6 lines of drug sales. As indicated on the evidence slip,
7 it said drug ledger. There was an objection earlier on
8 that terminology. I believe Mr. Williams is asserting
9 that he needs to be qualified as an expert to give such
10 testimony. My argument would be that we saw a razor
11 blade, a piece of flex tubing earlier. It's his opinion
12 based on his training and experience that those are drug
13 paraphernalia. The odor of marijuana was based on his
14 training and experience. The contents of the ledger
15 based on his training and experience as a narcotics agent
16 he can say it's related to drug sales without being
17 qualified as an expert witness.

18 THE COURT: Mr. Williams.

19 MR. WILLIAMS: Your Honor, obviously I think it does
20 require an opinion from someone who is more trained than
21 just being a police officer because they're making the
22 leap that the numbers to the names mean that drugs are
23 being transferred. He could have been borrowing money
24 from somebody. He may just be a big hobo and he's
25 borrowing money from Tom, Dick and Harry because he needs

1 the money. He may need the money because he's some sort
2 of, has some sort of drug issue that he has to borrow
3 money for. I mean, there's any number of ways for why
4 that you would have to borrow money. So all you've got
5 on the pages are initials and money.

6 THE COURT: Okay.

7 MR. WILLIAMS: So the jury wouldn't have a
8 foundation as to why he jumped from there. I mean, they
9 could jump to anything.

10 THE COURT: Well, the jury has a foundation of
11 presence of drugs and drug paraphernalia and a scale, you
12 know, and cash, so, you know, on one hand if there was
13 some hypothetical situation let's just say where there
14 was some minute amount of possession level drug found in
15 the car and then there was also a book with none of the
16 other paraphernalia or the cash that he talked about, I
17 would say that's a pretty good leap. Right here it seems
18 to be not an unreasonable inference or testimony. They
19 only say what they say.

20 MR. PINCELLI: And, Your Honor, I'm not objecting --

21 THE COURT: Hold on one second. All right. I think
22 in light of the circumstances, the testimony and evidence
23 I've heard up to this point makes him referencing, or the
24 initials and the amount of money it's appropriate. I
25 don't think it's unreasonable to say that based upon his

1 experience and the investigation of this specific case
2 that he believed that it to be used as a ledger. You
3 used the word earlier. I don't want to put words in
4 anybody's mouth. To the extent I'm denying Mr.
5 Williams's objection, but I would like you to tell me how
6 you intend to ask it so if there's an issue, I can
7 address it now.

8 MR. PINCELLI: I plan on publishing it to the jury,
9 opening it, showing the contents, asking --

10 THE COURT: That's fine.

11 MR. PINCELLI: Okay. I thought I had said something
12 offensive.

13 THE COURT: I forgot I have hot coffee.

14 MR. PINCELLI: I'm sorry, Judge. I thought that we
15 were that far that I was gonna open this. I plan on
16 opening it, showing it to the jury and then asking based
17 on his training and experience what do these names with
18 apparent dollar amounts beside it, what would that
19 indicate.

20 THE COURT: Okay. All right.

21 MR. PINCELLI: And drawing out further testimony
22 after that.

23 THE COURT: Okay. All right. I'm satisfied with
24 that. When that question comes, Mr. Williams, just stand
25 and object based on previous discussions and we'll move

1 forward. Anything else you want?

2 MR. WILLIAMS: No, Your Honor.

3 MR. PINCELLI: Judge, just briefly, we talked about
4 me saying at the Court's instruction this was cut outside
5 the presence of the jury getting into the bag. I just
6 want to make sure.

7 THE COURT: Yeah. When you talk about it, are you
8 fine with Mr. Pincelli saying, ladies and gentlemen, I'll
9 just inform you that this bag has been opened. It was
10 opened at the direction of the Judge during a break? Is
11 that suitable for you?

12 MR. WILLIAMS: Yes, Your Honor.

13 MR. PINCELLI: Okay.

14 MR. WILLIAMS: I was thinking about the words.
15 That's all.

16 THE COURT: That's why I'm asking this. I'm always
17 thinking about words.

18 MR. WILLIAMS: Yeah. Me too, Judge.

19 THE COURT: What the words mean.

20 MR. WILLIAMS: What words mean.

21 THE COURT: How they can be misinterpreted. All
22 right. We ready to proceed?

23 MR. PINCELLI: Yes, Your Honor. Thank you.

24 THE COURT: All right. Let's bring them in please.

25 (Whereupon, the jury entered the courtroom at 10:55

JOHN GIETZ - DIRECT BY MR. PINCELLI

191

1 a.m.)

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 welcome back. We'll continue where we left off.

4 MR. PINCELLI: Thank you, Your Honor. And what's
5 been moved in as State's 16, this ledger that was
6 testified to was opened outside the presence of the jury
7 at the Court's instruction. Investigator Gietz, I'm
8 going to remove this from its packaging now and ask you
9 some questions about it. So this is State's 16.

10 THE COURT: And we marked some things for
11 identification?

12 MR. PINCELLI: Yes. We did mark some things for
13 identification.

14 THE COURT: Okay. All right.

15 BY MR. PINCELLI:

16 Q. And, Investigator Gietz, do you recognize what this
17 item is?

18 A. That's the ledger taken from the black backpack.

19 MR. WILLIAMS: And, Your Honor, here we would place
20 the objection in regards to any testimony in regards to
21 what these items are until a proper foundation has been
22 laid by the witness in regards to how he interprets that,
23 things of that nature and I'm not sure if it's been
24 placed into evidence yet either.

25 MR. PINCELLI: I believe this was placed into

1 evidence outside the presence of the jury, 16 and 17.

2 THE COURT: Do a quick foundation. We did have some
3 discussion. I want to make sure we lay the proper
4 foundation.

5 MR. PINCELLI: Sure. Outside the presence of the
6 jury 16 was moved in as State's evidence.

7 BY MR. PINCELLI:

8 Q. Investigator Gietz, you testified that you located
9 this where?

10 A. In the black backpack inside the Volkswagen Passat
11 driven by Mr. Wagner.

12 Q. And then we talked about where it came from. It
13 came from this bag that's now been opened. You testified,
14 what are some of these symbols on the outside of this bag?

15 A. It has the case number, looks like it says drug
16 ledger on the front. On the back, if I can see it, it has my
17 initials and the date that it was sealed, February 10th,
18 2020.

19 Q. And before it was cut moments ago inside of this
20 courtroom, did that seal remain?

21 A. It did.

22 Q. And the contents of this bag, meaning this ledger,
23 was in the same condition as you recovered it during the
24 search of Maxie Wagner's vehicle that day on February 10th,
25 2020?

JOHN GIETZ - DIRECT BY MR. PINCELLI

193

1 A. Correct and subsequently placed it in the Lexington
2 County evidence center.

3 Q. And then it was maintained until it was brought
4 today; is that correct?

5 A. That is correct.

6 Q. And then again, today, after it was removed from
7 evidence these years later, the seals remain intact; is that
8 correct?

9 A. That is correct.

10 THE COURT: State's 16 is admitted into evidence
11 subject to objection.

12 BY MR. PINCELLI:

13 Q. Investigator Gietz, let's talk about the contents of
14 this ledger now. Let's talk about this in terms of columns.
15 So we'll have column over here and then the second column.
16 What does column one, this left hand column, based on your
17 training and experience, what do you believe column one to
18 indicate?

19 A. Nicknames or names associated with subjects.

20 Q. And the second one might be a little more obvious
21 because there are some symbols that are common knowledge, but
22 column two, what do these indicate?

23 A. Dollar amounts.

24 Q. Okay. How about this next page, would those be the
25 same?

1 A. That's correct. The left hand side of the column
2 would be the names or nicknames and the right hand column
3 would be dollar amounts.

4 Q. Okay.

5 A. It actually looks like there's some additional
6 writing on there as well that indicate some of what it was
7 for.

8 Q. Okay. Let's not go into that right now, but just
9 generally on your training and experience a book like this
10 with this information, a nickname and a dollar amount found in
11 conjunction with a large quantity of what is believed to be
12 cocaine as well as a scale, based on your training and
13 experience as a narcotics officer, what do you believe this
14 ledger is for?

15 A. Based on my training and experience the ledger is
16 used to track the distribution of narcotics, dollar amounts
17 owed to specific clients.

18 Q. If we go back to this previous page, I'm not sure
19 about the spelling here, but this final amount at the bottom
20 of the page, what do you think that indicates?

21 A. The total amount owed to Mr. Wagner from that
22 page.

23 Q. Investigator Gietz, we've referenced a scale, talked
24 about it earlier. It has been marked State's 17. Again, you
25 found this where?

1 A. In the Volkswagen Passat driven by Mr. Wagner inside
2 of the black backpack.

3 Q. And I believe you already testified this was sealed
4 and has your initials on it?

5 A. I did.

6 Q. And what happened to it after you sealed it and put
7 your initials on it?

8 A. Take it and I placed it in the Lexington County
9 evidence center and submitted it as evidence.

10 Q. And how did it get to the courthouse today?

11 A. I picked it up from evidence and signed it out
12 through the evidence custodian and brought it over here. It
13 was secured in a locker until I brought it over to the
14 courtroom.

15 Q. And is it still sealed?

16 A. It is still sealed.

17 Q. So this is State's 17. What is that?

18 A. That is a black digital scale, looks like a
19 WeightMax digital scale. I testified earlier it looks like it
20 has a white residue and a crystal like residue on the weighing
21 station. You can look more where it says calibration center
22 towards the left you will see a white powdery substance that I
23 know through my training and experience to be cocaine and to
24 the right along edges you will see a crystal like substance
25 that I know through my training and experience to be

1 methamphetamine.

2 Q. Based on your training and experience in narcotics,
3 what is the purpose of possessing a scale? What can that
4 indicate to you?

5 A. To weigh out amounts for distribution. Typically
6 when you're distributing narcotics, there's already an agreed
7 amount either dollar amount that will equal the weight or a
8 weight that will have to be paid by a dollar amount.

9 Q. How might those smaller amounts be packaged?

10 MR. WILLIAMS: Objection to the form of the
11 question.

12 THE COURT: Rephrase the question, Mr. Pincelli.

13 BY MR. PINCELLI:

14 Q. Introducing State's 4, we've already looked at this.
15 You said this was a small Baggie?

16 A. Correct.

17 Q. Based on your training and experience, how does that
18 relate to narcotic sales?

19 A. That's where a small amount of narcotics would be
20 placed for distribution. Typically you would weigh it out
21 prior to putting it in a Baggie so if you were to sell a gram
22 of cocaine, you would put it into that Baggie after it was
23 weighed out.

24 Q. Investigator Gietz, we've talked about through your
25 training and experience seeing a large amount of drugs, seeing

1 a scale, seeing a ledger with names and numbers and totals,
2 dollar amounts, that that would indicate narcotic sales; is
3 that correct?

4 A. That's correct.

5 Q. Did Mr. Wagner make any statements to you on scene
6 about narcotic sales?

7 A. Yes. He did.

8 Q. What did he say?

9 A. This is all post Miranda. I asked Maxie if he was
10 selling drugs and he said quote, "I have to. I can't get any
11 other job."

12 Q. Did you follow up any questioning on that line of
13 thought?

14 A. Yes. I asked him where he was selling. He said the
15 mile which I know through my training and experience in
16 previous narcotics investigation to mean the Mile High Club
17 that's located in Cayce, West Columbia.

18 Q. Let's go back to when you were searching the
19 vehicle. Where was Mr. Wagner while you searched the
20 vehicle?

21 A. Uhm, I had him and Ms. Wagner separated just so
22 there wasn't any kind of conversation to, you know, who was
23 gonna take what or if they were to come up with some
24 fictitious story or change their story, but Mr. Wagner was
25 close by me while I was searching the vehicle.

1 Q. Did he make statements to you while you searched the
2 vehicle?

3 A. Yes. As I pulled items out of the backpack, I asked
4 him to identify the items. Let's see. So as I pulled the
5 large bag out, I asked him what was in the bag and he said
6 cocaine. Uhm, later as I searched him, let's see, I believe
7 he indicated the methamphetamine found in his pocket was
8 methamphetamine. Also there was a hypodermic needle found in
9 the vehicle and he indicated that that was methamphetamine.

10 Q. As a result of all the drugs you found, Mr. Wagner's
11 statements, the scale, the ledger, the totality of what you
12 found in that search, what did you do with Mr. Wagner?

13 A. Mr. Wagner was placed under arrest. I believe the
14 field weight that we had on the cocaine was 48 grams which is
15 28 grams higher, or excuse me, 20 grams higher than the 28
16 gram threshold for trafficking, the actual second level of
17 trafficking, it goes 10 grams, 28 grams, and then a hundred
18 grams, so he fell in the middle of the second tier.

19 Q. I'll stop you there, investigator. Is it just fair
20 to say he was placed under arrest?

21 A. Correct.

22 Q. Okay. As a result of his arrest, what did you do
23 with Mr. Wagner after that?

24 A. Anyone who is arrested who is going to be
25 transported to the Lexington County Detention Center is

1 searched post incident to arrest so we would make sure that he
2 had no more weapons or narcotics or didn't inadvertently make
3 him commit a crime by introducing contraband into the
4 detention center.

5 Q. You talked about an Erin Wagner on scene. Was she
6 the only other adult on scene?

7 A. Yes. The only other adult on scene that was in the
8 vehicle.

9 Q. Was she charged with anything?

10 A. No. She was not.

11 Q. And why not?

12 A. Very early in the traffic stop after I had
13 Mr. Wagner exit the vehicle, uhm, he indicated that all the
14 drugs, there were drugs in the car and that everything
15 belonged to him so he took ownership very early in the traffic
16 stop stating that it was his. The methamphetamine that was
17 found in his pocket, that was clearly his. It belonged to him
18 and then, yeah.

19 Q. Okay. Did he make -- Did you transport Mr. Wagner
20 to jail?

21 A. I did.

22 Q. Did he make any statements to you?

23 A. Let me just confirm that. Yes. I did.

24 Q. Did he make any statements to you during that
25 transport?

1 A. Yes. He attempted to backtrack on his story. You
2 know, as we're going to jail, I'm not gonna sit in silence so
3 I was having a conversation with Mr. Wagner and he attempted
4 to -- Well, first I told him that I was gonna get search
5 warrants for his phone because he had a trafficking amount of
6 cocaine and then a possession with intent to distribute a
7 quantity of methamphetamine and to that in response Mr. Wagner
8 told me, quote, "I'm just going to wipe both phones when I get
9 out of jail."

10 Q. Okay. Let me stop you there. So how many phones
11 did you recover?

12 A. Two.

13 Q. And I believe we have marked one for ID only, you
14 recovered one. Can you describe those phones?

15 A. Yes. One was a iPhone 11 with a red case that was
16 found in his left pocket with methamphetamine and cash and
17 then in the backpack there was a gray iPhone with a black grip
18 on the back.

19 Q. And again, we touched on it briefly. What was done
20 with those drugs you recovered and those phones following your
21 stop following packaging them up and put into evidence? What
22 was the purpose of the collection?

23 A. I submitted them all into the Lexington County
24 evidence center. The phones we took because we were gonna get
25 search warrants to further investigate the case and see if

JOHN GIETZ - CROSS BY MR. WILLIAMS

201

1 there was potential, if we could figure out where he was
2 buying the narcotics from or who he was selling it for to
3 obtain further evidence of this case.

4 MR. PINCELLI: All right. Thank you, Investigator
5 Gietz. Please answer anything from Mr. Williams.

6 THE COURT: Cross examination.

7 MR. WILLIAMS: May it please the Court.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. WILLIAMS:

11 Q. So, uhm, are you an investigator or officer or
12 sergeant or lieutenant or what is your --

13 A. My title currently is investigator.

14 Q. Investigator. So we were talking about your earlier
15 association, I guess, with the Lexington County Sheriff's
16 Department, and as I recall your testimony that you worked in
17 corrections from 2013 until, what is that, you said a year and
18 a half, so that would have been 2014 and a half; is that
19 correct?

20 A. Give or take.

21 Q. Middle of the year 2014?

22 A. I'll say that seems accurate.

23 Q. And when you talk about working in corrections, are
24 you talking that you worked at the Lexington County Detention
25 Center or did you work somewhere else?

1 A. The Lexington County Detention Center.

2 Q. All right. And then you went on to say that you
3 worked on the road in 2017. That's when you went on the road
4 as, I guess, a road deputy?

5 A. No, sir. That's incorrect.

6 Q. Okay. Tell me where you went after the middle of
7 2014.

8 A. So that's when I became a road deputy as they would
9 call it with the Lexington County Sheriff's Department.

10 Q. All right. So from 2014 until when did you cease
11 being a road patrol officer?

12 A. 2017.

13 Q. Okay.

14 A. And then I was promoted to investigations.

15 Q. All right. So essentially when this happened, you
16 had been with investigations for about three years; is that
17 correct?

18 A. Seems accurate. Yes. Yeah. I mean, 2017 to 2020,
19 that's approximately three years.

20 Q. Well, I wasn't messing with the months because we're
21 talking about February versus it could have been the end of
22 the year. So, when you went to investigations, did you take
23 your rank with you when you went to investigations? Because
24 you're assigned a rank when you're a road patrol deputy,
25 aren't you? Aren't you a sergeant or a lieutenant or a

1 captain or a major or colonel or something? You're always
2 assigned a rank, aren't you?

3 A. As you're promoted, yes, you would be assigned a
4 rank. I was actually, when I went from the road, I was a
5 field training officer so I would be technically considered a
6 corporal. As I was promoted to investigations, I suppose I
7 would still be a corporal except we go as an investigator.

8 Q. Okay. So if you were assigned -- And the reason why
9 rank is important obviously I guess you get paid based on that
10 based on whatever your rank is, don't you? It's better to be
11 a sergeant than a corporal, it's better to be a lieutenant
12 than a sergeant, it's better to be a major than a first
13 lieutenant or even a light colonel I guess.

14 A. Yes. We have pay grades. I don't know if it
15 necessarily goes entirely by rank because sometimes due to
16 your pay band you can pay more money if you stay in the same
17 spot for a longer period of time.

18 Q. So when you went to investigations, you were a
19 corporal. Do you still maintain the same position now meaning
20 are you a corporal?

21 A. I would assume that would be my rank as a corporal,
22 however, my rank is investigator.

23 Q. Okay. So let's go back then to February the 10th of
24 2020. That was the date that you stopped Mr. Wagner, right?

25 A. That's correct.

1 Q. Let's go through this slowly with the jury in terms
2 of how this stop actually happened. The stop occurred
3 approximately 5:00 on that date; isn't that correct?

4 A. No.

5 Q. When did the stop occur?

6 A. Oh, yes. Yes. It was approximately 5:00. I
7 apologize.

8 Q. Well, it was 17:00 which is military time kind of
9 like corporals and majors and stuff?

10 A. 17:00. Yeah.

11 Q. So 5:00 is 17:00 hours so it was 5:00 in the
12 afternoon when this occurred, right?

13 A. Correct.

14 Q. And what type of vehicle were you in?

15 A. I believe by then I had been issued my black
16 unmarked Chevy Silverado.

17 Q. And that's a truck, right?

18 A. It's a truck.

19 Q. And did you get to choose the color you wanted or
20 did you get to pick your particular vehicle?

21 MR. PINCELLI: Objection, Your Honor. Relevance.

22 MR. WILLIAMS: Well --

23 THE COURT: Overruled. It's cross examination.

24 BY MR. WILLIAMS:

25 Q. So did you get to pick whatever vehicle you got to

1 drive around in Lexington County or were you assigned a
2 vehicle?

3 A. It's kind of, it's half of one, six of another, you
4 know. Uhm, I am assigned a Chevy Silverado, however, I'm
5 limited as to what I can pick.

6 Q. So you picked the black one? You in essence had a
7 choice and you picked the black one?

8 A. I believe so.

9 Q. Okay. Okay. Now, the one thing which is
10 interesting about a Silverado truck versus what most of
11 Lexington County officers drive is that now they drive, what
12 is it, those Ford squared off, are they Explorers, or what are
13 they, the Lexington County officers?

14 A. I don't know anyone to drive that type of vehicle.

15 Q. What are the vehicles that the Lexington County
16 deputy, road patrol deputies drive?

17 A. Chevy Tahoe.

18 Q. They drive Chevy Tahoe?

19 A. Correct.

20 Q. And you drove a Silverado truck, right?

21 A. Correct.

22 Q. The other distinction about those two is that on
23 your particular truck it has no markings of law enforcement.
24 It doesn't say anything about Lexington County deputy or
25 anything like that, does it?

1 A. No. Due to the nature of my investigations, it
2 would be problematic for me to have markings on the outside of
3 my vehicle.

4 Q. As a part and parcel of that you wear street
5 clothes, right?

6 A. Typically.

7 Q. On this particular day when you stopped my client,
8 did you have street clothes on?

9 A. I believe I did.

10 Q. Now, you observed the Silverado going down the road
11 not while you were on Platt Springs Road, but when did you
12 observe the vehicle going down the road?

13 A. Sir, I don't know anything about a Silverado rolling
14 down the road other than my own.

15 Q. Oh, I'm sorry. What type of vehicle was Mr. Wagner
16 in?

17 A. Volkswagen Passat.

18 Q. And you particularly observed his vehicle going down
19 the road, didn't you?

20 A. I did.

21 Q. Where were you when you observed him?

22 A. I was parked across the street of, on Platt Springs
23 Road. I couldn't give you the numerics except it was across
24 from Kittie Drive where Mr. Wagner lived or should I say Ms.
25 Wagner lived and Mr. Wagner frequented.

1 Q. Okay. So you were across the road from where he
2 lived and you said it's on Kittie Wake?

3 A. No, sir.

4 Q. Where was it?

5 A. Kittie Drive.

6 Q. Kittie Drive?

7 A. Yes, sir, on Platt Springs Road or across the
8 street.

9 Q. It's not on Platt Springs Road? Those are two
10 different roads, aren't they?

11 A. I don't understand what you're asking me.

12 Q. You were observing his house at the time where his
13 vehicle was --

14 MR. PINCELLI: Your Honor, if we could approach.

15 BY MR. WILLIAMS:

16 Q. -- or not?

17 A. No, sir.

18 (Side bar off the record.)

19 BY MR. WILLIAMS:

20 Q. So, you observed the vehicle going down the road,
21 correct, referring to Mr. Wagner's vehicle going down the
22 road, right?

23 A. I did down Platt Springs Road.

24 Q. And when you observed the vehicle going down the
25 road, could you tell from where you were who was the driver of

1 the vehicle or if somebody else was driving the vehicle?

2 A. No. Not necessarily, but I knew he drove that
3 vehicle.

4 Q. And you stopped him for a suspended tag; is that
5 correct?

6 A. That is correct.

7 Q. Did you call in to the Highway Department before you
8 stopped him questioning whether or not he had a suspended tag
9 or not?

10 A. I had prior knowledge that his tag was suspended.

11 Q. And did you have anything from the Highway
12 Department that said that he had a suspended tag before you
13 stopped him?

14 A. I did not have any paperwork stating that his tag
15 was suspended, however, I knew his tag was suspended.

16 Q. And when did you first learn that his tag was
17 suspended?

18 A. January 29th of 2020.

19 Q. But you didn't get anything from the Highway
20 Department to show that?

21 A. I did not.

22 Q. Okay. So you observed the vehicle going down the
23 road and at what point in time did you see that he is the
24 driver of the vehicle?

25 A. When I made the passenger side approach to the

1 vehicle.

2 Q. You couldn't tell who the driver of the car was
3 until you got to the passenger side?

4 A. The rear windows of the vehicle had a significant
5 tint where I could not see into the vehicle.

6 Q. Okay. All right. Did you have a blue light on your
7 truck when you pulled him over?

8 A. Yes, sir.

9 Q. Did you turn the blue light on?

10 A. Yes, sir. My vehicle has several blue lights, but
11 yes.

12 Q. Did you have a video camera on your truck as a
13 highway, as a regular officer would have when he turns his
14 blue lights on, it would turn his video on on his car and
15 whatever else he's driving, right? You didn't have a camera
16 when you turned on the blue light?

17 A. No, sir. Due to undercover investigations, it would
18 be problematic to have a video camera sticking out on an
19 undercover vehicle.

20 Q. Well, now, I'm not talking about a camera that would
21 be on the dashboard, but aren't there other ways to place a
22 camera on a vehicle when you have blue lights that would still
23 record the events of the day?

24 A. I don't know that. I mean, it's possible.

25 Q. But the short answer is all you had was blue lights

1 and you didn't have any kind of video recording, right?

2 A. That is correct.

3 Q. So did it take an unusual amount of time for the
4 vehicle to pull over?

5 A. Uhm, no. Not necessarily.

6 Q. So you turned the blue lights on and the gentleman
7 you didn't know at the time, but somebody pulled the vehicle
8 over, you subsequently learned it was a gentleman and then
9 would you normally walk up to the passenger side if you're on
10 Platt Springs Road or did he pull off of Platt Springs Road on
11 the sideway or something like that onto the grassy area?

12 A. No. He pulled into a gas station off of Platt
13 Springs Road in Three Fountains.

14 Q. So the gas station, what is the name of the gas
15 station that y'all pulled into?

16 A. I'm not sure.

17 Q. But clearly you knew at the time that you stopped
18 him that there was a gas station with other people around and
19 gas pumps. It was a gas station, right?

20 A. Yes, sir.

21 Q. Did you inquire prior to coming to court today the
22 possibility yet maybe probability that there were cameras
23 located at the gas station that may or may not have recorded
24 the entire stop as well as the entire search of the vehicle?

25 A. I didn't, however, I didn't see any cameras.

1 Q. Did you take the time to go look and see if they had
2 cameras?

3 A. Well, I mean, I looked at the environment around me,
4 but I didn't see any cameras. There's a possibility, it's
5 possible there were cameras, but I didn't see any.

6 Q. Did you go inside and talk to the owner of the store
7 to ask him if he had cameras to record his gas pumps in case
8 somebody drives off from his gas station or not?

9 A. No. This particular gas station has almost like a
10 small kiosk with one -- it can't really -- It's not your
11 typical convenient store. It's pretty much just a gas
12 station.

13 Q. What's the name of it?

14 A. I don't know.

15 Q. So do you normally work that area, that Platt
16 Springs area so that you would know the stations and stuff
17 like that around?

18 A. I mean, I work all of Lexington County.

19 Q. So you've been by the station?

20 A. That gas station?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. So, he pulls over in the gas station. Who
24 was with you at the time?

25 A. During the initial stop?

1 Q. During the initial stop.

2 A. No one, but very early in the stop I called for
3 additional units.

4 Q. So, you make a stop on the vehicle with blacked out
5 windows on the back so that you can't see into it with no one
6 else with you to pull them over, right? You didn't call any
7 of the other people that you work with, right, at the time you
8 were stopping him?

9 A. I called it over the radio.

10 Q. After you had him stopped, right?

11 A. Yes.

12 Q. Okay. So you went to the passenger side inside of a
13 parking lot. Correct me if I'm wrong, because I don't pretend
14 to be a police officer, but you see a lot of times highway
15 patrolmen who actually go to the passenger side of the vehicle
16 when they're on the interstate to make sure that they don't
17 get clipped while they're writing a ticket for somebody on the
18 interstate, right? That's the reason they do it, right?

19 A. Well, that's not the only reason.

20 Q. What is the only reason?

21 A. You get a better view inside the vehicle. It's more
22 of a safety issue. It gives you kind of a better view of your
23 driver and what your passenger is doing.

24 Q. Then being able to see the guy right up front if you
25 were right next to him where you can see what was in his hand

1 or what was in his lap?

2 A. I think tactically it's safer to approach on the
3 passenger side. It's really just a personal preference. I
4 know people that approach on the driver side, however, I
5 prefer to approach on the passenger side.

6 Q. Is that something that you learned as part of the
7 way to stop a vehicle?

8 A. Yes, sir.

9 Q. Did you have your ticket book with you?

10 A. I did.

11 Q. Did you write him a ticket for a suspended tag?

12 A. No. I didn't.

13 Q. So you come to the passenger side and you observe
14 Max Wagner in the passenger seat -- I'm sorry -- in the
15 driver's seat, right? And then his wife is in the passenger
16 seat of this vehicle, right?

17 A. Yes.

18 Q. Who else is in the vehicle?

19 A. There was a child in the vehicle.

20 Q. How old was the child?

21 A. I don't know the approximate age.

22 Q. You don't know the approximate age?

23 A. I don't know the child's age. Let me refer to my
24 report. I don't know his age. I would say elementary
25 school.

1 Q. Where was the child seated?

2 A. I don't know.

3 Q. Well, you're describing what you do for safety
4 reasons, that you come to the passenger side because you can
5 see better and you talk about what you observed. You don't
6 know if he was in the back seat, the middle seat, on the
7 console, driving the car? You don't know where he was?

8 A. I do know he was not driving the car or in the front
9 seat.

10 Q. So I believe one of the first things you have
11 described for this jury is that when you walked over, you
12 could see the red piping, the red rubber stuff coming out from
13 between the driver's seat and the driver's door, correct?

14 A. Yes.

15 Q. Well, now --

16 MR. WILLIAMS: Maxie, stand up for a second and walk
17 over here.

18 MAXIE WAGNER: (Complies.)

19 BY MR. WILLIAMS:

20 Q. You and Maxie are about the same size?

21 A. Sure.

22 Q. So if it is between the driver's door and the seat,
23 how much of this red tubing could you see?

24 A. Not the whole tubing, however, I could see it
25 sticking out from behind his leg. I testified to that

1 earlier.

2 Q. Behind his leg?

3 A. Sticking out above his leg.

4 Q. Well, you just said behind his leg just then. Was
5 it above his leg or behind his leg?

6 A. It was behind his leg so as I'm looking in from the
7 passenger side, if you're looking in, his leg is gonna be in
8 the way so between the driver's seat and the driver's door
9 behind his leg part of the hose was sticking up.

10 Q. All right. And at this point in time is this when
11 you tell him to get out of the car?

12 A. No. He began fumbling with razors. That happened
13 very, very quickly, within a minute of --

14 Q. Go ahead.

15 A. -- of the traffic stop. He began grabbing at the
16 razors. I then identified myself, who I was, why I had
17 stopped him, and rather than reach for his ID, he began
18 reaching for razors.

19 Q. So when did you ask him for a driver's license,
20 insurance card, and registration?

21 A. That was the first things I said. So, we are
22 trained to identify ourselves, so I would have said I'm
23 Investigator Gietz with the Lexington County Sheriff's
24 Department. I stopped you because you had a suspended tag.

25 Q. And you said all this before you asked him for his

1 driver's license and registration?

2 A. Then I requested his documentation. I need your
3 driver's license, insurance, registration.

4 Q. And did he pull his wallet out and give you his
5 driver's license, insurance card and registration?

6 A. No. He reached for razors.

7 Q. He reached for razors?

8 A. Correct.

9 Q. So, did you pull your weapon and get on the
10 walkie-talkie and call people down there because you felt like
11 he was some sort of threat?

12 A. No. I didn't pull my weapon on him, but I did have
13 him exit the vehicle.

14 Q. Did he exit the vehicle before his wife exited the
15 vehicle?

16 A. I'm not sure. I believe it was simultaneously. I
17 did have both of them exit the vehicle.

18 Q. Well, how did you instruct them to get out of the
19 vehicle? Because if you move with a police officer there, you
20 can get hurt if he doesn't know you're getting out of the car,
21 can't you?

22 A. I'm sorry.

23 Q. Isn't it standard procedure that when somebody is
24 stopped, if a driver or anybody tries to get out of their car,
25 then you will hear some officer say "remain in the car"?

1 Isn't that standard procedure now? It's not like it used to
2 be 40 years ago when we learned how to drive. Isn't that
3 standard procedure?

4 A. No. It's not standard procedure.

5 Q. So you don't try to have people remain in the car
6 when you stop them?

7 A. It all depends on the -- You take in the totality of
8 the circumstances. If someone is armed with a weapon inside
9 the car, I like to get them away from the weapon per se. It
10 all just depends on the situation at the time.

11 Q. So you're not trained a particular way to stop a car
12 and whether or not people should get out of the car or stay in
13 the car?

14 A. No. We're given options on where the stop, or
15 should I say where the interview with the subject is taking
16 place.

17 Q. Okay. All right. But you don't know which person
18 got out of the car, right, first or together?

19 A. No. I do not.

20 Q. And do you know -- Well, you were standing right
21 there where Ms. Wagner was, weren't you, right next to her,
22 right?

23 A. Yes. I was.

24 Q. So you would have had to move for her to get out of
25 the door, right?

1 A. Correct.

2 Q. So where did you move to?

3 A. To the rear of the vehicle.

4 Q. So you said get out of the car. Did you open up the
5 car door and you stepped back like this (indicating)?

6 A. I retreated to the trunk of the vehicle and wrapped
7 around to the more driver's side, but I was at the rear bumper
8 of the vehicle.

9 Q. Left side or right side, driver's side?

10 A. Well, I would have gone around to the driver's side
11 since he was the one with the weapon.

12 Q. You say he had a weapon. He had a razor which you
13 say has been used to use drugs. It's not necessarily a
14 weapon. It's a razor is what it is, right?

15 A. It could be a weapon.

16 Q. Well, people's fists are weapons sometimes, aren't
17 they?

18 A. You're right.

19 Q. So, when she stepped out of the car, who was
20 watching her when she stepped out of the car?

21 A. I'm not sure if Investigator Ramunni was on scene at
22 the time, but very quickly he was there very shortly after the
23 stop was conducted.

24 Q. So who is this person that you're talking about that
25 got there, Ramunni?

1 A. He's an investigator on the gang unit with me.

2 Q. So he's another officer that works with you,
3 right?

4 A. Correct. Mm-hmm.

5 Q. And how long was it that you were out there on the
6 road before you called for anybody to come out there?

7 A. I requested another unit rather quickly.

8 Q. How many minutes went by before you called for
9 anybody to come out there?

10 A. I don't know.

11 Q. 20 minutes?

12 A. No, sir. I would say within five minutes.

13 Q. And then how long did it take them to get there?

14 A. I believe he was fairly close so he got there very,
15 very close or very, very quickly.

16 Q. So 15 minutes?

17 A. No, sir. It was less than that.

18 Q. So what did you do when y'all were standing around
19 waiting on the other investigator to get there? Did you talk
20 to Ms. Wagner while you were waiting on the investigator, the
21 other investigator to get there?

22 A. I'm not sure.

23 Q. Well, didn't you testify at some point in time that
24 once she got out, that you gave her her Miranda Warnings
25 first?

1 A. Yes. I did.

2 Q. So you gave her her Miranda Warnings first, then you
3 gave Max Wagner his Miranda Warnings after that, correct?

4 A. That's correct.

5 Q. Why did you give her Miranda Warnings?

6 A. Because at the time I didn't know what I was dealing
7 with. I didn't know who was in possession of the narcotics.
8 I didn't want to ask her any questions without her being
9 advised of her rights. There's a possibility she could have
10 had narcotics on her as well, however, she didn't, but I
11 wanted to make sure that I was doing everything within the way
12 that it was supposed to be done.

13 Q. Whose name was the car in?

14 A. Both Mr. Wagner and Mrs. Wagner.

15 Q. Do you happen to know through your research whether
16 or not the car was only in her name for a period of time, then
17 it became in joint names?

18 A. I do not.

19 Q. Do you know if this is the car that she normally
20 drove?

21 A. I do not.

22 Q. So after you gave her her Miranda Warnings, what did
23 y'all do with that little school kid who was in the car? What
24 did you do with the school kid who was in the car?

25 A. He exited the vehicle. We stood by with him as

1 well. He stood by with Ms. Wagner.

2 Q. So he came out. Do you remember, is this a four
3 door vehicle or two door vehicle?

4 A. I don't recall.

5 Q. Well, did you assist him coming out of the car or
6 was he big enough to take care of himself and just got out?

7 A. He was big enough to exit the vehicle on his own.

8 Q. So he was over there standing with his mama and you
9 were giving her her Miranda Warnings, right? So he was there
10 at the same time, right?

11 A. Yes. I believe so.

12 Q. Okay. You keep saying I believe so. Would anybody
13 else have a better answer to that? Was somebody else there
14 with them that would have a better answer?

15 A. You're asking me specific details. I'm just, as far
16 as I was dealing with a large amount of narcotics in the
17 vehicle at the time, so some of the smaller details of, you
18 know, the child, who was not the subject of the person with
19 the weapon, I'm not sure how he exited the vehicle.

20 Q. Well, are you ever trained when you have more than
21 one person to get out of a car to immediately have other
22 persons there to detain them, use the magic word detain, until
23 you can concentrate on which person you want to talk to?
24 Isn't that a standard thing you do?

25 A. No. I prefer not to detain people until they need

1 detaining.

2 Q. Well, was she detained?

3 A. I mean, she was not free to go, however, she was not
4 in handcuffs.

5 Q. Okay. But she was certainly not free to go so she
6 was detained, wasn't she? You were giving her Miranda
7 Warnings, weren't you?

8 A. Yes.

9 Q. Would you say that she is detained if you're giving
10 somebody Miranda Warnings?

11 A. That's correct, but I think what you were
12 referencing is placing somebody in handcuffs.

13 Q. I wasn't referencing anything but detained.

14 A. Okay. So both subjects in the vehicle were
15 detained, however, neither were in handcuffs.

16 Q. All right. So then this other officer comes.
17 What's his name again?

18 A. Investigator Ramunni.

19 Q. How do you spell that?

20 A. If you give me a second, I'll be able to spell his
21 name. It has a unique spelling. He is not listed in the
22 report, however, he is on the CAD notes so if I was able to
23 reference the CAD notes, I would be able to tell you the
24 spelling of his name.

25 Q. You pronounce his name a certain way?

1 A. Ramunni.

2 Q. Ram --

3 A. Ramunni.

4 Q. Ramunni. So he's not in your investigative notes?

5 A. I didn't reference him in the report, not
6 specifically by name.

7 Q. Now, the purpose of these reports that you have are
8 to maintain factual recitations of things because obviously
9 this thing happened in 2020.

10 A. Yes, sir.

11 Q. And we're trying the case two years later. The
12 reason you put stuffs down in these official, these are
13 official reports, aren't they?

14 A. Correct.

15 Q. They have to be signed off on by whoever your
16 supervisor is and you maintain it with the case that you're
17 working on, right?

18 A. That's correct.

19 Q. You actually give a number to the case that you're
20 working on?

21 A. Correct.

22 Q. You actually give evidence that you seize numbers to
23 say that they go with the particular case that you're working
24 on?

25 A. Correct.

1 Q. You actually put down on items that you put in
2 evidence different numbers depending on what type of evidence
3 you're putting into evidence so that you can see that there's
4 a difference in whatever those things are, but that it still
5 goes to the case. I mean, there are different numbers that
6 are assigned to it so that you can keep up with stuff,
7 right?

8 A. What do you mean, like an item number?

9 Q. Well, let's see. Like State's Exhibit number 18. I
10 think that's in evidence. Didn't you identify this particular
11 item?

12 A. Yes.

13 Q. All right. And it's got a case number on it,
14 right?

15 A. That's correct.

16 Q. Okay. That's 20-0002766, right?

17 A. I'm sorry. Can you read that again?

18 Q. (Proffering.)

19 A. That is the correct case number. Yes.

20 Q. And it's also got a control number on it with a C,
21 right?

22 A. That's correct.

23 Q. What is that?

24 MR. PINCELLI: Your Honor, if we could approach
25 briefly.

1 (Side bar off the record.)

2 BY MR. WILLIAMS:

3 Q. But is there a number on these items that references
4 what is in the bag, isn't there?

5 A. That's correct.

6 Q. It's on the bag that I'm holding in my hands which I
7 think you have already said what was in the bag, didn't you?

8 A. Yes.

9 Q. What did you say was in the bag?

10 A. Cocaine and methamphetamine.

11 Q. So, since you've already said what's in the bag,
12 what's the number that's on the bag?

13 A. Do you mean the control number?

14 Q. Yes. Right here.

15 A. Okay. It is 005667.

16 Q. Okay. So I guess the point of all this is that
17 there is a need to record information that you can maintain
18 two years later after something happens, right?

19 A. Correct.

20 Q. And the other way in which you can preserve evidence
21 would be to have tape recordings for statements that are made
22 by individuals as they get out of a car or make statements to
23 you, right?

24 A. That is a way.

25 Q. And another way would be to have statements in which

1 the person you are asking questions would answer questions and
2 in their own handwriting st give you what they did, what they
3 didn't do, those are written statements, right?

4 A. That's a way. Yes.

5 Q. And y'all use them, don't you?

6 A. At times, yes.

7 Q. Now, was there any recording, oral recording or
8 written recording from my client in which my client admits to
9 doing anything on this day?

10 A. Well, yes. I documented what he said.

11 Q. Oh, it's the documenting that you use in your
12 investigative report which is the way you preserve that,
13 right?

14 A. That is a way, yes. That's the way it was done in
15 this case.

16 Q. So just like, it's like reporting officer's
17 narrative, those are things which are typed up, I don't want
18 to hold it away from you so you can't see what I'm talking
19 about (indicating.) Those are things that you record to keep
20 up with stuff, right?

21 A. Yes.

22 Q. And you even recorded the number of what you said
23 was cocaine and meth and you gave the BEST Kit number that it
24 was in, right? What's the BEST Kit number?

25 A. Right there, it says, hold on, it's has 00 --

JOHN GIETZ - CROSS BY MR. WILLIAMS

227

1 MR. PINCELLI: Judge, if we can approach.

2 MR. WILLIAMS: I would like for him to be able to
3 answer that question.

4 MR. PINCELLI: And I think we need to address it
5 before he does, Your honor.

6 THE COURT: Okay. Come on up.

7 (Side bar off the record.)

8 BY MR. WILLIAMS:

9 Q. So my last question to you was I think we just
10 referenced that over here -- Is yours like mine?

11 A. Yes.

12 Q. Because these should be the same, right?

13 A. They are.

14 Q. So when you referenced the methamphetamine and
15 cocaine were sealed in separate bags and submitted in the BEST
16 Kit, what number do you give that?

17 A. So it appears that I transposed the numbers and
18 there were two BEST Kits. The one that I referenced as having
19 the methamphetamine and cocaine I put 005666.

20 Q. And in that regards there is certainly no doubt that
21 this is not that same number, is it?

22 A. On that bag no, however, there were two BEST Kits.
23 The other one has the other number.

24 Q. So and, of course, with numbers, I don't want to go
25 to the obviously, but obviously 666 is a number that most

1 people would recall, but that's the number you assigned to
2 this one, right?

3 A. Yes. That's the number.

4 Q. And that's wrong?

5 A. It is. I transposed the numbers.

6 Q. Transposed it?

7 A. I mixed them up.

8 Q. Gave it a wrong number?

9 A. I used the BEST Kit that was prior that was used on
10 a different substance.

11 Q. All right. So let me ask you this: After you got
12 through, when you first gave your Miranda Warnings to my
13 client, was this other officer who you have referenced,
14 Ramunni, was he present when you gave the Miranda Warnings to
15 my client?

16 A. I'm not sure.

17 Q. So there is no other way to show that you gave all
18 the Miranda Warnings, the correct Miranda Warnings and when
19 you gave the Miranda Warnings with the exception of what you
20 would say, right? That's it, right? There's no recording?

21 A. You asked me like three different questions there.
22 Which one is it?

23 Q. It's all one. There's no other evidence that you
24 gave the Miranda Warnings except for the fact that you're
25 simply saying it today?

1 A. There are no recordings of the incident, yes.

2 Q. There are no videos of the incident?

3 A. Correct.

4 Q. There's no other witness that you're gonna present
5 today who will say that he heard you give the Miranda
6 Warnings?

7 A. To my knowledge, no.

8 Q. So all of this was conducted out on the road by
9 yourself and after everything was done, you had another
10 officer who showed up; is that right?

11 A. Seems accurate.

12 Q. Okay. I just want to make sure. So, all these
13 pictures that we've seen that have come in, did you take these
14 pictures?

15 A. Yes. I did.

16 Q. So where was Max Wagner when these pictures were
17 being taken?

18 A. He was standing next to the vehicle.

19 Q. Well, who was watching Max Wagner while you were
20 taking these pictures?

21 A. Investigator Ramunni would have been watching both
22 subjects.

23 Q. So he was there by this time, right?

24 A. Yes. It's frowned upon in policy to conduct a
25 search without another officer there.

1 Q. And that's for safety of the officer and it's also a
2 witness in regards to what transpires, right?

3 A. Numerous reasons, but yes, those are some of the
4 reasons.

5 Q. All right. So, and I think it's been referenced
6 obviously that pictures were taken of items and that pictures
7 were taken of items that were opened up. The person who
8 opened up those items would have been you, right?

9 A. That's correct.

10 Q. Because there were only two officers there and he
11 was watching everything else that was going on, right?

12 A. I believe so. I would have to look at the CAD notes
13 on who all was there. I know it was me and Investigator
14 Ramunni.

15 Q. If you had a video, then we probably wouldn't have
16 to do all that like that, would we?

17 A. I'm sure we still would have.

18 Q. So, was there any type of fingerprints taken of any
19 of these items?

20 A. No.

21 Q. We've already opened up, I believe, yep, we did
22 obviously, nobody's book, we've opened nobody's book, right?
23 That's what it says, right, nobody's book?

24 A. We've opened the ledger, yes, sir.

25 Q. It doesn't say drug ledger on here, does it?

1 A. It does not.

2 Q. It says nobody's?

3 A. That's what it looks like it says on the front,
4 yes.

5 Q. So calling it something doesn't make it something
6 necessarily?

7 A. Yes.

8 Q. So, when you opened this book and it says Malasia,
9 \$120.00 for work --

10 A. Okay.

11 Q. -- I'm trying to piece my mind into why you say that
12 this is some sort of account ledger for drugs?

13 A. It does seem odd that he would need to reference
14 \$20.00 for work if it was all for work.

15 Q. Okay. So, you're saying you don't think it's for
16 work?

17 A. No. I believe it's a drug ledger. Based on my
18 training and experience it appears to be a drug ledger.

19 Q. Okay. When you first asked Maxie if there were any
20 drugs in the car, he said no, right?

21 A. That was his initial comment, yes.

22 Q. And after you asked his wife questions, only then
23 did he ever say anything to indicate that those drugs were
24 his, right?

25 A. No. I told him I was gonna do a probable cause

1 search of the vehicle.

2 Q. So, no, that wasn't the sequence of the events that
3 you didn't ask her -- You asked her first, right?

4 A. It's an inaccurate portrayal of the events. You're
5 taking a step out. So, yes, I did speak to Ms. Wagner first
6 after reading her Miranda Advisement, then after that I
7 conducted a field interview of him post Miranda, and then I
8 conducted a probable cause search of the vehicle.

9 Q. I got you. That was almost, it kind of remind me,
10 it's almost like watching CNN and somebody is asking a
11 question and five seconds later and then invariably you'll
12 talk into the person answering the question. Just an
13 observation, kind of like, but if we had a recording though,
14 it would be easier to determine, wouldn't it? So, did you do
15 any type of chemical analysis on the backpack or the items
16 that you've referenced with the exception of those items
17 which you sent to the lab in plastic bags to be tested?

18 A. No additional testing was done on the vehicle or
19 anything out of the vehicle other than what was submitted for
20 testing.

21 Q. Because you referenced in one of the comments about
22 the gear shift, that there appeared to be some little white
23 crumbs or something left there. You said that appears to be
24 methamphetamine? Was it methamphetamine or coke?

25 A. Based on my training and experience it appears to be

JOHN GIETZ - CROSS BY MR. WILLIAMS

233

1 shards of methamphetamine around the gear shift of the
2 vehicle.

3 Q. Did you scoop that up and take it to the chemist for
4 them to check it to see if you were right or if it was just
5 salt that he had been eating French fries?

6 A. I did not take it and submit it for testing.

7 Q. So, you said that you told Maxie that you were gonna
8 search the car, right? Did you have another question that you
9 asked right after that?

10 A. Yes. I asked him if there was anything in the
11 vehicle.

12 Q. Well, didn't you ask him, now would be the time to
13 tell me if there's anything in the vehicle?

14 A. I'm not sure. I didn't quote myself on the words,
15 but I believe I would have said something along the lines --

16 Q. Well, you want to see what you put in your report?

17 A. No. I have it right here.

18 Q. So you did say that?

19 A. Something along those lines, yes.

20 Q. Was there an indication that you were gonna charge
21 his wife?

22 A. No.

23 Q. Did you get a copy of a registration card from Maxie
24 Wagner as well as his driver's license and his insurance card?
25 Did you get that from him on the street that day?

1 A. I'm not sure.

2 Q. Was there a sticker on the back of the license plate
3 that was not out of date expiration, it was fine? The
4 sticker, the tag, there was nothing about the tag itself, the
5 license tag to indicate there was anything wrong with it, was
6 there?

7 A. That's not why the vehicle tag was suspended.

8 MR. WILLIAMS: That's all the questions I have, Your
9 Honor.

10 THE COURT: All right. Counsel, just approach real
11 quick.

12 (Side bar off the record.)

13 THE COURT: Ladies and gentlemen, we'll take a short
14 break and get you back in a few minutes. Go back to the
15 jury room, refresh yourselves. I'll get you right back
16 out here in a few minutes. Thank you.

17 (Whereupon, the jury entered the jury room at 12:00
18 noon.)

19 MR. WILLIAMS: There are other items, but I feel
20 like I should reference, I don't know how you fix this,
21 but when he was referencing Ramunni or whatever his name
22 was, he said he is on the gang task force which I don't
23 know if that's improper in terms of --

24 THE COURT: Let's see.

25 MR. WILLIAMS: Because, I mean, we weren't gonna

1 mention gang task force is what I understood.

2 MR. PINCELLI: We made no reference in regards to
3 this case, the facts of this case.

4 THE COURT: I understand him bringing it up, so it
5 struck me more of identification of who somebody was, of
6 course, but not what their role was in this particular
7 case.

8 MR. WILLIAMS: Okay.

9 THE COURT: To the extent there's an objection to
10 that, I'll overrule it going forward.

11 MR. WILLIAMS: Thank you, your Honor.

12 THE COURT: For redirect purposes, there was a great
13 deal of attention given to it I'll call it a scrivener's
14 error and some of the documents in the chain that were
15 addressed by this witness as being transposed or mixed
16 up. The only thing counsel for the State brought up to
17 me in the bench conference is the other BEST Kit in which
18 the number was a scrivener's error applied to was the
19 marijuana BEST Kit. I want to make sure on redirect that
20 we don't get into specific marijuana testimony
21 which would run afoul of any previous pretrial ruling.
22 So, I don't want to put words in anybody's mouth. If
23 y'all can agree on the questioning, I'm fine with it, but
24 obviously to the extent that the State wants to at least
25 address that number issue, it involves, I thought it

1 involves a matter not before this Court or something like
2 that. So, if y'all have an idea on what the appropriate
3 words would be based on your knowledge and experience,
4 Mr. Williams.

5 MR. WILLIAMS: Well, Your Honor, I was very careful
6 about what I asked him about that number. I didn't bring
7 up anything about marijuana or anything.

8 THE COURT: Nobody is saying you did anything wrong,
9 but certainly there's something that the State can
10 justify if they want to clarify any confusion over and we
11 want to do it in a way that doesn't violate any pretrial
12 rulings.

13 MR. WILLIAMS: I think two things. I think number
14 1, I think that since you've already ruled about the
15 marijuana situation, that they cannot attach the number
16 to the marijuana, and the second thing is that it was an
17 error, period. The number that was assigned in his sheet
18 was in error to whatever they tested because it wasn't, I
19 mena, it was a number that was assigned -- He gave the
20 number to the cocaine and the methamphetamine. If they
21 didn't test that number for cocaine and meth, you know,
22 it's just something he did wrong. I think it's one of
23 those things you argue about, but you can't talk about
24 the marijuana. It's the wrong number.

25 MR. PINCELLI: The State's argument, Your Honor, it

1 was not an erroneous number. It was not made up from
2 whole cloth. This is clearly, they're consecutive
3 numbers. One was for marijuana, one was for meth and
4 cocaine, they were just switched in the report. I would
5 like to be able to ask how many BEST Kits there were in
6 this situation, which BEST Kit contained cocaine. I'll
7 show him what the State marked for ID, get him to say the
8 last digit of that and say on your report did you switch,
9 was that switched with the other BEST Kit containing a
10 different substance.

11 MR. WILLIAMS: I think, I think on that basis we
12 would be moving for a mistrial because we are bringing in
13 a substance which he's not being tried on which is the
14 initial problem with this whole case.

15 THE COURT: Well --

16 MR. WILLIAMS: If it's wrong from the beginning,
17 Your Honor --

18 THE COURT: I don't want to --

19 MR. WILLIAMS: -- it's obviously getting worse.

20 THE COURT: I don't want to hinder you and I'm not
21 going back into that from Monday, but I think the State
22 needs a little bit of leeway to just, as I would phrase
23 it, that number is for a kit that was in error, not in
24 error, but for another BEST Kit that is not involved in
25 this case or --

1 MR. PINCELLI: It is involved in this case.

2 THE COURT: Again, I'm trying to figure out the
3 proper words here.

4 MR. PINCELLI: The BEST Kit assigned to this case.

5 MR. WILLIAMS: Your Honor, she just pointed out that
6 he's already remedied it. He said that there were two
7 BEST Kits, and he left it at that.

8 MR. PINCELLI: Your Honor, I would like to follow up
9 on it, Your Honor. I'm willing to take any suggestion
10 from the Court as far as language.

11 THE COURT: I'm basing this little meeting on our
12 bench conference when we talked about where you pointed
13 out the scrivener's error before we got into the
14 testimony.

15 MR. WILLIAMS: Well, I don't know that it is a
16 scrivener's error. This is the Solicitor's and everybody
17 else's assignment as to what caused this. This is not
18 the witness' testimony about what happened until after he
19 heard the bench conference.

20 THE COURT: What about this number in the report
21 says, what is the accurate number? Did he correct that
22 already?

23 MR. PINCELLI: He did, Your Honor, but I think it's
24 important for my argument to say that it is not just
25 wrong, it is incorrect as far as what it's related to,

1 but it wasn't a huge error. I mean, it was one number
2 off. The number from this is something related to this
3 report.

4 THE COURT: I think we've talked about marijuana and
5 it's obvious we're not seeking - there's no indictment
6 that was presented to the jury on marijuana and it seems
7 to me that the remedy is just to say that that number
8 error involved a kit that's not subject to this trial.

9 MR. PINCELLI: And I'll be happy to use that
10 language, a kit that is not subject to this trial.

11 THE COURT: Is not obviously involved with this case
12 obviously is not accurate, but subject to this trial.
13 Now, Mr. Williams, I don't necessarily think that you
14 agree with that but...

15 MR. WILLIAMS: I'm just - it's like a ball of
16 thread, Judge. It just keeps unrolling here, just keeps
17 unrolling, just unrolling.

18 THE COURT: All right. I think the appropriate way
19 to deal with it, the additional number or number error in
20 the numerics received, potential perceived error involved
21 a kit that is not subject to this trial.

22 MR. WILLIAMS: You know, in all this no one has
23 actually asked the witness how it happened. We got the
24 Solicitor saying how it happened.

25 MR. PINCELLI: I think you just had him on cross,

1 didn't you?

2 THE COURT: Yeah. I mean, I thought that's why
3 we're here because we're talking about --

4 MR. PINCELLI: I think we did actually have
5 testimony of how it happened so I'm prepared for redirect
6 at this time, Your Honor.

7 THE COURT: Okay. Let's just to be clear, it's
8 subject to a, I think the question, the appropriate
9 question is, is that subject to a kit that's not subject
10 to this trial and we'll leave it at that. When you ask
11 the question, Mr. Williams, stand up and we'll have the
12 response subject to objection. All right. Anyone else
13 need to use the restroom real quick?

14 MR. WILLIAMS: Sure.

15 THE COURT: All right. Take five minutes, then
16 let's make sure our next witness is available. I hope
17 redirect won't be too long.

18 MR. PINCELLI: She's available. I don't expect to.
19 Your Honor, just for purposes of scheduling, following
20 our next witness who as I said is a chain witness should
21 not be too long. Do you plan on taking a break?

22 THE COURT: Yes.

23 MR. PINCELLI: Approximately how long?

24 THE COURT: We started at 9:15 so they're due for
25 lunch.

JOHN GIETZ - REDIRECT BY MR. PINCELLI

242

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, welcome back. We'll continue
3 where we left off. Redirect.

4 MR. PINCELLI: Thank you, Your Honor. Please the
5 Court.

6 REDIRECT EXAMINATION

7 BY MR. PINCELLI:

8 Q. Investigator Gietz, you've been up on the stand a
9 long time this morning and now afternoon; isn't that
10 correct?

11 A. Yes, sir.

12 Q. Is it fair to say it's not super comfortable up
13 there getting a lot of questions asked?

14 A. It's a little chilly.

15 Q. I'd like to ask you to reference the first paragraph
16 of your report and see if you see the name Investigator
17 Ramunni?

18 A. Yes. I see it now.

19 Q. Can you spell that for the Court please?

20 A. It's R-a-m-u-n-n-i.

21 Q. So you did put in your report that Investigator
22 Ramunni was present?

23 A. I did.

24 Q. Let's go back and talk about the stop based on a
25 suspended tag; is that correct?

1 A. That's correct.

2 Q. Did it have anything to do with the sticker on the
3 license plate?

4 A. No. It did not.

5 Q. Did you confirm once on scene that that tag was
6 suspended?

7 A. I did.

8 Q. What was done as a result of confirming that
9 information?

10 A. The tag was seized and submitted to the South
11 Carolina Department of Motor Vehicles by Investigator Holt.

12 Q. Was the car towed?

13 A. Initially it was gonna be towed, but her request of
14 Ms. Wagner I let her take the vehicle. I believe she said she
15 wanted a tow truck of her own choosing, but let me confirm
16 that.

17 Q. Either way, that tag was taken; is that correct?

18 A. Correct.

19 Q. Because it was suspended?

20 A. Correct.

21 Q. Let's talk about, we referenced, Mr. Williams
22 referenced it many times. Was there any recording?

23 A. There was not.

24 Q. Was there any video?

25 A. There was not.

1 Q. Were you or your unit equipped with recording or
2 video at that time?

3 A. No. Per policy at the time we were required or
4 issued body worn camera or any other recording devices due to
5 the nature of our investigations.

6 Q. At this time today as we're standing here today,
7 does some of your unit now have a recording devices?

8 A. Yes. I carry a body worn camera.

9 Q. But in February os 2020 you were not equipped with
10 either?

11 A. I was not.

12 Q. We talked about a child being in the car. You said
13 that child was obviously not driving and you said Ms. Wagner,
14 am I correct, Ms. Wagner was in the front passenger seat?

15 A. That's correct.

16 Q. So the child was where?

17 A. In the back seat.

18 Q. Where did you find the drugs in the vehicle?

19 A. In the back seat.

20 Q. There was some issue made about the number on the
21 BEST Kit. How many total BEST Kits were there from this
22 stop?

23 A. So for this stop there was two total BEST Kits.

24 Q. Is it correct that one of those BEST Kits is not
25 subject to this trial?

1 A. That is correct.

2 Q. Did those BEST Kits have consecutive numbers?

3 A. They did.

4 Q. Meaning that one ended in a 6 and the next ended in
5 a 7?

6 A. Correct. Sequentially.

7 Q. Given that information, how can you describe your
8 report --

9 A. So --

10 Q. -- the assigned number not matching up to the BEST
11 Kit?

12 A. I mixed up the numbers. I mixed up the 6 and the 7
13 between the two BEST Kits so I assigned the BEST Kit not
14 subject to this case to the substance, the cocaine and
15 methamphetamine, however, the BEST Kit that was used was
16 assigned to, I want to make sure I'm saying this right, the
17 BEST Kit not subject to this case was referenced in the report
18 as that BEST Kit, however, that BEST Kit obviously contains
19 cocaine and methamphetamine.

20 Q. Just to clear this up just a little bit more,
21 State's 18, you testified this white substance inside, these
22 are narcotics, I believe you said cocaine; is that correct?

23 A. Correct.

24 Q. And there was also methamphetamine?

25 A. Correct.

1 Q. And I think it was also stated on the record this
2 BEST Kit ends in a 7?

3 A. Correct.

4 Q. And it was also stated this was sealed, correct?

5 A. Correct.

6 Q. So there's no confusion what number or what is in
7 this; is that correct?

8 A. That's correct. It was taken from the traffic stop
9 directly into evidence and secured in the Lexington County
10 evidence center.

11 Q. Did you write Mr. Wagner a ticket for a suspended
12 plate?

13 A. I did not.

14 Q. Did you arrest him for trafficking cocaine and
15 possession with intent to distribute methamphetamine?

16 A. I did.

17 MR. PINCELLI: Your Honor, that's all the questions
18 from the State on redirect. I would like to keep him on
19 subpoena for recall.

20 THE COURT: All right. Recross.

21 RECROSS EXAMINATION

22 BY MR. WILLIAMS:

23 Q. You said you mixed up the numbers, right?

24 A. I did. In the report I did.

25 Q. Well, who assigns the numbers that are being used in

1 your report?

2 A. I'm not sure what you're asking.

3 Q. I'm asking where that number came from in terms of
4 did you assign the number? Was there a list of numbers? Did
5 you just write the wrong number?

6 A. So I took the two BEST Kits and I mixed them up when
7 I wrote the number in my report.

8 Q. Was that before or after you turned the stuff in?
9 When did you do this report?

10 A. After I submitted it into evidence.

11 Q. How many days after you, after the stop did you do
12 this report?

13 A. I mean, it's signed right off. So after I submit
14 the evidence, I begin working on my report.

15 Q. So when did you do the report?

16 A. The 10th.

17 Q. So that's the same day?

18 A. Right.

19 Q. The stop happened at the same day at 5:00. The stop
20 was 5:00 that day?

21 A. Correct.

22 Q. So you turned it in the same day and you did the
23 report and you got the numbers wrong later on that day,
24 right?

25 A. Well, I mixed the two numbers up, yes.

1 Q. You keep saying mixed up. It's the wrong number,
2 isn't it? The number you put in the report is the wrong
3 number, right?

4 A. That number is referenced in the report.

5 Q. The number which you assigned to what you have
6 testified to today is the wrong number; is that correct? It's
7 not complicated.

8 A. You're right, it's not complicated. There was two
9 BEST Kits. That BEST Kit is referenced in the report,
10 however, I mixed it up and I used, I flipped the BEST Kit
11 numbers around.

12 Q. You used the wrong number?

13 A. Sure.

14 Q. Okay. So you were talking about, he was asking you
15 I think about that you are not assigned videos or anything
16 like that, recording devices, or you are now, right?

17 A. Yes.

18 Q. You know what these are, right?

19 A. Right.

20 Q. Cell phones, right?

21 A. Mm-hmm.

22 Q. You got a cell phone, don't you?

23 A. I have two.

24 Q. Two?

25 A. Mm-hmm.

1 Q. So you can record things, video and audio on your
2 cell phone, can't you?

3 A. I could, however, tactically that would be very,
4 very unsafe to have one hand filled with a cell phone the
5 entire time.

6 Q. Well, what if you had another officer there, he
7 could do that, couldn't he?

8 A. Well, I think that would be unsafe for him as
9 well.

10 Q. So is it best just not to have copies of what
11 happens on a law enforcement police stop? Is that just a
12 better idea for everybody?

13 MR. PINCELLI: Your Honor, asked and answered.
14 We're going back into recordings.

15 MR. WILLIAMS: I don't have any other questions,
16 Your Honor.

17 THE COURT: All right. The witness may step down.
18 Next witness.

19 MR. COX: Your Honor, the State calls Erin Antley.

20 THE COURT: Very well. Ladies and gentlemen, just
21 to let you know, we will be taking a break for lunch
22 after this witness.

23 Thereupon,

24 ERIN ANTLEY

25 after having been first duly sworn, testified as follows,

ERIN ANTLEY - DIRECT BY MR. COX

250

1 THE CLERK: Please have a seat. Once you're seated,
2 state your full name spelling your last please.

3 THE WITNESS: Erin Antley, A-n-t-l-e-y.

4 DIRECT EXAMINATION

5 BY MR. COX:

6 Q. Good morning, Ms. Antley. Well, I guess good
7 afternoon at this point. Tell the jury what it is you do.

8 A. I'm an evidence custodian with the Lexington County
9 Sheriff's Department.

10 Q. Would you tell us what exactly is an evidence
11 custodian for the Sheriff's Department?

12 A. Sure. We are responsible for labeling, processing,
13 storing evidence that any of our deputies or investigators
14 turn into the evidence room until they are needed for testing,
15 for court purposes or we can dispose or release them back to
16 the property owner.

17 Q. Would this include items submitted for drug testing
18 or phones submitted for extractions?

19 A. Yes, sir.

20 Q. Okay. Let's start with evidence submitted for drug
21 testing. How does this process work? How does an officer
22 submit drugs for testing?

23 A. They typically will put it in a storage locker if we
24 are not available or a wooden box that is secure. Once we
25 come into the evidence room the next morning, we are able to

1 access those drugs or whatever needs to be tested or submitted
2 into evidence, we label them, process them, keep them for
3 storage until they're needed for testing. The items that are
4 needed for testing usually our chemist will send an email
5 advising that they need this particular drug to test, then we
6 give that to her for testing.

7 Q. The locked box that you, the locker you kind of
8 referenced, when you said it's secure, what do you mean it's
9 secured? How does it work?

10 A. So our deputies have access to the front side of the
11 locker. Once they put the item in this locker and lock the
12 lock box or locker, there are only four of us that are able to
13 access the locker from the other side so once these items are
14 in the locker, nobody else has access to them unless it's the
15 evidence custodian or evidence staff.

16 Q. There are only four of you. Who are the other
17 three?

18 A. We have our supervisor, Sergeant Sadi Black,
19 Margaret or Beth Holliman and Candi Kizer and then myself.

20 Q. Now, when one of the four of you take possession of
21 these items, do they just remain in the locked box after you
22 label them or do you take them to a different area? What do
23 you do with this?

24 A. Once we take these items out of the lockers or the
25 locked box, we make sure that the item description matches

1 what the deputy placed on his voucher. Once we accept the
2 item, they then go to a storage facility or a storage place
3 that the evidence custodians are the only ones that have
4 access to it and they remain there until further testing or
5 for court purposes.

6 Q. How are you and your team able to keep up with these
7 pieces of evidence during this time?

8 A. We have a records management system, a computer
9 based system.

10 Q. Are there, how are these things labeled? Are they
11 given numbers?

12 A. They're given personal record numbers which we call
13 PR numbers. They have the case number and they also have a
14 bar code attached to them so the bar code, PR number and item
15 description are placed on the items.

16 Q. Prior to testing any of these items, do you or any
17 other evidence custodian open the packaging, go into it,
18 anything like that?

19 A. No, sir.

20 Q. Whenever you do hand them over for testing, do you
21 open them at that point or manipulate what you have in any
22 way?

23 A. No, sir. The seal stays intact.

24 Q. How long have you been in this position?

25 A. Four and a half years.

1 Q. Okay. Ms. Antley, as part of this case did Agent
2 Gietz submit items for testing?

3 A. He did.

4 Q. And where were they placed when he submitted them?

5 A. Some of the items tested were placed in a drug lab
6 temp box which is located in one of the storage facilities
7 within the main office of our evidence room and they remained
8 in this temp box until our chemist was ready to test them.

9 Q. And, Ms. Antley, how do you know they remained in
10 that temp box until they were tested?

11 A. The records management system has them placed in the
12 box and they don't move until the chain of custody or unless
13 we sign them out to the chemist.

14 Q. And from your records after Agent Gietz submitted
15 these items for testing, who was the evidence custodian that
16 moved them to the other area?

17 A. I assigned them in so I was the one who placed them
18 in the temp box prior to testing.

19 MR. COX: Your Honor, may I approach the witness?

20 THE COURT: Yes, sir.

21 BY MR. COX:

22 Q. Ms. Antley, I'm gonna show you a few things. I'm
23 showing you what has been previously marked as State's Exhibit
24 18 and State's Exhibit 19. Do you recognize these items?

25 A. I do. Yes, sir.

ERIN ANTLEY - DIRECT BY MR. COX

254

1 Q. What do these appear to be?

2 A. Uhm, State's Exhibit 18 is a BEST Kit and 19 is a
3 iPhone 11 that appears to be in a red case.

4 Q. What is the BEST Kit number associated with exhibit
5 number 18?

6 A. BEST Kit control number is C005667.

7 Q. Did these two items appear to be some of the
8 evidence that Agent Gietz submitted in this case?

9 A. Yes, sir.

10 Q. Okay. And are these two items pieces of evidence
11 that you yourself accepted from Investigator Gietz and moved
12 into holding before testing?

13 A. Yes, sir.

14 Q. Okay. Specifically with exhibit number 19, you said
15 it looks like a phone. Ms. Antley, what happened, what was
16 the next step for this phone after it was moved to the holding
17 area?

18 A. Well, it was placed in our cell phone file after I
19 accepted it or got it out of the locker. I believe looking at
20 the chain of custody I assigned it out on February 12th of
21 2020 to Investigator Ward and then Investigator Ward returned
22 it on February 13th to Margaret or Beth Holliman so it was
23 returned back to us.

24 Q. And after the evidence has been tested, you say it's
25 returned to you. Where does it go at that point?

1 A. This particular item went back to the cell phone
2 file.

3 Q. For this particular item between it being submitted
4 and getting to Investigator Ward, did anyone else handle this
5 piece of evidence?

6 A. No, sir.

7 Q. Was it ever opened or manipulated by anyone in your
8 department?

9 A. No, sir.

10 Q. According to your records, Ms. Antley, for State's
11 Exhibit 18, the BEST Kit you identified, do your records,
12 after you moved it into the temp control area, who in your
13 department is the one who moved it to testing?

14 A. Uhm, Candi Kizer signed it out to Margaret Walker on
15 September 24th, 2020 for testing.

16 Q. Who is Margaret Walker?

17 A. She is our forensic chemist at the Sheriff's
18 Department.

19 Q. Ms. Antley, what date was the BEST Kit submitted to
20 Ms. Walker for testing?

21 A. Candi Kizer handed it over on September 24th, 2020
22 to Meg Walker, our chemist.

23 Q. When was it returned?

24 A. It was returned on October 12th, 2020, from Meg
25 Walker back to Candi Kizer.

ERIN ANTLEY - DIRECT BY MR. COX

256

1 MR. COX: Your Honor, that's all the questions we
2 have at this time.

3 THE COURT: All right. Cross examination.

4 MS. WILLIAMS: No questions from the defense.

5 THE COURT: The witness may step down.

6 MR. COX: Thank you, Your Honor. We just request
7 she be released from her subpoena.

8 THE COURT: Very well. Without objection. Okay.
9 Ladies and gentlemen, we'll take a lunch break now. I
10 would like you to be back in your room at 1:50 p.m. and
11 we'll start the afternoon testimony about at two p.m.
12 Appreciate everyone being on time this morning. The
13 lawyers put in a good bit of work already. Please don't
14 discuss the case while you're out at lunch, but I'll see
15 you all after lunch.

16 (Whereupon, the jury was released for lunch at 12:40
17 p.m.)

18 MR. PINCELLI: Judge, if we could just make these a
19 Court's Exhibit, the photos and ledger.

20 THE COURT: That will be fine. Court's Exhibit 1
21 and 2.

22 (Whereupon, Court's Exhibit #1 and #2 marked for
23 identification.)

24 MR. WILLIAMS: Judge, it's got the pictures of the
25 book in it, but then it's got some extra stuff.

1 MR. PINCELLI: The State calls Investigator Patrick
2 Ward.
3 Thereupon,

4 PATRICK WARD
5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat. Once you're seated,
7 state your full name spelling your last please.

8 THE WITNESS: Patrick Ward, W-a-r-d.

9 DIRECT EXAMINATION

10 BY MR. PINCELLI:

11 Q. Good afternoon, Investigator Ward. Is it
12 investigator?

13 A. Yes, sir.

14 Q. All right. Investigator Ward, where are you
15 employed?

16 A. The Lexington County Sheriff's Department.

17 Q. What do you do for the Lexington County Sheriff's
18 Department?

19 A. I'm a crime scene investigator.

20 Q. All right. Were you employed there in February of
21 2020?

22 A. I was.

23 Q. And what was your capacity at the Lexington County
24 Sheriff's Department at that time?

25 A. I was still a crime scene investigator.

1 Q. What kind of duties do you have as a crime scene
2 investigator?

3 A. I typically respond for calls involving death
4 investigations, property crimes, burglaries, we also extract
5 data from phones, digital forensics.

6 Q. Okay. In relation to this case, did you respond to
7 the scene?

8 A. I did not.

9 Q. Did you extract some data from a phone?

10 A. I did.

11 Q. Let's talk about your background a little bit in
12 relation to extraction from phones. What kind of education do
13 you have for your job?

14 A. I have an undergraduate degree in philosophy and a
15 then master degree in theology.

16 Q. How about specialized training as it goes to
17 forensics or digital technology?

18 A. I am a certified by Cellebrite certified physical
19 analyst and certified operator.

20 Q. Tell us a little bit about those certifications and
21 what they mean.

22 A. Cellebrite is a company that specializes in creating
23 products that you can conduct digital forensic extractions
24 from electronic devices such as phones, tablets, computers, so
25 those are the products that the Lexington County Sheriff's

1 Department uses.

2 Q. You got certified in those. What did it take to get
3 certified?

4 A. Essentially I got certified last year, last March
5 and I took basically two classes online. They do offer in
6 person classes but because of covid I was certified online by
7 taking essentially a class and then a test.

8 Q. How long have you been doing data extractions from
9 digital devices?

10 A. Approximately four years.

11 Q. And you have been certified, but before that time
12 were you still able to do those extractions?

13 A. Correct. I was still able to do them.

14 Q. Have you had any in office training on that or do
15 you work under anybody that teaches you how to do these
16 things?

17 A. Pretty much all the crime scene investigators
18 conduct phone extractions so it's a lot of hands on.

19 Q. And roughly how many data extractions do you think
20 you have done in your career?

21 A. Currently it's at least 75, but not over one
22 hundred.

23 MR. PINCELLI: Your Honor, at this time the State
24 moves to qualify Investigator Ward as an expert in
25 digital forensic technology.

1 MR. WILLIAMS: May we approach for one second, Your
2 Honor.

3 THE COURT: Sure.

4 (Side bar off the record.)

5 MR. PINCELLI: Your Honor, the State had just moved
6 to qualify Investigator Ward as an expert in forensic
7 digital technology.

8 MR. WILLIAMS: Without objection, Your Honor.

9 THE COURT: Ladies and gentlemen, ordinarily a
10 person who testifies cannot give opinion testimony, but
11 testify as to what they personally saw, hears, sensed by
12 smell, or something of that nature, however, there's an
13 exception when someone is qualified because of knowledge,
14 education or experience and are permitted to give their
15 opinion in certain areas if the Court qualifies them that
16 way. This witness will be qualified in the area of
17 digital forensic technology to give opinion testimony in
18 that area. That does not mean you must accept the
19 opinion, but it's evidence for you to in any way you see
20 fit.

21 MR. PINCELLI: Thank you, Your Honor.

22 BY MR. PINCELLI:

23 Q. Investigator Ward, we talked about phone extraction
24 and Cellebrite. What exactly is a phone extraction?

25 A. A phone extraction is a forensic examination of a

1 digital device in which we are able to pull data off of a
2 phone or a tablet or a computer and then compile that
3 information into a readable report or format that we present
4 in court.

5 Q. Did you have the opportunity to do that in this
6 case?

7 A. I did.

8 Q. What did you examine?

9 A. On February 12th I received two phones from
10 evidence, one being an iPhone 11 Pro Max. The other was
11 another Apple iPhone of unknown make or unknown model. So I
12 received those.

13 Q. Where did those phones come from?

14 A. They came from our evidence, turned over to me by
15 the evidence technician Erin Antley.

16 Q. How did you know that you needed to attempt an
17 extraction on those devices?

18 A. Investigator Gietz provided me with search warrants
19 for the phones.

20 Q. Upon the search warrants and you testified those
21 came from evidence?

22 A. Correct.

23 Q. I'm gonna approach you with what's State's ID number
24 19. Do you recognize this item?

25 A. I do.

PATRICK WARD - DIRECT BY MR. PINCELLI

263

1 Q. What is that?

2 A. Appears to be a Apple iPhone in a red Incipio
3 case.

4 Q. And how about the condition that it's stored in?

5 A. It's sealed with my initials on the evidence tape
6 here.

7 Q. What does that indicate that seal and your
8 initials?

9 A. That means I received it, opened it, removed the
10 phone from the packaging and then placed it back in and
11 resealed it.

12 MR. PINCELLI: Your Honor, at this time I would move
13 State's 19 from ID to evidence.

14 THE COURT: Mr. Williams?

15 MR. WILLIAMS: Without objection, Your Honor.

16 THE COURT: State's Exhibit 19 is admitted into
17 evidence without objection.

18 BY MR. PINCELLI:

19 Q. So, Investigator Ward, this is State's 19. This is
20 the iPhone 11 in a red case. Were you able to do an
21 extraction on this device?

22 A. I was.

23 Q. Now, you just testified there were two phones. Did
24 you attempt an extraction on the other phone?

25 A. I did attempt an extraction on the other phone,

1 however, when I received it, it had a dead battery. When I
2 charged it, tried to power it on, I found that it had been
3 factory reset, airplane mode had not been activated at the
4 time it was seized.

5 Q. So what does that mean as far as whether or not you
6 can do an extraction?

7 A. At that point we are not able to extract any
8 evidence or data off the phone because it's essentially as you
9 would receive it if it was purchased new, it's a factory
10 reset.

11 Q. So factory reset, just in case anybody doesn't know,
12 frankly for my edification too, what does that mean on a cell
13 phone?

14 A. It's essentially been wiped clean. It's like a new
15 phone. You can set it up as a different phone, sell the phone
16 to a different individual and they can put their information
17 on there.

18 Q. As an expert in digital forensics, are you aware,
19 can a device be remotely reset?

20 A. Yes.

21 Q. So if somebody wanted to wipe that phone clean
22 before you could do an extraction, would that be possible?

23 A. Yes.

24 Q. Going back to State's 19, the phone in the red case,
25 you were able to do an extraction; is that correct?

1 A. That's correct.

2 Q. What does that extraction look like digitally?
3 What's the size? What does it look like once you finish with
4 it?

5 A. Essentially it can vary from phone to phone. If
6 there's not a lot of data on the phone, it can be anywhere
7 from a couple gigabytes, but with some of the current phones
8 we have now, it's not uncommon for us to find phones that have
9 up to 500 gigabytes of data or even more. It just depends on
10 how much the individual uses the phone, how much information
11 they've stored on it, photos, videos, what have you.

12 Q. Is it fair to say you received a large data file
13 before it's organized into a report?

14 A. Yes. Typically.

15 Q. I'll approach you with a disk. Do you recognize
16 this disk?

17 A. I do.

18 Q. And how do you recognize that disk?

19 A. It has my initials and date on the bottom.

20 Q. So you have viewed this and understand the contents?

21 A. I have.

22 Q. And what is on this disk?

23 A. This is a forensic report that is compiled from the
24 data extracted from the phone.

25 Q. Okay. Can you explain to me the difference between

1 the extraction and the report?

2 A. Okay. The extraction itself is the raw data that
3 has been pulled from the device, however, in order to read
4 that and make it presentable we have to put that information
5 into another piece of software that will essentially organize
6 it for us and make it viewable.

7 Q. And this is the report, the full report from State's
8 19 that we talked about?

9 A. Correct.

10 MR. PINCELLI: Your Honor, at this time I would like
11 to mark this disk for ID purposes as exhibit 20.

12 THE COURT: State's Exhibit 20 marked for
13 identification.

14 MR. PINCELLI: Thank you.

15 (Whereupon, State's Exhibit #20 marked for
16 identification.)

17 MR. PINCELLI: Thank you.

18 BY MR. PINCELLI:

19 Q. Investigator Ward, you said that disk contains a
20 full report?

21 A. Correct.

22 Q. That would be everything you could potentially
23 recover from that phone; is that correct?

24 A. That's correct.

25 Q. But it's just organized. That's what makes it a

1 report versus just raw data; is that correct that I understood
2 you?

3 A. Correct.

4 Q. From that full report was a summary generated for
5 pertinent information for this trial?

6 A. Yes.

7 Q. Would that be much shorter than what is on that
8 disk?

9 A. Yes.

10 MR. PINCELLI: Okay. Your Honor, pursuant to Mr.
11 Williams's side bar objection, I think we have a matter
12 of law at this time before I introduce my next piece of
13 evidence.

14 THE COURT: Let's take a short break. Ladies and
15 gentlemen, please don't discuss the case. We'll get you
16 right back in here. Thank you.

17 (Whereupon, the jury entered the jury room at 2:19
18 p.m.)

19 THE COURT: Okay. Mr. Williams?

20 MR. WILLIAMS: Your Honor, my concern is the
21 confrontation clause and hearsay. Any time you have text
22 and information on a cell phone, it's not indicative of
23 the person who is being attributed to it but as to the
24 person who is sending the information too, so just as my
25 daughter has used my cell phone, my wife has used my cell

1 phone, various people have used my cell phone, it
2 certainly doesn't mean that I was the one sending or
3 receiving it. There are people named in some of these
4 text, such as Stormmy and other individuals who
5 apparently are carrying on some sort of conversation, but
6 neither of their full names nor their addresses or any
7 information is included that would allow me to cross
8 examine those individuals about did they send it, what
9 did they say, and who was it addressed to. So I think in
10 terms of defense of my client he would be under a huge
11 burden to prove, and actually they would just be guessing
12 it would be as to who was sending the stuff and who
13 wasn't sending the stuff. So, it's not so much that
14 messages are sent or the times are sent, but cell phones
15 are a haven of hearsay.

16 THE COURT: Okay. Well, are the statements, are you
17 talking about all of the statements or the statements not
18 initiated from your client's phone?

19 MR. WILLIAMS: It depends on which statements the
20 Solicitor attempts to introduce.

21 MR. PINCELLI: This is, Your Honor, this is the
22 summary that the State intends to introduce. We can walk
23 through the statements. It's two different pages. Some
24 of the statements are shown in different ways, but it's
25 two series of statements. This would be the first series

1 of statements. I intend to elicit testimony that the
2 messages here on the right were outgoing meaning they
3 came from the device that was extracted by Investigator
4 Ward, the device attributed to Mr. Wagner. This would be
5 a statement by the defendant.

6 THE COURT: Just, it says, any time is good, Bro?

7 MR. PINCELLI: That's correct.

8 THE COURT: Okay.

9 MR. PINCELLI: And then we go to the incoming
10 statement. The State would say this is not hearsay as
11 far as especially the question, we're not proving the
12 truth of the matter asserted for a question and it's the
13 reaction on the part of the listener which again is the
14 statement by the defendant. He's reacting to this non
15 hearsay question. And then I guess before you make a
16 ruling we have further argument. I'll show you the next
17 conversations again from the same device and if I can
18 direct your attention to this column that will show
19 outgoing. Outgoing would be again statements from the
20 device in question being sent out that would be
21 attributed --

22 THE COURT: Just the - from the phone seized?

23 MR. PINCELLI: Right, that we would attribute to the
24 defendant so I would say outgoing would be statements
25 from the defendant and all of the incoming messages

1 especially in this are questions so I would just assert
2 that those are not hearsay. I'm not using them to prove
3 the truth of the matter asserted. They're questions.

4 MR. WILLIAMS: I'm not sure what question mark has
5 to do with material that's included in regards to whether
6 or not it constitutes hearsay or not because that could
7 be a method of simply transferring information without -
8 a mere question mark doesn't mean anything. They could
9 have put an exclamation mark.

10 THE COURT: You're referring to incoming?

11 MR. WILLIAMS: That's correct, Your Honor.

12 THE COURT: Okay. The outgoing, just to be clear,
13 the outgoing text appears to be statements made by the
14 defendant?

15 MR. PINCELLI: That's correct.

16 MR. WILLIAMS: Or from his phone.

17 THE COURT: Or from his phone. Okay. We'll let
18 from his phone satisfy that. So just the incoming text
19 message, one of which says, Max? question mark. Okay.
20 Incoming. Yes? question mark. Other incoming, what's my
21 tab down to? Now, I can understand, I mean, first of
22 all, the first question is, is it relevant. Well, I mean
23 one of the things they're trying to prove is this
24 distribution or trafficking or drug dealings going on
25 here, so it seems pretty relevant to that overall over

1 arching question, but whether it can be excluded by some
2 hearsay argument whether there's an applicable exception
3 or whether it is not even hearsay. These are the only
4 two things?

5 MR. PINCELLI: Yes, Your Honor, this communication,
6 the previous page, I can flip to if you want to see it
7 again?

8 THE COURT: Yes. Show me the page again. Well, I
9 think -- All right. Just so I'm clear, that's the
10 forensic report?

11 MR. PINCELLI: That's correct, Your Honor.

12 THE COURT: And the extraction report is the data.

13 MR. PINCELLI: The extraction is everything. What's
14 been marked as State's 20 for ID is the full report.
15 This is a summary of the full report because the full
16 report is several thousand pages long.

17 THE COURT: Right. Right. Okay. Well, I'm going
18 to rule that it's not hearsay, okay? I think it's a
19 question and brief looking through here while not
20 directly analogous, State versus Johnson, so State versus
21 Johnson involved a defendant, I'm just gonna read it,
22 quote, "you got a gun?" unquote, was not hearsay and not
23 offered for the truth of the matter asserted. The
24 statement is not an assertion but a question asked to the
25 defendant in that trial. So I think in that specific

1 form without any more information it's obviously relevant
2 and one of the key questions, key elements of the case so
3 I think over objection I'll allow the forensic report
4 statements into evidence.

5 MR. PINCELLI: Thank you, Your Honor. Just while we
6 are in a break from the jury, I do intend to admit two
7 photos.

8 MR. WILLIAMS: Well, there appears to be a picture
9 of some device that is -- Can we blow it up?

10 THE COURT: That's a black and white picture?

11 MR. PINCELLI: Right, Your Honor, but then I have a
12 full sized photo from that extraction.

13 THE COURT: iPhone 6. No wonder it's green.

14 MR. PINCELLI: And then this would be the photo
15 associated with that phone now.

16 MR. WILLIAMS: Is this the same photo?

17 MR. PINCELLI: Yes.

18 THE COURT: So that would be a scale? What is that?
19 Yes. It's a scale, max.

20 MR. WILLIAMS: I'm not sure -- He didn't take this
21 photo, right?

22 THE COURT: It was taken from the phone.

23 MR. PINCELLI: Taken from a phone.

24 THE COURT: But don't we already have the scale
25 found at the scene?

1 MR. WILLIAMS: We do.

2 MR. PINCELLI: We do, but this is one from the
3 phone.

4 MR. WILLIAMS: So even though it was found on him,
5 we're gonna put in a picture where we don't even know
6 that he was taking the picture.

7 THE COURT: Well, the scale was found in the car.
8 We know that so that's just a picture on the phone of the
9 scale.

10 MR. PINCELLI: If you want to stipulate it's his
11 scale, we can avoid this picture.

12 MR. WILLIAMS: I don't know because I can't see the
13 serial numbers on the scale and I can't see what that is
14 beside, on the scale. I can't tell if that is a drug or
15 it's flour.

16 MR. PINCELLI: I'm not gonna ask -- I don't think
17 Investigator Ward can testify to any of those things. He
18 can just say that this photo came off of that device.

19 MR. WILLIAMS: Then the question I guess is whether
20 or not the probative value outweighs the prejudicial
21 effect of that then.

22 THE COURT: I don't - I don't think the -- Arguably
23 it could be cumulative because we've already got the real
24 thing in evidence, but I don't think the probative value
25 is outweighed by the prejudicial effect because it's a

1 picture and it's -- What does the real scale look like,
2 the one that's in evidence? I mean, does it corroborate
3 what's already in evidence?

4 MR. WILLIAMS: The real scale supposedly had some
5 white substances on it.

6 THE COURT: So I mean is that the same, does it say
7 WeightMax on it and all that? I can't see --

8 MR. PINCELLI: Let's put it on there and blow it
9 up.

10 THE COURT: All right. So that appears to have the
11 same characteristics.

12 MR. WILLIAMS: And it's probably, that's probably
13 just a make that 20 million people, I don't know, make.

14 THE COURT: A point you can draw out at your leisure
15 on cross.

16 MR. PINCELLI: I may have gone about this the wrong
17 way, Your Honor. I expect there were actual legal
18 arguments here. I'm just trying not to waste the Court's
19 time if we bring the jury in and then there's an
20 objection to these because it's all in the same summary I
21 intend on going through.

22 THE COURT: Okay. You're just trying to save us
23 another break.

24 MR. PINCELLI: I was.

25 THE COURT: You're not wasting time.

1 MR. PINCELLI: I was. So this is the other photo.

2 Based on the summary, it's similar. We would have a --

3 MR. WILLIAMS: Well, he obviously didn't take a
4 picture of himself like that.

5 MR. PINCELLI: There's a word called selfie. Part
6 of my generation. So here's the thumbnail that would
7 indicate that it's from the same phone.

8 THE COURT: Okay. All right. That's it for the
9 photos?

10 MR. PINCELLI: That's it. Those two statements and
11 those two images.

12 THE COURT: I anticipate that those come in.

13 MR. PINCELLI: Okay.

14 MR. WILLIAMS: Did you officially rule on the other
15 items as not being hearsay? I'm talking about the things

16 --

17 THE COURT: The reports?

18 MR. WILLIAMS: Yes.

19 THE COURT: I did. I said that the statements by
20 the non seized phones were questions and not hearsay.

21 MR. WILLIAMS: Non seized phones? These were
22 seized.

23 THE COURT: No. No. I'm saying a communication
24 came into the phone in evidence in theory from another
25 phone.

1 MR. WILLIAMS: True.

2 THE COURT: Whoever's phone it is, but Stormmy was
3 asking a question and not offering anything, or is not
4 being offered for the truth of the matter. It's just a
5 question between the defendant so it's not hearsay.

6 MR. WILLIAMS: Then the objection would be
7 relevance.

8 THE COURT: Oh, I think it's highly relevant. I
9 think relevance we met the prong clearly. It just wasn't
10 excludable via hearsay, I'll say it that way.

11 MR. WILLIAMS: And the cumulative argument, Your
12 Honor?

13 THE COURT: Having seen that it corroborates, I
14 think it's okay. You're not putting in four pictures of
15 the same scale, correct?

16 MR. PINCELLI: That's correct, Your Honor. Those
17 are the only two photos.

18 MR. WILLIAMS: The scale and the pictures of the
19 scale are coming in?

20 THE COURT: The scale, the picture.

21 MR. WILLIAMS: That's cumulative.

22 THE COURT: Okay. Well, arguably. Arguably, but I
23 don't think it's -- I think it's okay.

24 MR. WILLIAMS: Okay.

25 THE COURT: So let's go. Ready?

1 MR. PINCELLI: Thank you, Your Honor. Ready, Your
2 Honor.

3 THE COURT: Yes?

4 MR. PINCELLI: Yes, Your Honor.

5 MR. WILLIAMS: Your Honor, I believe there is one
6 other thing. I believe one of the items that we're
7 arguing about is a specific act on a certain date where
8 my client was charged with a violation of the law, right?
9 He's charged --

10 THE COURT: Hold on. What am I missing?

11 MR. WILLIAMS: He's charged with violating
12 trafficking and PWID on the date of 2/10/20, right? So,
13 Your Honor, in terms of when these pictures were taken
14 and the relevance to the charge on this particular day, I
15 don't think there's been a correlation to when these
16 pictures were taken to correlate with a violation of the
17 law on the date that he's accused of committing a crime.

18 THE COURT: Okay. I don't recall looking at the
19 date on the thumbnails.

20 MR. WILLIAMS: It wasn't the same day that he was
21 arrested.

22 MR. PINCELLI: It was not. Your Honor, the State's
23 argument is close in time. As for the photo of the, for
24 the scale, January 17th, 2020 and the purpose of
25 introducing that is that he did possess that scale that

1 appears to be the same one that is found in his book bag.

2 THE COURT: All right. You're saying it's close in
3 time in the sense that it's 23 days before the actual
4 arrest?

5 MR. PINCELLI: Correct, Your Honor. You're making
6 an argument on all of them?

7 MR. WILLIAMS: Absolutely.

8 MR. PINCELLI: The rest of them, Your Honor, Mr.
9 Williams' argument expands to the communications from
10 January 21st, 2020 and then the second set on February
11 5th of 2020.

12 THE COURT: So one would have been after a
13 photograph was taken and the other would have been five
14 days before the arrest?

15 MR. PINCELLI: Right.

16 THE COURT: Okay.

17 MR. PINCELLI: The State alleges this is so closely
18 related to his interactions as a drug dealer.

19 MR. WILLIAMS: I don't think there's been any
20 testimony about how long he's been a drug dealer, Your
21 Honor.

22 THE COURT: I don't think anybody knows. They've
23 got to prove that he was doing this. I think I'm
24 satisfied.

25 MR. PINCELLI: Okay.

PATRICK WARD - DIRECT BY MR. PINCELLI

279

1 THE COURT: Admitted over objection. Now are we
2 ready?

3 MR. PINCELLI: Yes, Your Honor. Thank you.

4 (Whereupon, State's Exhibits #22 and #23 marked and
5 admitted.)

6 (Whereupon, the jury entered the courtroom at 2:45
7 p.m.)

8 THE COURT: All right. Continue where we left off.

9 MR. PINCELLI: Thank you, Your Honor.

10 BY MR. PINCELLI:

11 Q. Investigator Ward, we were talking about your report
12 which you testified was on that disk is a full report. Do you
13 recall roughly how many pages this one was? Was it several
14 hundred or several dozen?

15 A. I don't remember exactly. It was probably a
16 thousand.

17 Q. And then you testified that a summary of that report
18 had been created; is that correct?

19 A. That's correct.

20 (Whereupon, State's Exhibit #21 marked for
21 identification.)

22 BY MR. PINCELLI:

23 Q. I'm approaching you with what's marked as State's
24 21. Can you look through this and see if that's an accurate
25 portrayal of the summary that was created from your main

1 extraction report?

2 A. Yes. It appears to be so.

3 MR. PINCELLI: Your Honor, at this time I would move
4 this summary State's 21 into evidence.

5 MR. WILLIAMS: Object based on the prior motions we
6 made, Your Honor.

7 THE COURT: Very well. State's Exhibit number 21
8 will be admitted subject to objection.

9 MR. PINCELLI: Thank you.

10 BY MR. PINCELLI:

11 Q. Investigator Ward, I'm gonna now ask you to look at
12 this extraction report, the summary with me and explain what
13 we are looking at. So the top of this right here, extraction
14 report, do you write that or how is that generated?

15 A. The software generates that itself.

16 Q. Again, what software are we using for this device?

17 A. To generate the reports we use the Cellebrite
18 Physical Analyzer software.

19 Q. Now we move down to the next heading that's summary.
20 What does this heading, what information are we learning from
21 that heading?

22 A. Essentially it provides the firmware addition for
23 the software the 7.1, 7.1, et cetera, the date that the report
24 was created, my name, agency, a lot of that stuff I do input
25 such as the case number, evidence number and the investigator

1 and the offense.

2 Q. Okay. And source extraction, I don't really know
3 that I know what any of that means. Why is this important to
4 us?

5 A. That is the date and time that I started the
6 extraction and the date and time that it finished.

7 Q. Okay. So you started it on February 12th at this
8 time?

9 A. Correct.

10 Q. 3:33 p.m.?

11 A. Correct.

12 Q. And it runs through everything and you finished the
13 same day just a short while later?

14 A. Correct.

15 Q. Let's talk about extractions in general. When you
16 are creating an extraction and it's pulling information from
17 that report, is it possible for any outside information to be
18 generated into the report per your extraction?

19 A. It will only pull whatever comes from the phone.

20 Q. So whatever it was on this iPhone, State's 19,
21 whatever is on this would, or at least most of it, is it
22 possible some things were deleted?

23 A. Yes.

24 Q. Is it possible anything was added to your report
25 that was not on this device?

1 A. No.

2 Q. Device information, that will tell us the phone
3 numbers and everything associated; is that correct?

4 A. Yes.

5 Q. How about this next page. We see the contents.
6 What do the contents tell us?

7 A. It basically gives you a breakdown of what's on that
8 phone as far as how many photos, number of calls, if there's
9 anything deleted, phone numbers.

10 Q. So we have messages, web history, images. In your
11 report can you click on those and see everything that's under
12 that heading?

13 A. Yes.

14 Q. So if we're gonna talk about messages, say, you can
15 click on that and see all the messages on that device?

16 A. Correct.

17 Q. Okay. Moving onto user account, what are the user
18 accounts? What does that mean?

19 A. User accounts are the various apps, the email
20 addresses and phone numbers that you have associated with that
21 device.

22 Q. Okay. So, let's skip down to number 20 on user
23 accounts. I'll zoom in for us. Number 20, this is from the
24 report that you did on number 19. You said nothing can be
25 added to the report so this came off this device?

1 A. Yes.

2 Q. What is the user account for number 20 in this?
3 What is that related to and who?

4 A. That's telling us that a Facebook Messenger or
5 Facebook account associated with Max Wagner was created on
6 that phone.

7 Q. With Max Wagner you said?

8 A. Correct.

9 Q. All right. We talked about the images, or messages.
10 Your report would have information about messages; is that
11 correct?

12 A. Yes.

13 Q. Are these messages that came off of this device?

14 A. That's correct.

15 Q. Okay. These messages on the right, are these from
16 the device or coming into the device?

17 A. These would be outgoing messages from the device.

18 Q. Someone is texting using that phone texting somebody
19 else?

20 A. Yes.

21 Q. This message on the left would mean somebody texted
22 that device that message; is that correct?

23 A. Correct.

24 Q. So anything that's said in these messages comes from
25 your extraction? You didn't add anything, nothing can be

1 added to that extraction report; is that correct?

2 A. That's correct.

3 Q. Would you agree with me that this statement here
4 says, you still straight on \$20.00 go fast, was that the
5 incoming message?

6 A. That's correct.

7 Q. And this response of, yeah, what message is this
8 associated with?

9 A. That would be from the device outgoing to the
10 received message.

11 Q. This is more of the same information but found from
12 a different place. Obviously the format is different. What
13 can you tell me about this format?

14 A. The format, it does say that it's an instant message
15 so likely being an iPhone that would be an iMessage so it's
16 being sent between two iPhones not through cellular so mobile
17 data or WiFi.

18 Q. And again, we talked about incoming and outgoing,
19 but this one actually shows us, does this indicate where the
20 message is coming from, coming or going?

21 A. Correct. The top one is saying that the message is
22 incoming and the one that's the response is outgoing.

23 Q. Staying in the same format but at a different line
24 of communication, let me try to zoom in on this one a little
25 bit. Okay. Let's go through this one. What is an SMS

1 message?

2 A. An SMS message is basically just a text message that
3 you would send over cellular so it's not an iMessage.

4 Q. Again, what does incoming mean?

5 A. Incoming means the message is coming from another
6 user to the phone.

7 Q. Would this indicate the date that the message was
8 made or received?

9 A. Yes. The time is a little off though because it's
10 on universal time so you have to subtract five from that and
11 get the accurate eastern standard time.

12 Q. Okay. So we're within five hours of this time just
13 because of the way that your extraction report generates
14 time?

15 A. Correct.

16 Q. How about the from, what does this information
17 indicate to you?

18 A. That indicates the phone number and whatever contact
19 information was in the phone, who it was from essentially.

20 Q. So, this was from a person listed as Stormmy with
21 two M's, it was an SMS message, it was incoming. What does
22 the message say?

23 A. Max? question mark.

24 Q. Okay. Now, the next line, again, all of these, is
25 it fair to say these are all SMS messages?

1 A. That's correct.

2 Q. Were they all made within five hours of February 5th
3 somewhere around one or two in the morning?

4 A. Yes.

5 Q. Okay. So this next line is outgoing communication
6 and it says, to that same number, who is that to?

7 A. To is a reply from the phone to that phone number.

8 Q. Okay. And what is that outgoing message?

9 A. Yeah.

10 Q. And the next one, is this outgoing or incoming?

11 A. It's outgoing.

12 Q. So this is from this device?

13 A. Correct.

14 Q. And what does that say?

15 A. He's replying to the sender's name or recipient's
16 name Stormmy.

17 Q. And the next message, is this incoming or
18 outgoing?

19 A. Incoming to the phone.

20 Q. All right. What are we reading here?

21 A. Confirmation yes? with a question mark.

22 Q. And then the next row down, is this incoming to that
23 device?

24 A. Correct.

25 Q. What's that question?

- 1 A. They're asking what their tab is down to.
- 2 Q. Could you just read exactly what that question is.
- 3 A. What's my tab down to? question mark.
- 4 Q. And this next line I see says 350. Was that
- 5 incoming or outgoing?
- 6 A. It was outgoing.
- 7 Q. So the question, what's my tab down to, that came
- 8 into the device that was seized by Investigator Gietz that you
- 9 extracted; is that correct?
- 10 A. That's correct.
- 11 Q. And that message said 350 in response to that
- 12 question. Where did that come from?
- 13 A. That came from the phone, the device.
- 14 Q. And was sent out from that device?
- 15 A. Yes.
- 16 Q. Next we talk about you can see images from this
- 17 report; is that correct?
- 18 A. Correct.
- 19 Q. This image talks about when it was created, how it
- 20 was created. This one is a little interesting because this
- 21 says an iPhone model, but you said you extracted from an
- 22 iPhone 11?
- 23 A. That's correct.
- 24 Q. Why would this say it's an iPhone 6?
- 25 A. That means that the photograph was taken with an

1 iPhone 6, 6s device.

2 Q. But you said you couldn't add anything to the cell
3 phone so where did that photo come from?

4 A. More than likely it either came from a backup from
5 another device.

6 Q. Okay. So can you give me a for instance in that
7 situation, how one device can be backed up to another?

8 A. If you take your iPhone in this case and back up
9 your data through iCloud, you went and purchased a different
10 device, you could remove that or extract that data from iCloud
11 and basically have the same information on your new phone.

12 Q. All right. And this is a very small photo here. I
13 believe this is referred to as a thumbnail; is that correct?

14 A. That's correct.

15 Q. What is this thumbnail, does that shows that device
16 is also somewhere else on the phone in full size?

17 A. Yes.

18 Q. I want to approach you with a photograph. Do you
19 recognize this photograph?

20 A. I do.

21 Q. And what is that?

22 A. It appears to be a photograph of a black scale with
23 a plastic Baggie containing a white powdery substance.

24 Q. And is this the accurate photograph that relates to
25 the thumbnail from your extraction report?

PATRICK WARD - DIRECT BY MR. PINCELLI

289

1 A. Yes.

2 MR. PINCELLI: Your Honor, I would move this in as
3 State's 22.

4 MR. WILLIAMS: Subject to prior objection, Your
5 honor.

6 THE COURT: All right. State's 22 is admitted into
7 evidence subject to objection.

8 (Whereupon, State's Exhibit #22 marked for
9 identification and admitted.)

10 BY MR. PINCELLI:

11 Q. So from this device we see this photograph and you
12 just testified that this is the photograph that came off of
13 that device; is that correct?

14 A. Correct.

15 Q. Similarly there's another photograph that we have
16 some information on. Can you tell me about the created time
17 on this photograph?

18 A. If you can zoom in just a little bit for me.

19 Q. Sure.

20 A. It was created on January 31st, 2020.

21 Q. Do you recognize this thumbnail?

22 A. I do.

23 Q. Would that thumbnail be in a larger photo somewhere
24 else on the device?

25 A. Yes.

1 Q. I want to approach you with another photograph. Is
2 that an accurate portrayal of the thumbnail found on that
3 device?

4 A. Yes.

5 MR. PINCELLI: Your Honor, I would move this into
6 evidence as State's 23.

7 MR. WILLIAMS: Subject to prior objection, Your
8 Honor.

9 THE COURT: All right. State's Exhibit 23 is
10 admitted into evidence subject to objection.

11 (Whereupon, State's Exhibit #23 marked for
12 identification and admitted.)

13 BY MR. PINCELLI:

14 Q. Is this the photograph that you just testified came
15 from that device created on January 31st, 2020?

16 A. Yes.

17 Q. Just one last thing, Investigator Ward. We talked
18 about how the extraction works and where everything comes
19 from, but just to clarify one more time, where do these, where
20 does the information from your reports, where does that come
21 from?

22 A. The information from the report comes from the data
23 extraction itself from the phone.

24 Q. And the data extraction comes from the device you've
25 extracted; is that correct?

PATRICK WARD - CROSS BY MR. WILLIAMS

291

1 A. That's correct.

2 Q. So everything on your report came from this
3 device?

4 A. Yes.

5 Q. Did it come from anywhere else?

6 A. No.

7 MR. PINCELLI: Thank you, investigator. If you'll
8 answer any questions from Mr. Williams.

9 MR. WILLIAMS: May it please the Court.

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. WILLIAMS:

13 Q. How are you doing, investigator?

14 A. Doing well. Thank you.

15 Q. I'm Theo Williams. I think we've met before.

16 A. I believe so.

17 Q. So, I'm gonna take you back kind of to the beginning
18 of this, and it's my understanding that you were brought into
19 this based on the fact that there were two cell phones
20 which were recovered and you did the work on one of them and I
21 think that's the one you're talking about is the red cell
22 phone?

23 A. Yes.

24 Q. Do you know where the other cell phone is? Did you
25 have that in evidence, the other cell phone?

1 A. I received both from evidence.

2 Q. But you don't know where the other one is?

3 A. It's still in evidence.

4 Q. Okay. Well, the reason I ask that is that this
5 particular cell phone is a, is it a 6? Is that what it is?

6 A. It should be an 11.

7 Q. This is an 11?

8 A. Yes 11 Pro.

9 Q. 11 Pro. So, is there a more descriptive name for
10 that?

11 A. Apple iPhone 11 Pro and I believe it was 11 Pro
12 Max.

13 Q. All right. So that's an Apple phone?

14 A. Correct.

15 Q. As opposed to an iPhone, right?

16 A. An Apple iPhone is --

17 Q. Same thing?

18 A. -- the same thing.

19 Q. Very same thing. So you were reflecting that you
20 had two cell phones that you dealt with and the other one is
21 still in evidence somewhere, right?

22 A. It should be. Yes.

23 Q. And you could not extract any evidence out of the
24 other cell phone. What was the color of that cell phone?

25 A. I believe it was a silver in color Apple iPhone.

PATRICK WARD - CROSS BY MR. WILLIAMS

293

1 Q. So both were Apple cell phones?

2 A. Correct.

3 Q. One was an 11, right?

4 A. Correct.

5 Q. And then the other one was a 6?

6 A. I wasn't able to get any model or any other
7 identifiers from the back of the phone without - I believe it
8 had popped something on the back.

9 Q. So we don't know what the other phone was other than
10 the fact that you couldn't extract any information from it?

11 A. No.

12 Q. And I believe when you were talking about why you
13 couldn't extract any information from it is you said that the
14 battery had gone dead?

15 A. Correct.

16 Q. And that it had not been placed on the little slot
17 that does when you go into the airport, what do you call
18 that?

19 A. Airplane mode.

20 Q. Airplane mode. Why do you turn it on airplane
21 mode?

22 A. You turn the phone or any device on airplane mode to
23 isolate it from any radio networks such as cellular towers or
24 WiFi.

25 Q. Okay. So, when these phones were seized, was it

1 your understanding that they were seized at the same time?

2 A. I believe so.

3 Q. And was the phone that you checked out, was it in,
4 what do you call it, airplane mode?

5 A. The iPhone 11 was in airplane mode.

6 Q. But the other one wasn't?

7 A. Correct.

8 Q. Seized at the same time?

9 A. Right.

10 Q. So, who would be person who would normally if
11 they're seized phones, would be the person in charge of
12 putting it in airplane mode?

13 A. It would be the individual who seized it.

14 Q. The officer?

15 A. Correct.

16 Q. Okay. But the other one was not in airplane mode,
17 right?

18 A. I don't believe they were able to put it in airplane
19 mode.

20 Q. You say you don't believe they were able to. I
21 thought you did all the work on these phones? Didn't you do
22 the extractions and everything?

23 A. I received one that was in airplane mode.

24 Q. You never received the other one?

25 A. I received it from evidence.

1 Q. Did you check to see if it was in airplane mode or
2 not?

3 A. Yes.

4 Q. And it was not in airplane mode?

5 A. It was not.

6 Q. Which is an obligation of whoever seizes the phones,
7 correct?

8 A. Yes. If they were able.

9 Q. And you surmised that the reason why it didn't have
10 any data on that particular phone was that somebody hadn't
11 placed it in airplane mode and allowed the battery to go
12 dead?

13 A. Yes. It was dead.

14 Q. Well, I mean, you said that will cause you to have
15 the inability to pull anything back from it because it wasn't
16 in airplane mode and the battery was dead so you couldn't pull
17 anything from that one?

18 A. Correct.

19 Q. Both phones were seized at the same time?

20 A. As far as I know. Yes.

21 Q. So, then you were asked the question by the
22 Solicitor, well, you can swipe those phones meaning you can go
23 to another number and swipe the phone so that there's no
24 information on those, right?

25 A. Correct.

1 Q. So, to be able to do that you would have to have the
2 ability to have some phone access to do that, wouldn't you?

3 A. You can do it on a computer too.

4 Q. You would have to have the ability of having a
5 computer that you could get to to do that, right?

6 A. Correct.

7 Q. Do many people who are arrested and are taken to the
8 detention center normally have access to computers to wipe
9 cell phones?

10 A. They don't.

11 Q. They don't. So would it be a safe assumption that
12 when you got that second iPhone, that it was in, somebody
13 didn't put it in airplane mode or it just never had any data
14 on it to begin with or we don't know? We're speculating,
15 aren't we?

16 A. Correct.

17 Q. Did you have any conversation with the police
18 officer who made the arrest to determine and ask him, did you
19 put it in airplane mode when you got it?

20 A. I don't believe I spoke with Investigator Gietz
21 about the airplane mode.

22 Q. Because you never saw the other phone?

23 A. I saw both phones.

24 Q. But you didn't do anything with the other phone?

25 A. I was unable to.

1 Q. I'm not blaming you. I'm just going to why
2 they were different, that's all.

3 A. Right.

4 Q. Both of them are Apple phones, right?

5 A. Correct.

6 Q. Both of them are 11 Pros?

7 A. One is an 11. I'm not sure about the other model.

8 Q. So you weren't even able the make a determination if
9 it was an iPhone 6 or not?

10 A. Correct.

11 Q. Did you have any iPhone 6 that you examined?

12 A. I'm unsure if it was an iPhone 6.

13 Q. So you didn't have one to your knowledge that you
14 examined, right?

15 A. Correct.

16 Q. Let me take you to your report. This extraction
17 report that you have, you use Cellebrite which is a, it's an
18 FBI kind of deal that downloads off of one phone and it just,
19 you were able to minimize, if you will, minimize all the data
20 that was on that phone, and we'll call that phone as being the
21 red phone, correct?

22 A. Correct.

23 Q. Now, as you were creating these items from the
24 phone, I think you said that you pulled roughly, how many bits
25 of information did you pull?

1 A. As far as the file size?

2 Q. Right.

3 A. I believe it was around four gigabytes.

4 Q. Four gigabytes?

5 A. Enough to fit on a DVD.

6 Q. All right. And clearly we don't have that amount of
7 information on these few pages, do we?

8 A. No. That's not everything.

9 Q. So, is it kind of like sometimes reading a story
10 where you read the beginning of the story and read the end of
11 the story and you don't necessarily have all the lines in
12 between? We don't know what the other lines in between were,
13 do we?

14 A. There's a lot of data so I don't honestly look
15 through most of it.

16 Q. Right. And if there was a conversation going on
17 between two people, we don't have the entire conversations
18 going on between the two people, do we?

19 A. No, because there could be phone calls.

20 Q. Right. So, one thing which has always kind of
21 amazed me, it's possible to purchase programs that allow you
22 to call somebody else's phone and make it look like, I could
23 call your phone and make it look like it came from the court
24 reporter's phone, couldn't I, in terms of what the screen
25 would show and what it would print out?

1 A. I'm not aware.

2 Q. You're not aware of apps that do that?

3 A. I'm not aware of any that will take a pre-existing
4 phone number from somebody you know that you can call from.

5 Q. So, in terms of the particular phones that we're
6 talking about here, if we were to assume that this information
7 is correct, and when I say we, I'm talking about law
8 enforcement -- We'll just shove this one right here, there we
9 go. Can you see that good enough to see what I'm talking
10 about? You see that this is 3700 down to 3705? You see that
11 this reportedly is phone calls that occurred on February the
12 5th, 2020 and it's - and I think we went through it. Max.
13 Yeah. Stormmy. Yes. What's my tab down to? 350. There's
14 no reflection of any particular type of drug reference on
15 here, is there?

16 A. Not to my knowledge. I'm not a narcotics
17 investigator.

18 Q. Well, but the most important information that's on
19 here is the part that says from and to. So it is from
20 [REDACTED], see I'm using old school terms, phone numbers,
21 to [REDACTED]. How do you do that? How can it be the
22 same number?

23 A. One is an incoming message coming from that phone
24 number. The other is an outgoing message going to that phone
25 number.

1 Q. So what number, what is the other number that we're
2 dealing with besides [REDACTED]?

3 A. Whatever the phone number on that particular device
4 is.

5 Q. And we don't know what that phone number is?

6 A. Well, the report does tell us what the primary phone
7 number is.

8 Q. All right. But the number that you're saying that
9 this is is the phone number of Stormmy?

10 A. Yes.

11 Q. Pretend you're an investigator, a law enforcement
12 person and you have that number and you know that some person
13 with information on a particular drug case is calling from
14 that number. Do you have the ability to go to that --

15 MR. PINCELLI: Objection, Your Honor. I think he's
16 going to call for speculation here in a different field
17 of investigation.

18 MR. WILLIAMS: I'm not. I'm just asking if you can
19 use that number to find out whose phone number it is. If
20 he can do extractions, he ought to be able to tell who
21 the phone number belongs to.

22 THE COURT: Okay.

23 BY MR. WILLIAMS:

24 Q. Okay. Could you do that?

25 A. You could potentially run that phone number and find

1 out more information, yes.

2 Q. Well, let's don't be evasive about it. You could
3 find out whose phone number it is, couldn't you?

4 A. Potentially if you call the carrier.

5 Q. Well, that's not a hard thing to do, is it?

6 A. No. Shouldn't be.

7 Q. You can do, what is it, you got that call you call,
8 what, Star 66 or Star 99 or whatever they do on the phone
9 number and it will give you who called you last and stuff like
10 that. You could actually see who Stormmy was and you could go
11 out and say, hey, Stormmy, did you have a conversation with
12 Max on such and such a date and if you did, what the heck were
13 you talking about? Couldn't you do that?

14 A. Possibly.

15 Q. And that would allow you to not guess as what you
16 and I have been doing a little bit here today about what
17 people were trying to say and you can swear them in, put them
18 up there on the stand and swear them in, what were y'all
19 talking about? You obviously could subpoena them, get them up
20 here. So that person is a potential witness to whatever
21 conversation that is being used in this particular case and
22 that would be a pretty good witness, wouldn't it? Wouldn't
23 have to go through cell phone 6's and cell phone 11's and
24 stuff like that, right?

25 A. Potentially.

1 Q. Okay. And again, I'm not gonna beat a dead horse,
2 so the same deal here. We got names here. We got
3 ██████████. And then we got ██████████. We could go talk
4 -- We could check that phone number to Duttin and Jess and see
5 if they're potential witnesses in this case, couldn't we?

6 A. Potentially, yes, sir.

7 Q. And look at their cell phones and see if they sent
8 something from their cell phones or if it came from somebody
9 else, right? Because with cell phones, anybody can use a cell
10 phone. Are you married?

11 A. I am.

12 Q. Does your wife ever use your cell phone for
13 anything?

14 A. She has her own so no.

15 Q. You're lucky. But I'll bet, I'll bet my daughter
16 over here has used my cell phone before when I'm too stupid to
17 be able to call the number on it when I'm going down the road
18 because it's a universal device. Once you get it open,
19 anybody can call and the only thing that this information
20 shows you is which --

21 MR. PINCELLI: Objection, Your Honor. There's not a
22 lot of questioning going on here. It's testifying.

23 THE COURT: Rephrase your question, Mr. Williams.

24 BY MR. WILLIAMS:

25 Q. What does this information show you? It simply

1 shows you the cell phone it came from or involved in the
2 situation, right?

3 A. Correct.

4 Q. It doesn't show you people --

5 A. Right.

6 Q. -- does it? Doesn't show you the intent. Doesn't
7 show you the intent because it's an inanimate object. It
8 can't show intent, right?

9 A. (No response.)

10 Q. Now, I got to ask you about the iPhone 6 because
11 that made me think. You said the picture was from an iPhone
12 6.

13 A. Correct.

14 Q. All right. That's the camera model that took that
15 picture and it came from an iPhone 6?

16 A. Correct.

17 Q. You didn't seize any iPhone 6's, did you?

18 A. Not to my knowledge.

19 Q. That's what, five years out of date? Do they do one
20 every year?

21 A. I'm not sure when that 6 came out.

22 Q. When iPhone put it out. But you're saying that the
23 capture time which is January the 17th of 2020, are you saying
24 that it was captured by the iPhone 6 on January the 17th of
25 2020?

1 A. Yes.

2 Q. And then somehow it was transferred from the iPhone
3 6 to an iPhone 11. What time was it transferred to the iPhone
4 11? What was the date it was transferred there?

5 A. I can't see the metadata that would indicate that.
6 Well, it does say that it was on the phone at 8:37 p.m.
7 universal time.

8 Q. Okay. So that five hours -- Well, that can't be
9 right. Isn't that the five hours you were talking about
10 earlier when you talked about how you had the computer time
11 and you got the other time, there's a five hour slot? Or is
12 it just happenstance that it's a five hour time
13 differential?

14 A. It's just a five hour time differential because of
15 universal time.

16 Q. So are you saying that both of these times are
17 correct meaning you don't have to adjust them if you were
18 comparing computers or comparing cell phones, you don't have
19 to do an adjustment on those phones, right?

20 A. Normally Cellebrite will adjust them for you, but
21 subtracting five.

22 Q. So what you're saying is the iPhone 6 on January
23 17th at 3:37:33 p.m. took a picture and that this other iPhone
24 received that picture the same day five hours apart, exactly
25 five hours apart?

PATRICK WARD - REDIRECT BY MR. PINCELLI

305

1 A. No. Actually if you do the math they are taken at
2 the exact same time.

3 Q. Say that again.

4 A. They're actually taken at the same time. If you
5 subtract five from eight you get 3:37 p.m.

6 Q. So when did the iPhone 11 get the information from
7 the iPhone 6? Because you've already said the iPhone 6 is the
8 one that took the picture, right?

9 A. Correct.

10 Q. So when is it that the iPhone 11 received the
11 information from the iPhone 6?

12 A. I'm not sure.

13 MR. WILLIAMS: That's all I have, Your Honor.

14 THE COURT: Redirect.

15 MR. PINCELLI: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. PINCELLI:

18 Q. Investigator Ward, when did you analyze these
19 devices?

20 A. February the 12th, 2020.

21 Q. February the 12th?

22 A. Correct.

23 Q. And again, how many devices did you attempt to
24 analyze?

25 A. I attempted two.

1 Q. And you could not analyze one. Why was that?

2 A. I was unable to analyze the Apple iPhone unknown
3 model because it had been factory wiped.

4 Q. When you received it, what condition was that phone
5 in?

6 A. It was sealed as an item of evidence. It was
7 powered off with a dead battery.

8 Q. Is it possible to put a phone with a dead battery
9 into airplane mode?

10 A. No.

11 Q. Because it was powered off and had been wiped, you
12 couldn't tell which specific model of cell phone it was,
13 correct?

14 A. Correct.

15 Q. Just that it was an iPhone?

16 A. Correct.

17 Q. Could that have been an iPhone 6?

18 A. It could have been.

19 Q. Let's go back to the report. The metadata alone, is
20 that where the information ends and begins on all things or
21 are there other indicators, file names that might show where
22 something comes from?

23 A. Potentially, yes.

24 Q. You already talked about this before. It's kind of
25 getting into the weeds of the forensics. This portion back

1 here, does that indicate anything to you?

2 A. Coming from the media folder the DCIM that indicates
3 it came from the phone's photo library.

4 Q. The photo library of the phone?

5 A. Correct.

6 Q. Does it indicate it came from a message?

7 A. No.

8 Q. Mr. Williams talked and I talked about this says
9 iPhone 6. If it were downloaded, would it go into the media
10 library? You gave a for instance earlier. It's probable that
11 this says iPhone 6 and this image is on this report because it
12 was backed up onto the new phone, onto the iPhone 11; is that
13 correct?

14 A. Correct.

15 Q. When it's backed up, where would the image file
16 go?

17 A. It would go to the photo library.

18 Q. Just what that says, right?

19 A. Yes.

20 MR. PINCELLI: Thank you, investigator. That's all
21 I have.

22 THE COURT: Recross?

23 MR. WILLIAMS: Just a few questions on recross.

24 RECROSS EXAMINATION

25 BY MR. WILLIAMS:

1 Q. Obviously you have no idea what the condition of the
2 phone was at the time that the officer retrieved both of them,
3 do you, of either phone, do you?

4 A. I don't.

5 Q. And you haven't had a conversation with the officer
6 who said both phones were operating at that time, right?

7 A. I don't recall having a conversation about it.

8 Q. Let me ask you this: When we do this, aren't we
9 just speculating on when that thing went dead?

10 A. I don't know when it went dead.

11 Q. It might have gone dead just sitting in your lab. I
12 mean, not in your lab, but sitting waiting for you to look at
13 it, right?

14 A. That does happen. Yes.

15 Q. It does happen, not on just on this occasion, but it
16 has happened in the past?

17 A. Correct.

18 Q. So it's not an unusual thing for it to happen?

19 A. Before we did not have chargers in our evidence
20 laboratory, now we do.

21 Q. So it was an ongoing problem. You couldn't get
22 anything off the cell phones because they weren't being
23 charged up?

24 A. I wouldn't say it was ongoing, but it does happen.

25 MR. WILLIAMS: That's all the questions I have.

1 THE COURT: All right. The witness may step down.

2 (Side bar off the record.)

3 THE COURT: Let's take a ten minute break before we
4 get our next witness and we'll get you right back in
5 here. Please don't discuss the case. Thank you.

6 (Whereupon, the jury entered the jury room at 3:23
7 p.m.)

8 (Short break.)

9 THE COURT: We ready to bring them in?

10 MR. PINCELLI: Yes, Your Honor.

11 MR. WILLIAMS: Defendant is ready, Your Honor.

12 THE COURT: All right. Bring them in.

13 (Whereupon, the jury entered the courtroom at 3:36
14 p.m.)

15 THE COURT: Ladies and gentlemen, welcome back.
16 We'll continue with our next witness.

17 MR. PINCELLI: Thank you, Your Honor. The State
18 recalls Investigator Gietz.

19 THE CLERK: He's already under oath, Your Honor.

20 THE COURT: Very well. Come up, sir.

21 MR. WILLIAMS: Your Honor, may we approach?

22 THE COURT: Sure.

23 (Side bar off the record.)

24 Thereupon,

25 JOHN GIETZ

1 after having been previously duly sworn, testified further as
2 follows,

3 REDIRECT EXAMINATION CONTINUED

4 BY MR. PINCELLI:

5 Q. Investigator Gietz, we just went through the phone
6 extraction from a device seized on scene. This is State's 19.
7 Is this a cell phone that you seized from Maxie Wagner?

8 A. Yes, sir.

9 Q. Where was this located on Maxie Wagner?

10 A. In his left front pocket.

11 Q. Was anything else in that left front pocket?

12 A. Yes. A PWID amount of methamphetamine as well as
13 cash.

14 Q. PWID, what does that mean for the members of the
15 jury?

16 A. Possession with intent to distribute.

17 MR. WILLIAMS: Your Honor, objection. Asked and
18 answered on direct examination previously.

19 THE COURT: Okay. Let's get to the heart of why
20 you're recalling him.

21 MR. PINCELLI: Laying foundation for my next
22 question.

23 THE COURT: Okay. So overruled, but move on.

24 BY MR. PINCELLI:

25 Q. From that phone a summary report was made. We

JOHN GIETZ - REDIRECT BY MR. PINCELLI

311

1 looked at some messages. This incoming message here, this
2 question specifically, you still straight on \$20.00, go fast.
3 Based on your training and experience as a narcotics
4 investigator, what does that mean?

5 A. Fast is a typical term that's used for a stimulant
6 of some sort, probably cocaine or methamphetamine, but in this
7 instance in the circle that my investigation showed is that
8 fast equals methamphetamine.

9 Q. So this question, you still straight on \$20.00, go
10 fast, would you say that is a request for drugs?

11 MR. WILLIAMS: Objection, leading. Suggests an
12 answer.

13 MR. PINCELLI: I'll rephrase, Your Honor.

14 THE COURT: Okay.

15 BY MR. PINCELLI:

16 Q. So you say go fast means methamphetamine; is that
17 correct?

18 A. Correct.

19 Q. Based on your training and experience, what does
20 this question as a whole mean?

21 A. Based on my training and experience I know that that
22 is a request for \$20.00 of methamphetamine.

23 Q. Going to another conversation found on this phone.
24 This question here, what does that say?

25 A. It says, what is my tab down to?

1 Q. And what is the reply response?

2 A. 350.

3 Q. And again, we're referencing State's 21. Based on
4 your training and experience what do you believe that
5 conversation to be about?

6 A. The incoming message is asking how much --

7 MR. WILLIAMS: Objection, speculation. No basis for
8 the question and an answer.

9 THE COURT: Rephrase the question, Mr. Pincelli, as
10 you did before.

11 BY MR. PINCELLI:

12 Q. Based on your training and experience as a narcotics
13 agent, what is a tab?

14 A. A tab is a debt owed to the seller of narcotics.

15 Q. Can you read from State's 21 here who that's coming
16 from? What is that name?

17 A. Stormmy.

18 Q. I'm gonna refer you now to State's 16 that you
19 referred to before as a ledger. Might a ledger contain what
20 you just described as a tab?

21 A. Absolutely.

22 Q. Can you read this handwriting? What does that say
23 right there?

24 A. That says Stormmy.

25 Q. How about this number?

1 A. That's \$350.00.

2 Q. We also looked at some photos taken from this
3 device. This is State's 22. You testified earlier that you
4 recovered and we put into evidence State's 17 that you
5 recovered a scale; is that correct?

6 A. Yes, sir.

7 Q. Do you recognize this scale?

8 A. It appears to be the same scale.

9 Q. Would you say that it is similar or the same as the
10 picture that was extracted from that phone?

11 A. Yes. It appears to be the same brand and model.

12 Q. This will be my last question for you, investigator.
13 We had another photo extracted from that phone, State's
14 Exhibit 23. Now, this was extracted from the phone. Do you
15 recognize this individual?

16 A. Yes. I do.

17 Q. Who do you know that individual to be?

18 A. The defendant Maxie Wagner.

19 MR. PINCELLI: That's all the questions I have for
20 you. If you will answer anything from the defense.

21 MR. WILLIAMS: May it please the Court.

22 THE COURT: Yes, sir.

23 RECROSS EXAMINATION CONTINUED

24 BY MR. WILLIAMS:

25 Q. So what did Max Wagner have on at the time that you

1 stopped him? What clothing did he have on?

2 A. I'm not sure.

3 Q. There's no indication as to when this picture was
4 taken, is there?

5 A. No, sir. Not in that picture.

6 Q. There are no drugs in that picture, are there?

7 A. No, sir.

8 Q. So in your interpretation of, is that drug lingo
9 when you talk about tabs and stuff like that?

10 A. Yes.

11 Q. So in a bar if I wrote a tab, that would mean what I
12 owed for my liquor, right, if I was a drinker?

13 A. If you were a drinker, yes.

14 Q. And if I was walking out of a restaurant, I would
15 have a tab that I would have to pay. Tab doesn't mean drugs,
16 does it?

17 A. It doesn't always have to be.

18 Q. No. Tab just means how much I owe. So right here,
19 on February the 5th of 2020, Stormmy, the question about the
20 tab of the 350, that's an indication, I don't know if it is
21 dollars, it's an indication that Stormmy owes 350 bucks if
22 that's the way you interpret it in drug lingo, right?

23 A. Based off of my training and experience and the
24 totality of all the evidence, yes.

25 Q. When you go to your book and you talked about the

1 similarity of the numbers, there's a 350 there, but if you
2 strike through something, what does that normally mean?

3 A. It's paid.

4 Q. Do you have any information in regards to when any
5 of these items were written in this book?

6 A. I do not.

7 Q. As a matter of fact, have you done any handwriting
8 analysis on this book?

9 A. No, sir. I'm not qualified to do handwriting
10 analysis.

11 Q. But there are experts that do it, aren't there?

12 A. Yes, sir.

13 Q. Where is the other cell phone? I got the red one.
14 Where is the other one, the other one that you seized?

15 A. I believe it's over there. It was signed out of
16 evidence.

17 Q. Were you the person who seized both of them?

18 A. Yes, sir.

19 Q. And you checked both of them? You took both of them
20 in possession and looked at them before you took them into the
21 Lexington County Sheriff's Department, right?

22 A. I did take both of them into possession into
23 Lexington County evidence, yes.

24 Q. And you know now to preserve information on cell
25 phones, don't you?

1 A. Yes.

2 Q. All right. What was the condition of the other cell
3 phone? Was it in airplane mode or not in airplane mode?

4 MR. PINCELLI: Objection, Your Honor. This is not
5 part of my testimony with this witness. That was a prior
6 witness.

7 THE COURT: We're talking about -- Hold on. I do
8 have a question for you, Mr. Williams.

9 MR. WILLIAMS: Up here a question?

10 THE COURT: Yes, sir.

11 (Side bar off the record.)

12 THE COURT: All right.

13 BY MR. WILLIAMS:

14 Q. So did you decide if you could remember about the
15 other cell phone if you had it in airplane mode or not
16 airplane mode?

17 A. The other cell phone I believe was not placed in
18 airplane mode.

19 Q. You believe that. Did you note that in your
20 investigative report that you filled out?

21 A. I don't believe so.

22 Q. Well, that's where you include all that information,
23 isn't it?

24 A. Yeah. I'm not sure if it was turned into airplane
25 mode or not.

1 Q. And did you, you were shown the stuff to Stormmy.
2 Did you try to talk to Stormmy about what this information
3 is?

4 A. Stormmy was an 843 number, correct?

5 Q. Right. Well, I don't know.

6 A. If you put it back up there, I can see.

7 Q. You think you might have talked to Stormmy about
8 it?

9 A. Well, 843 would be Florence, Charleston, along the
10 coast outside of the jurisdiction that I work in.

11 Q. You mean if you work in Lexington County, you don't
12 get people everyday who live in Lexington who have 843
13 numbers, have Pennsylvania numbers, they have all kind of
14 numbers, don't they?

15 A. That's correct.

16 Q. So did you just assume they didn't live around here
17 because it was an 843 number?

18 A. No.

19 Q. So then why did you say that?

20 A. Because it's an 843 number.

21 Q. So you assume since it's 843, there's no need you
22 looking to see where it goes or who lives there or anything,
23 right?

24 A. No. That's not the case. It was never called up.

25 MR. WILLIAMS: That's all the questions I have, Your

1 Honor.

2 THE COURT: Anything else?

3 MR. PINCELLI: Nothing from the State.

4 THE COURT: The witness may step down. Next
5 witness.

6 MR. COX: Your Honor, the State calls Margaret
7 Walker.

8 Thereupon,

9 MARGARET WALKER

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. Once you're seated,
12 state your full name spelling your last please.

13 THE WITNESS: Margaret Walker, W-a-l-k-e-r.

14 DIRECT EXAMINATION

15 BY MR. COX:

16 Q. Good afternoon, Ms. Walker. If you could, tell us
17 where you work?

18 A. I work for the Lexington County Sheriff's
19 Department.

20 Q. What do you do for the Sheriff's Department?

21 A. I am the chemist for the Sheriff's Department.

22 Q. What exactly, if you could tell the jury, what
23 exactly a chemist does for the Sheriff's Department?

24 A. I analyze drug analysis for the Sheriff's
25 Department, so unknown substances that come into the Sheriff's

MARGARET WALKER - DIRECT BY MR. COX

319

1 Department I do the analysis on them to confirm if it is a
2 substance or if it's not.

3 Q. How long have you been in that role with the
4 Sheriff's Department.

5 A. I've been there about five and a half years.

6 Q. Okay. In order to become a chemist for this kind of
7 role, what have you studied?

8 A. I have a degree in forensic chemistry and a minor in
9 criminal justice from York College of Pennsylvania and I also
10 have had training and experience from the South Carolina Law
11 Enforcement Division commonly known as SLED.

12 Q. What did that training from SLED, what did it
13 entail?

14 A. Drug analysis, drug identification.

15 Q. Other than what you just described at SLED and your
16 degree, do you have any other specialized training when it
17 comes to your role as a chemist with the Sheriff's
18 Department?

19 A. No.

20 Q. For your role as a chemist have you ever had to
21 testify in court?

22 A. Yes. I have.

23 Q. Have you ever been qualified as an expert?

24 A. Yes. I have.

25 Q. What was that field?

1 A. Drug identification or drug analysis.

2 Q. How many times have you been qualified as an expert
3 in those fields?

4 A. Seven.

5 MR. COX: Your Honor, at this time the State would
6 offer Ms. Walker as an expert in the field of drug
7 analysis.

8 MS. WILLIAMS: Without objection, Your Honor.

9 THE COURT: Analysis?

10 MR. COX: Drug analysis, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, this
12 witness will be qualified in the area of drug analysis
13 and can give opinion testimony in that area. That
14 doesn't mean you have to accept the opinion, but it's
15 evidence for you to use in any way that you see fit.

16 BY MR. COX:

17 Q. Ms. Walker, did you receive any evidence to test in
18 your role as a chemist as part of this case?

19 A. Yes. I have.

20 Q. Okay. Could you, before we get into what testing
21 you did, when in your role as a chemist, how do you receive
22 evidence in order for it to be tested?

23 A. When I receive evidence, it comes in what's called a
24 BEST bag which is what our drugs, BEST stands for best
25 evidence sample testing so the sample is placed into a bag

1 that is tamper proof meaning that they're designed along the
2 sides and there's adhesive as well to seal in the substance
3 and it shows that if you try to break it open or cut it apart,
4 it will be noted, it will be noticeable on the bag itself.

5 Q. And for the Sheriff's Department are you in your
6 role free to just go grab whatever evidence you want to test
7 or is there a process?

8 A. There's a process. There is an officer can request
9 it or a Solicitor or a defense attorney can ask to have an
10 analysis done on it. Also, it's just, if I have time to pull
11 extra cases, I will pull what needs to be done.

12 Q. And whenever you receive a request for testing, who
13 brings you the evidence to test?

14 A. I go to evidence and one of our evidence custodians
15 will sign out that BEST Kit to me.

16 Q. And when they sign it out to you and bring it to
17 you, do they just place it on a table, do they just leave it
18 laying around?

19 A. It's a hand to hand exchange essentially. They have
20 to sign it on a pen pad to me, and I also have to sign it
21 saying that I have received it in hand from evidence.

22 Q. And you described kind of a tamper proof sealing
23 that these BEST Kit gets to you. If you have, if you receive
24 a BEST Kit that appears to be tampered with or opened prior to
25 getting to you, what is your protocol?

1 A. I stop what I'm doing, I place it back into a manila
2 envelope, I take it to evidence and notify my direct
3 supervisor of the situation and the analysis process stops
4 there.

5 Q. Did you receive a BEST Kit as a part of this case?

6 A. Yes, sir. I did.

7 Q. What was the number of that BEST Kit?

8 A. May I refer to my notes?

9 THE COURT: Yes, ma'am.

10 BY THE WITNESS:

11 A. Thank you. The BEST Kit container number was
12 C005667.

13 BY MR. COX:

14 Q. And 5667, who was it from evidence that brought it
15 to you?

16 A. It was signed out to me by Candi B. Kizer.

17 Q. What was the date?

18 A. The date that she signed it out to me was September
19 24th, 2020.

20 Q. And when you received that BEST Kit number, did it
21 appear to have been tampered with or opened prior to it
22 getting to you?

23 A. No. It had not.

24 MR. COX: Your Honor, may I approach the witness?

25 THE COURT: Yes, sir.

MARGARET WALKER - DIRECT BY MR. COX

323

1 BY MR. COX:

2 Q. Ms. Walker, I'm showing you what's marked as State's
3 Exhibit 18. Do you recognize this?

4 A. Yes. I do.

5 Q. Without going to exactly what is inside of it for
6 us, how do you recognize what that is?

7 A. This is the outer most packaging.

8 Q. I'm gonna stop you right there. Prior to showing it
9 to the jury, just try to look at it and tell me what you see
10 in there.

11 A. The outer most packing is something that I placed on
12 the item with my initials and date of closing as well as my
13 initials and seal intact are noted on the BEST Kit.

14 Q. So that is the BEST Kit?

15 A. Yes.

16 Q. What's the number on that BEST Kit?

17 A. C005667.

18 MR. COX: Your Honor, at this time we move State's
19 Exhibit 18 into evidence.

20 MS. WILLIAMS: Without objection, Your Honor.

21 THE COURT: All right. State's Exhibit 18 admitted
22 into evidence.

23 BY MR. COX:

24 Q. Okay. Ms. Walker, when you received this BEST Kit,
25 kind of walk us through your process. What is the first step

1 when you are presented with something to test?

2 A. I open up the BEST Kit and pull out all of the items
3 that are within the BEST Kit itself, I make sure I put the
4 case number that's on the BEST Kit as well as the seal intact
5 my initials and date that it was opened, I then start the
6 process of doing the indicative testing.

7 Q. When you say indicative testing, what are you
8 referring to?

9 A. It's a presumptive test so it gives me a rough idea
10 of what it could be.

11 Q. In your role as a chemist prior to this have you
12 performed tests for methamphetamine and cocaine?

13 A. Yes. I have.

14 Q. Is that what you were testing for in this case?

15 A. In this case it gave me an indicative or a
16 suggestive of what it could be and it looked to be
17 methamphetamine and cocaine.

18 Q. Okay. Were you successfully able to -- I apologize.
19 Were you successfully able to complete your test on these
20 substances?

21 A. Yes. I was.

22 Q. Okay. Ms. Walker, to a reasonable degree of
23 scientific certainty what were the substances that you tested
24 in this case?

25 A. For item 1.1 zip lock bag containing empty plastic

MARGARET WALKER - DIRECT BY MR. COX

325

1 sandwich bag and plastic sandwich bag containing crystal
2 substance methamphetamine C2 found in sample tested one
3 tested.

4 Q. What about item 1.2?

5 A. For item 1.2.1, two zip lock bags containing
6 compressed powder substance, cocaine C2 found in sample tested
7 two tested.

8 THE COURT: Real quick.

9 (Side bar off the record.)

10 BY MR. COX:

11 Q. Ms. Walker, so you tested two substances and found
12 methamphetamine and cocaine, correct?

13 A. Yes, sir.

14 Q. And to a reasonable degree of scientific certainty
15 were you able to determine the weight of the
16 methamphetamine?

17 A. The methamphetamine, that weight was 3.49 grams,
18 53.85 grains.

19 Q. How about the cocaine?

20 A. Total net weight 44.12 grams, 687.87 grains.

21 Q. Ms. Walker, that piece of evidence that's in front
22 of you today, who was the last person to seal that?

23 A. I was.

24 Q. How do you know you were the last person to seal
25 that bag?

1 A. My initials are on the outer most packaging seal.

2 MR. COX: That's all the questions I have.

3 THE COURT: All right. Cross examination.

4 MS. WILLIAMS: Please the Court.

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Good afternoon, Ms. Walker. How are you?

9 A. I'm good. How are you?

10 Q. I'm doing well. I don't have a lot for you today,
11 but you are employed by the Lexington County Sheriff's
12 Department to test substances to find out what they are,
13 correct?

14 A. Yes, ma'am.

15 Q. Why is that? Why would one need to test the
16 substance?

17 A. To make sure that something in the community is not
18 harmful or whatever investigation needs to be done. I just
19 verify if it is a controlled substance, if it is not a
20 controlled substance.

21 Q. Is that because some things that are controlled
22 substances and some things that are not controlled substances
23 can look similarly?

24 A. Yes.

25 Q. Is there a way from looking at a controlled

1 substance to tell that it is a controlled substance?

2 A. No, ma'am.

3 Q. So in order to determine if something is a
4 controlled substance one has to scientifically test it?

5 A. Yes, ma'am.

6 Q. I guess what I'm trying to get at is, if you have a
7 bag of white substance in front of you and you are trying to
8 find out what that white substance is, a white powdery
9 substance, for instance, if you were trying to determine what
10 that was, in order to do so to be certain, you would have to
11 run chemical tests on it, correct?

12 A. I would do a presumptive test and then I would do
13 the confirmatory test to confirm it.

14 Q. Is that because there are other white powdery
15 substances that could look similarly to cocaine?

16 A. Yes.

17 Q. Are there other controlled substances that look
18 similar to cocaine?

19 A. It honestly depends, ma'am. Sometimes it can be
20 fluffy powder and I can't assume what it essentially so it
21 could be flour, baking soda, but again, I can't confirm nor
22 deny if I get an unknown substance if it's positive or
23 negative for drugs.

24 Q. Okay. I'm just trying to get at the purpose of your
25 job is to conclusively determine whether or not something is a

1 controlled substance?

2 A. Yes.

3 Q. Not trying to oversimplify. Thank you.

4 A. No problem.

5 THE COURT: Any redirect?

6 MR. COX: No redirect, Your Honor. May the witness
7 be excused?

8 THE COURT: Without objection?

9 MS. WILLIAMS: Without objection.

10 THE COURT: All right. You're excused.

11 MR. PINCELLI: Your Honor, at this time the State
12 rests.

13 THE COURT: Let me speak with y'all real quick.

14 (Side bar off the record.)

15 THE COURT: Ladies and gentlemen, the State rests
16 their case. I have matters to take up with the attorneys
17 at this time. It's also just past 4:00 in the afternoon.
18 We'll go ahead and let you go for the day. We'll start
19 tomorrow morning again, I would like you to be here a
20 little later, 9:15 so we can start by 9:30 and we'll just
21 continue with this trial at that time. Obviously you've
22 heard a lot of testimony now so please don't do any
23 independent research on your own, don't discuss the case
24 with anyone else. As I said, everything you need to hear
25 from this trial will come from this witness stand,

1 otherwise see you at 9:15 in your jury room tomorrow
2 morning. Have a good evening. Don't discuss the case,
3 see you then. Bye-bye.

4 (Whereupon, the jury was released for the evening at
5 4:08 p.m.)

6 THE COURT: All right. Motion renewing all pretrial
7 objections and whatnot?

8 MS. WILLIAMS: Yes, Your Honor. We move to renew
9 all trial objections.

10 THE COURT: All right. So noted.

11 MS. WILLIAMS: We would also move for a directed
12 verdict regarding both indictments, the one for
13 trafficking and the one for possession with intent to
14 distribute methamphetamine. The State has failed to
15 present competent evidence that tends to prove the
16 charges of those indictments. It's beyond a mere
17 suspicion that the defendant committed those crimes.
18 Specifically the State has failed to present evidence
19 regarding the charges. I mean the elemental parts of
20 possession and intent to distribute and so therefore
21 there isn't enough evidence in order to put the charge in
22 front of the jury and we move for directed verdict on
23 both counts.

24 THE COURT: Very well. Any response from the State?

25 MR. PINCELLI: Your Honor, I believe the testimony

1 from Investigator Gietz alone about the post Miranda
2 statements gives enough for the jury to make a decision
3 both that the drugs were quote "his" and that he does
4 sell drugs. I believe there's additional indicia of
5 intent to distribute, given the ledger, given the scale,
6 and communications on his phone. I believe the
7 communications on his phone also show his knowledge and
8 possession of those drugs.

9 Further, Your Honor, the methamphetamine was found
10 on his person in his pocket. The cocaine was found in a
11 bag directly nearby. I believe that alone with all the
12 statements is plenty for the jury to decide on their own
13 whether or not there's guilt or not.

14 THE COURT: Anything else, Ms. Williams?

15 MS. WILLIAMS: With regard to the directed verdict
16 motion, no, Your Honor, but we would also like to renew
17 our objections made during the trial as well as pretrial.

18 THE COURT: Yeah. The record will reflect that all
19 of the defendant's pretrial motions or objections on any
20 rulings I made are renewed and your objections made
21 during the trial of the case are preserved.

22 MS. WILLIAMS: Thank you, Your Honor.

23 THE COURT: Obviously on directed verdict, the trial
24 Court is concern with the existence of evidence, not its
25 weight, and I think there's enough direct and

1 circumstantial evidence to send the case to the jury at
2 this point. They can fairly and logically take that
3 evidence and find a verdict one way or another so I'll
4 respectfully deny the defendant's motion for directed
5 verdict and we'll go from there, okay?

6 MS. WILLIAMS: Thank you, Your Honor.

7 THE COURT: All right. We, up here at the bench
8 just now, talked about addressing defense case, whether
9 he intended to testify or not. Do you all wish to have a
10 short break and discuss or are you ready to do that
11 collogue now? To be clear though, whatever he tells me
12 now, he can tell me something different in the morning.

13 MR. WILLIAMS: That's true. Judge, I think we might
14 as well just do it in the morning in terms of him
15 acknowledging or not.

16 THE COURT: I'll tell you what. Did you have -- Who
17 was your witnesses?

18 MR. WILLIAMS: Judge, there are only two potential
19 witnesses in this case and I'll give a heads up, we don't
20 intend to offer either one of them.

21 THE COURT: Okay. In that case, I asked the jury to
22 be back at 9:15. I've got a settlement hearing at 8:45
23 which should be done by nine. Why don't y'all just be in
24 here, let's make sure we're doing the right to testify
25 portion no later than 9:15, that way whatever happens we

1 can start right after. We are working on a proposed jury
2 charge dealing with the law of this case and we'll go
3 ahead and send you a draft now, okay?

4 MR. PINCELLI: Okay. Should we respond to Ariana or
5 --

6 THE COURT: You can do that. Obviously motion to
7 charge is the stuff we have in every case. Obviously pay
8 close attention to the trafficking and possession with
9 intent to distribute portion. Honestly, I haven't looked
10 at it yet myself. I'm confident it's a good solid first
11 draft, so any issues obviously I'll work with y'all.
12 Obviously if you both agree something is missing, we'll
13 add it.

14 MR. WILLIAMS: Lesser included, Judge, on the charge
15 on the indictment.

16 THE COURT: Okay. So lesser included. PWID would
17 be possession. Now what about trafficking?

18 MR. WILLIAMS: Well, you know, that's an interesting
19 question, Judge. We would take the position that he
20 should be entitled to charge on possession.

21 THE COURT: I haven't researched that, but that's
22 something I will do.

23 MR. PINCELLI: The State's argument on that would be
24 if possession is proven, the only other elements are
25 weight truly and that would also be a request for the

1 jury instruction. The trafficking statute has a myriad
2 of verbs on what can prove it, but essentially it can be
3 proven by possession and weight and confirming that the
4 drugs are, in fact, what the drugs are said to be so I
5 would just like to trim down some of that language and
6 for that reason also I would say that possession would be
7 appropriate for a lesser included.

8 THE COURT: Well, first of all, we're fine with
9 possession on PWID, right?

10 MR. PINCELLI: Yes, Your Honor.

11 THE COURT: So it's just a matter you don't think
12 possession is an appropriate lesser included, but
13 trafficking?

14 MR. WILLIAMS: I think the argument about the
15 weight.

16 THE COURT: Well, again, you're catching me in a
17 position because I have not looked that up so we'll all
18 have to look that up. How about this, Ms. Williams. To
19 the extent that possession is an appropriate lesser
20 included --

21 MS. WILLIAMS: I will do research on it and find
22 out.

23 THE COURT: To the extent, Mr. Cox, that you
24 disagree, please provide me something or Mr. Pincelli who
25 is fully capable.

1 MR. WILLIAMS: You don't need to ask me, Judge.

2 THE COURT: I have left someone out on that side. I
3 wanted to leave someone out on this side.

4 MR. PINCELLI: That's fine, Judge, if you have to
5 give Jordan homework, that's okay.

6 MR. COX: I believe me and Ms. Williams know exactly
7 our roles in this trial.

8 THE COURT: They are all vital roles. But if you
9 think we need to do that, I think we can do that. Any
10 other unique charges? I don't think so.

11 MR. WILLIAMS: Are you gonna do the mere presence
12 charge, Judge?

13 THE COURT: Yes. Always do.

14 MR. PINCELLI: I don't think there was anything
15 struck from the record.

16 THE COURT: Well, mere suspicion. We've got mere
17 something always, but mere suspicion, mere presence at
18 the scene where the drugs were found is not enough to
19 prove possession. So we have something along that
20 charge. We always have the sympathy charge, but this
21 hasn't been that type of case. I usually give them a
22 copy. I will have two, well, we'll do one sheet of paper
23 with two verdicts on it, one for each indictment. It
24 depends on how we do a lesser included. We may need to
25 redraft that. So that's still a work in progress.

1 Ideally we'll get some information on lesser included,
2 that way I don't have to start from scratch.

3 MS. WILLIAMS: I'll do my best, Judge.

4 THE COURT: And we will do the same. Anything else
5 for today for the record?

6 MR. PINCELLI: No, Your Honor.

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: Anything else from our 403 participant?

9 403: Great job.

10 THE COURT: Anything we leave out? All right.
11 We'll see y'all in the morning.

12 (Whereupon, court was adjourned for the day at 5:00
13 p.m.)

14
15
16
17
18
19
20
21
22
23
24
25

1 May 12, 2022

2 BAILIFF: All rise. Court is now in session.

3 THE COURT: Good morning. Please be seated. These
4 are the verdict forms for your benefit. If you see
5 anything glaringly wrong, please let me know. First
6 things first. Let's talk about, so we left yesterday the
7 State rested, we heard directed verdict motions, and we
8 discussed that we would allow Mr. Wagner the evening to
9 decide if he was gonna testify. Mr. Wagner, if you
10 wouldn't mind, would you please stand up.

11 Thereupon,

12 MAXIE WAGNER

13 after having been first duly sworn, testified as follows,

14 EXAMINATION

15 BY THE COURT:

16 Q. Mr. Wagner, good morning. I'm gonna explain to you
17 some of your rights. If you do not understand anything that I
18 say, please let me know. If you want me to explain anything
19 in more detail, please let me know. Do you understand that?

20 A. Yes, sir.

21 Q. I need to make sure I hear you.

22 A. Yes, sir.

23 Q. Okay. Now, we've now reached the stage of the trial
24 where you may present your defense. You have the right to
25 claim the protections given to you by the Fifth Amendment of

1 the Constitution of the United States which provides in part
2 no person shall be compelled in any criminal case to be a
3 witness against himself. This means you cannot be required to
4 testify in this case. You have the right to testify on your
5 own behalf, however, no one can make you testify. This is a
6 personal right and no one can waive this right except you. Do
7 you understand that?

8 A. Yes, sir.

9 Q. If you decide to testify, you will be subject to the
10 same rules that govern other witnesses. You may be examined
11 and cross examined on any relevant issue in this case. In
12 addition, if you have any convictions involving dishonesty or
13 false statement or for any crimes punishable by imprisonment
14 for more than one year and this Court determines that the
15 probative value of admitting this evidence outweighs its
16 prejudicial effect to you, the Solicitor will be able to
17 introduce your record to attack your credibility. Do you
18 understand that?

19 A. Yes, sir.

20 Q. If you decide to testify, this decision on your part
21 must be freely, voluntarily, and intelligently made with the
22 knowledge of the protections given to you by the Fifth
23 Amendment and the consequences of your decision to testify.

24 If you decide not to testify, I will instruct the
25 jurors that they cannot give the fact that you did not testify

1 any consideration whatsoever and there is to be absolutely no
2 prejudice to you because you did not testify because it's left
3 entirely up to you whether or not you testify. You may talk
4 with your attorney, family, friend or anyone else, but the
5 final decision will be left entirely up to you. Now, do you
6 understand what I have explained to you, sir?

7 A. Yes, sir.

8 Q. Do you have any questions about what I've
9 explained?

10 A. No, sir.

11 Q. Have you discussed this with your attorney?

12 A. Yes, sir.

13 Q. Do you have any additional questions for your
14 attorney now?

15 A. No, sir.

16 Q. Okay. Do you wish to testify?

17 A. No, sir.

18 THE COURT: All right. Very well. All right. Does
19 the defense intend to put up any case?

20 MS. WILLIAMS: Your Honor, the defense rests and at
21 this time we would renew all motions and objections
22 previously made at pretrial and during the trial.

23 THE COURT: Okay. Very well. I understand the
24 defense is resting and you are reasserting and preserving
25 all your previous objections and motions to include your

1 directed verdict motions and those rulings remain as
2 previously ruled. The charge. We had a nice chat this
3 morning about the charge. I also just gave copies of the
4 verdict form to the attorneys. We made some changes to
5 the body of the trafficking charge to add language to it,
6 that was really without any sort of objection from the
7 State if I recall.

8 MR. PINCELLI: Correct.

9 THE COURT: The main point of contention in our
10 discussion was whether or not to add lesser included
11 offenses to the trafficking cocaine charge. Well, you
12 know what, why don't I let you speak to that on the
13 record first, Ms. Williams.

14 MS. WILLIAMS: Thank you, Your Honor. Yes. The
15 defense requested a PWID with regards to cocaine and a
16 possession charge with regards to cocaine based on
17 Matthews v. State that seems to indicate that where there
18 is conflicting evidence as to whether the amount, in that
19 case, marijuana involved is sufficient to invoke the
20 trafficking statute, both charges should be submitted to
21 the jury. Where, however, the undisputed evidence is
22 that the amount involved exceeds the minimum trafficking
23 amount, then only the trafficking charge should be
24 submitted to the jury.

25 Depending on, you know, how the jurors find, we

1 thought that in evidence there was evidence of a bag of
2 cocaine as well as evidence of cocaine on a scale that
3 was found. The officer testified that based on his
4 knowledge and experience there was cocaine on the scale,
5 therefore, a jury could find that that cocaine belonged
6 to him and the other didn't or that the quantity of
7 cocaine on that scale was more or less and so we
8 requested a PWID and a possession charge based on that
9 basis, Your Honor.

10 THE COURT: Okay. Any response from the State, Mr.
11 Pincelli or Mr. Cox?

12 MR. PINCELLI: Your Honor, I believe the precedent
13 cases cite that the weight must be contradicted for a
14 trafficking case. I think any allegation there's an
15 additional amount of cocaine that could be added to the
16 sum total of 44 grams which our chemist testified to,
17 that might be a separate indictment charge of possession
18 or it would be added to the cumulative weight that has
19 been proven on the stand by the chemist. Because nothing
20 contradicts that weight, I believe the Court's ruling
21 that there is no lesser included for the cocaine charge
22 under trafficking 28 to a hundred grams, I believe that
23 is the appropriate charge. There should not be a lesser
24 included for either PWID or possession because that
25 weight is not contradicted and that is an essential

1 element of trafficking.

2 THE COURT: Anything else, Ms. Williams?

3 MS. WILLIAMS: Your Honor, I would only state that
4 while the chemist did testify as to a quantity of cocaine
5 that she tested, it was contradicted by the fact that
6 there was additional cocaine found or what could be
7 cocaine found. It was testified that it was cocaine and
8 it was not included in the measurements, so the fact it
9 was not measured in and of itself contradicts the amount
10 that the chemist testified to.

11 THE COURT: All right. I sort of indicated on the
12 verdict form I handed out, I think it's, I think in a
13 situation based on the evidence not to charge the lesser
14 included of possession, but the trafficking charge is
15 appropriate in part based on Matthews versus State and
16 Sellers versus State. The drugs here exceeded, or the
17 testimony, the weight exceeded the statutory amount of
18 the trafficking charge. Certainly Ms. Williams brought
19 up some interesting points. I will look at this again,
20 but I don't think any lesser included based off of what
21 we've heard in trial is appropriate here today. So we
22 won't charge lesser included on trafficking. Obviously
23 we'll charge the lesser included on possession with
24 intent to distribute on that. So that's where we are.

25 We'll bring them in. I'll told them yesterday, I

1 will ask them if they have done any independent research
2 since we broke yesterday. I'll tell them we had the
3 State rested without an opportunity to hear from the
4 defense. The defendant can rest and I'm gonna put it
5 right to them it's now time for closing arguments. So we
6 discussed the defense did not enter any evidence so
7 they will have the right to the last word. The State
8 will open and close in full. Ms. Williams will then have
9 an opportunity to close, and I'll charge them after that.
10 That make sense? Any questions?

11 MR. PINCELLI: Nothing from the State, Your Honor.

12 MS. WILLIAMS: Nothing from the defense.

13 THE COURT: All right.

14 MR. PINCELLI: Judge, before the jury gets in here,
15 if I put the easel right in front of the witness stand,
16 is that gonna block your view of the jury?

17 THE COURT: I don't think so. I don't think so. I
18 can move my chair if I have to.

19 (Whereupon, the jury entered the courtroom at 10:05
20 a.m.)

21 THE COURT: Okay. Mr. Foreman, ladies and gentlemen
22 of the jury, welcome back. Hope everybody had a nice
23 evening. Before we get started today, I just want to
24 make sure, did anyone do any independent research or have
25 any conversation with anyone about the case?

1 (Jury indicates no.)

2 THE COURT: All nos. Okay. Thank you. We
3 adjourned for the day yesterday. The State had just
4 rested. We now have an opportunity to hear from the
5 defendant, okay? Ms. Williams.

6 MS. WILLIAMS: Your Honor, the defense rests.

7 THE COURT: Very well. Ladies and gentlemen, the
8 defense has rested. We now - the parties have presented
9 their evidence in this case. It's now time for the
10 attorneys to make their closing arguments. The arguments
11 of the attorneys are not evidence in this case. Their
12 statements and arguments are meant to help you understand
13 the evidence and apply the law to the evidence. You
14 should disregard any remarks, statement or argument which
15 is not supported by the evidence presented during the
16 trial or the law that I'll explain to you after the
17 arguments. At this time please give your complete and
18 undivided attention to the attorneys as they make their
19 closing arguments.

20 MR. PINCELLI: Good morning. Yesterday Mr. Cox
21 opened for the State. He told you this was a
22 straightforward drug case. This is a straightforward
23 drug case. Maxie Wagner on February 10th, 2020 was in a
24 traffic stop. His vehicle was searched and a large
25 quantity of drugs was found, a cell phone was recovered.

1 That cell phone was searched. The drugs were tested and
2 a lot of other evidence showed his intent to distribute
3 those drugs. This is straightforward.

4 The Judge, following my presentation and the
5 defense's closing, is going to give you all the
6 information you need to know about the law. The Judge is
7 in charge of the law of this case and he will educate you
8 on everything you need to know to deliberate and to find
9 a verdict, but you, the jury, you are the judges of the
10 facts. You get to remember all the testimony, you get to
11 look at all of the evidence, you get to put that together
12 with the common sense that you walked in here with today
13 and you get to decide what you believe, but it's gonna be
14 straightforward.

15 Let's look at roughly what we're talking about, what
16 we are proving here throughout this trial. This is one
17 of the two charges that Maxie Wagner, the defendant, is
18 on trial for, PWID methamphetamine, possession with
19 intent to distribute methamphetamine. The defendant
20 knowingly possessed methamphetamine with the intent to
21 distribute. It's straightforward.

22 I'm not gonna take a lot of your time, but let's
23 review some of the things we learned throughout this
24 trial. There was a stop on the vehicle. We know that.
25 We heard Investigator Gietz testify to that. Inside that

1 vehicle was a black backpack, back seat of that vehicle.
2 Not a large car. You can see how cramped that back seat
3 is. Inside that black backpack, let's take a look.
4 We've got a small black case, a small red case and a
5 book. Inside of that black case, a large amount of cash.
6 I believe it was testified to over one thousand dollars
7 in cash right next to that red case. What was in that
8 red case? Well, those were the drugs.

9 These were the drugs that were testified to as being
10 collected on scene, sealed, sent back to evidence, sent
11 to a chemist, peer reviewed by another chemist and
12 confirmed to be methamphetamine as well as cocaine. The
13 weight of that cocaine was 44 and some odd grams. These
14 were drugs. Right next to that cash, right next to those
15 drugs, a book, but it wasn't just any book. No. This
16 was a drug ledger, ladies and gentlemen. We heard
17 testimony to that effect.

18 Now, like I said before, you are the judges of the
19 facts. You get to decide what all these names and the
20 dollar amounts mean. We heard testimony from a narcotics
21 agent. It's his job to make these cases and to be
22 familiar with what these things mean. But all these
23 names and numbers next to drugs, next to money, next to a
24 scale with drug residue, ladies and gentlemen, this is a
25 drug ledger. This shows that Maxie Wagner not only

1 possessed these drugs, he had the intent to distribute
2 these drugs and not just the intent, seems like he was
3 distributing these drugs. He had done it and intended to
4 do it in the future.

5 How do we know that he intended to do it in the
6 future and that he had been doing it in the past? We've
7 also got his cell phone. The testimony was this cell
8 phone came from Maxie Wagner's pocket, his pocket. What
9 else was in that pocket? The methamphetamine right next
10 to the cell phone and if there was any doubt whose cell
11 phone that was, we talked about some of the images found
12 on that cell phone. One of those images, a selfie of
13 Maxie Wagner because that is Maxie Wagner's phone, the
14 same phone he was using to sell drugs, the same phone
15 that he was using to access his Facebook account. Max
16 Wagner. Facebook Messenger. The same phone that people
17 were asking him to buy \$20.00 of go fast.

18 Now, you heard testimony, what was go fast? Well,
19 it's drug slang for a stimulant, could be cocaine, could
20 be methamphetamine. Well, Maxie was selling both. We
21 also had in that phone a communication about a tab from
22 Stormmy down to \$350.00. If you recall, we looked back
23 in that drug ledger and we found Stormmy and we found an
24 amount for \$350.00.

25 You, the jury, the judge of the facts, you get to

1 use your common sense and put this together. You get to
2 decide what to believe and that shows you that not only
3 was Mr. Wagner in possession of the methamphetamine in
4 his pocket next to that cell phone, he was in knowing
5 possession. It wasn't a surprise he had methamphetamine.
6 He was selling it. People were asking him for it. He
7 had a tab with people's prices and costs, what they owed
8 him. He was in knowing possession of methamphetamine
9 tested by a chemist and he had the intent to distribute.
10 Fairly straightforward. Three points on that one,
11 trafficking in cocaine. The other charge that Mr. Wagner
12 is on trial for today, the defendant was knowingly in
13 possession of.

14 Ladies and gentlemen, that cocaine was found in that
15 backpack that we went just through those pictures right
16 next to that money, right next to the ledger, the ledger
17 which he has communications on his phone. He knows about
18 all that. He's got this photo of this scale on his
19 phone, the same scale that was found in the backpack.
20 The same scale he's using to measure and sell these
21 drugs. He was in knowing possession of that cocaine.

22 And the Judge will explain the law to you again at
23 the end of this. Possession can be actual, it can be in
24 Mr. Wagner's pocket like the methamphetamine or it can be
25 constructive. It can be something that he has control

1 over, that he has dominion over, that he has the ability
2 to take and do something with like a large amount of
3 cocaine in the backpack in the back seat of his vehicle;
4 that he had his money and his scale and his drug ledger.
5 He had constructive possession of that cocaine. It was
6 tested by the chemist Margaret Walker. She was qualified
7 as an expert and she told you everything that goes on
8 with chemical testing, how it's done, the chain of
9 custody, how it gets to her, and she said yes, that was
10 in fact cocaine.

11 That brings us to the third element, must be a
12 weight greater than 28 grams, but less than one hundred
13 grams. It was 44 grams, that is between 28 and one
14 hundred. That's straightforward.

15 This is a straightforward drug case, and the State
16 does have the burden of proof to prove these things to
17 you, but let's talk about the burden in this
18 straightforward case. The burden is not was this the
19 perfect criminal investigation. The burden is not was
20 that report free of a single typo. The burden is are you
21 convinced beyond a reasonable doubt that Maxie Wagner
22 possessed methamphetamine with an intent to distribute
23 and that he possessed cocaine knowingly in an amount
24 between 28 and one hundred grams beyond a reasonable
25 doubt. That is the burden. It's not beyond a shadow of

1 a doubt. It's not beyond all doubt. Because what do we
2 really know beyond all doubt? Maybe that my mama loves
3 me maybe, but that's not it. It's not perfect. It is
4 what leaves you firmly convinced.

5 Now, you look at all this. You'll have this in the
6 jury room. Look at this scale. Look how it matches
7 what's on his phone. Look at those communications. Look
8 how it matches what's on the ledger. Think about the
9 testimony you heard about how those drugs were confirmed
10 to be what they were reported to be, methamphetamine and
11 cocaine. You get to look at all that. Think about all
12 the testimony, deliberate. When you do that, ladies and
13 gentlemen, you will be firmly convinced. I believe you
14 are right now. You will be firmly convinced that Maxie
15 Wagner is guilty of these charges and you will find him
16 guilty because we have proven beyond a reasonable doubt
17 that he possessed methamphetamine with the intent to
18 distribute and he was trafficking in cocaine. Thank
19 you.

20 MS. WILLIAMS: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. WILLIAMS: Ladies and gentlemen, I told you I'd
23 be back. The Solicitor still would have you believe that
24 it's a straightforward case. By the end of my speech
25 I'll hopefully persuade you that it is not. I don't

1 think it is. You know, I didn't always start out wanting
2 to be a lawyer. I actually wanted to be a chemist.
3 I went to school to be a chemist and as I mentioned in my
4 opening statement that I clearly am a rule follower. I
5 like rules. I like concrete things and chemistry
6 appealed to me about that. You can take two hydrogen
7 atoms and you can combine them with one oxygen atom and
8 every time you'll get water, and if you add an extra
9 oxygen atom, you don't have water anymore, you have
10 hydrogen peroxide. I wouldn't suggest you drink it.

11 So, similarly, the law is made up of multiple
12 elements, right? Hydrogen, oxygen elements. The law,
13 the Solicitor had a thing up here, made up of elements.
14 So, if you don't have each of those elements, you don't
15 have the end product. You don't have that crime. You
16 have something. You might have hydrogen peroxide. You
17 don't have that crime. Follow me here. So, two hydrogen
18 atoms, one oxygen atom, water. Looking a little bit more
19 narrowly at it not all hydrogen atoms are the same. I
20 swear I'm gonna get off science soon, but if you add an
21 extra part to that hydrogen atom, you get something
22 called deuterium which is still hydrogen, but you put it
23 with water and you do have water, with oxygen you still
24 have water.

25 So, same element, tweak it a little bit, add it to

1 oxygen, you have water. But it's called heavy water. If
2 you drink more than a few table spoons of that, you'll
3 die. So, if you don't have the exact right element and
4 put them together, you don't have what you're looking
5 for. Ladies and gentlemen, I submit to you that in this
6 particular case we do not have the exact right elements.

7 So, the Judge is the authority on the law. He said
8 that already and the Solicitor went through the basic
9 elements with you. In order to have trafficking in
10 cocaine, you must, in fact, have cocaine. You must have
11 possession of that cocaine. That cocaine must be in this
12 case 28 grams to a hundred grams. To have PWID,
13 possession with intent to distribute methamphetamine you
14 must have meth. You must have possession of that meth.
15 You must have the intent to distribute that meth. And
16 the Judge is gonna tell you there's a bit of presumption
17 based on the weight of that meth, but the State still has
18 to prove that intent beyond a reasonable doubt. So, I
19 swear I'm not gonna walk through each of those elements,
20 but I'm gonna focus in on the one that I think is the
21 most important on each of those crimes.

22 So, possession. Let's look at trafficking.
23 Possession is more than constructive possession. The
24 Solicitor mentioned to have actual possession, you have
25 constructive possession if it's in your car. I think

1 that's what he was getting at. But you also have to have
2 knowing possession. It doesn't matter if it's actual or
3 constructive, it also has to be knowing which makes sense
4 because otherwise if you are remotely around drugs, you
5 could be arrested for everything them.

6 Looking at the second element on the third charge,
7 in order to have intent to distribute, well, you must
8 show that the defendant intended to distribute it. We'll
9 get into more of that later. I'm clearly not a very
10 mysterious person. You can tell what I think we need to
11 focus on here. So, that being said, I am not the finder
12 of facts. You guys are. And as I mentioned at the
13 beginning, you get to determine the credibility of the
14 witnesses. As the Judge said, you get to consider their
15 credibility to know. You get to consider their memory
16 and you get to determine whether or not he or she may
17 have an interest in the outcome of the case.

18 However, you all aren't machines back there. You're
19 not just spitting out various data. You also have your
20 own points of view and you get to discuss those points of
21 views with one another and so if you happen to believe
22 that the State has not met its burden of proof in this
23 case, I'm going to give you some talking points.

24 Looking at knowing possession. This particular one
25 with regard to the trafficking charge, this particular

1 one isn't complicated. The Solicitor is right about
2 that. The State has only produced one thing for this
3 contention, Maxie's alleged statement. You all heard it
4 yesterday. The officer stated that Maxie himself
5 admitted that there were drugs in the car. However, how
6 does that officer remember Maxie's statement? He
7 referred to his investigative report. He danced around
8 it for a bit, but ultimately he admitted that at least in
9 one regard it was inaccurate. He admitted that he
10 composes them after he puts the evidence into the
11 evidence room and he admitted that he had no written
12 statements, no recordings, no video tape from the gas
13 station, not even fellow officers who could maybe refresh
14 his memory or corroborate the statement while he was
15 drafting this. He wrote this after. It was based just
16 on his memory of what Maxie said and I really want to
17 focus on this point and be clear that I am not trying to
18 imply that the officer has an easy job or that he is some
19 kind of bad officer or anything like that. I am not
20 implying that at all.

21 Narcotics officers have a really hard job. I am
22 sure that it is not easy and I am sure that there is a
23 lot of detail and a lot of paperwork and I have a hard
24 enough time keeping up with the details of this one drug
25 case and they have a bunch of them. However, the State

1 does have the burden of proving beyond a reasonable doubt
2 its case. That detail in that paperwork, they need to be
3 accurate just to make sure that everyone's rights are
4 protected. We have to make sure that each element is
5 met.

6 Why does the State have such a high burden anyway?
7 Well, you know the State is just another word for
8 government. I'm not a history buff and I swear I'm gonna
9 quit talking about knowledge things soon, but I think
10 it's common knowledge that the United States was founded
11 with a little bit of a wariness of big government and so
12 we were afraid of overreach and unjust imprisonment and
13 so the government has the burden of proving things beyond
14 a reasonable doubt. It's a checks and balances system to
15 make sure that the system works correctly.

16 Anyway, back to Maxie's alleged statement. I do not
17 know what Maxie said that day. According to the
18 officer's testimony he explained he was going to search
19 the car and Maxie said there were drugs in the car and
20 they belonged to him. There were loaded needles in the
21 car. He asked Maxie what was in the hypodermic needle
22 and he said methamphetamine. He asked Maxie what was in
23 the bag and he said cocaine. He asked Maxie if he was
24 selling drugs and he said I have to. He asked Maxie
25 where he'd been selling and he said the mile. He asked

1 Maxie if he had anything else on his person and he said I
2 have methamphetamine in my pocket.

3 Ladies and gentlemen, this is not an episode of
4 Scooby-Doo. Yes, officer, I did all of those things and
5 they happen to match the elements of the crime perfectly
6 and gee wilikers, commercial break. Did Maxie say those
7 things? Or, or, did an officer who wants to do his job
8 correctly accidentally misrepresent the statements in his
9 own report to reflect the crimes that he had just booked
10 him for. We know his memory wasn't perfect that day. He
11 messed up the BEST Kit numbers. We know his memory
12 wasn't perfect yesterday. He couldn't recall how to
13 spell his co-worker's name or how many doors were on the
14 car, not the gas station that he pulled him over in.
15 Memory wasn't perfect. Was he just trying to get the job
16 done and move on recalling the conversation as best he
17 could? Recalling it through his own lens, his own point
18 of view?

19 Ladies and gentlemen, the State has offered nothing
20 other than the officer's admittedly faulty recollected
21 report to support Maxie's statement that Maxie was
22 knowingly in possession of those drugs. Where is his
23 wife Erin Wagner? You heard her name on the list of the
24 State's potential witnesses. You did not hear from her.

25 We talked enough about knowing possession and

1 trafficking. So, let's look at with intent to
2 distribute. Let's talk about the ledger or the drug
3 ledger. What evidence do we have other than the
4 Solicitor's very eloquent argument or, which is in
5 evidence so never mind, what evidence do we have other
6 than the officer's own testimony that based on his
7 knowledge and experience that is a drug ledger. There is
8 not one word that says the word drug on that ledger. The
9 words knowledge and experience were bandied about a lot
10 yesterday. You might recall that based on his knowledge
11 and experience the officer could also identify the white
12 powdery substance as cocaine and the crystalline
13 substance as meth, but the State's own expert witness
14 countered yesterday and confirmed that you can't tell
15 what a substance is just by looking at it. You have to
16 test it.

17 Now, I'm not gonna stand up here and say that
18 there's a scientific test for determining whether or not
19 a ledger is a drug ledger. I think that's crazy. I
20 suppose you could do fingerprint testing which they
21 didn't do, but there is no scientific test. However,
22 there is corroborating evidence.

23 I'm gonna pause and I'm gonna go to the text
24 messages. The other evidence that the State submitted
25 that there was an intent to distribute are the text

1 messages. Again, the only evidence that we have that
2 those text messages have anything to do with selling
3 drugs is based on the officer's knowledge and experience.
4 Based on his knowledge and experience those have to do
5 with a drug deal and based on his knowledge and
6 experience that ledger is a drug ledger.

7 Well, it could also be a myriad of other things,
8 both of them could, but I'm not allowed to speculate and
9 I shouldn't have to speculate. There were messages in
10 there from Stormmy. Stormmy has a cell phone number.
11 There was an accounting in that ledger from Stormmy.
12 Again, Stormmy has a cell phone number. We all heard the
13 officer yesterday when he stated in a somewhat defensive
14 response that he does not have jurisdiction over the 843
15 area code. Well, I am willing to bet a nickel that
16 someone in this courtroom has a cell phone that does not
17 have an 803 area code but has something else. Maybe it's
18 Pennsylvania. Maybe it's Georgia, whatever.

19 Again, I am not saying that an the officer's job is
20 easy. It is not. I would not want it. But please
21 consider the source of most of the evidence in this case.
22 It is a human being. Knowledge and experience can be
23 wrong. In order to prove something beyond a reasonable
24 doubt, wouldn't it be easier if we had additional
25 evidence, that source, that source of most of the

1 evidence in this case. He has a point of view. He has a
2 job and he didn't follow up on multiple easy things that
3 could support his training and experience. They tested
4 the drugs. Where is the rest of the support for the
5 other elements?

6 Ladies and gentlemen, I have spoken long enough, so
7 in sum, there is no evidence to support beyond a
8 reasonable doubt that Maxie knowingly possessed that
9 cocaine. There is no evidence to support beyond a
10 reasonable doubt that Maxie had that methamphetamine with
11 intent to distribute. If you have the elements and
12 they're almost right, but they're not, you can end up
13 killing yourself from drinking heavy water. But in this
14 case you have the elements, but are they right? I don't
15 think they have met knowing possession. I don't think
16 they have met with intent to distribute. They might have
17 proven something else, and The Judge is gonna give you a
18 jury instruction on that. But have they proved the
19 crimes that he is charged with? I submit to you that
20 they have not and I would ask for you to return with a
21 verdict of not guilty with regard to trafficking in
22 cocaine and not guilty with regard to PWID meth. Thank
23 you for your time.

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen, I will now charge you on law applicable to

1 this case. You must consider the charge as a whole and
2 not focus on some portions to the exclusion of others.

3 I remind you that, during this trial, you and I have
4 certain duties to perform. As the trial Judge, it is my
5 responsibility to preside over the trial of this case,
6 and I also have the duty to rule upon the admissibility
7 of evidence offered during this trial. You are to
8 consider only the competent evidence before you. If
9 there is any testimony ordered stricken from the record
10 in this case during the trial, you must disregard that
11 testimony. You are to consider only the testimony which
12 has been presented from the witness stand, and any
13 exhibits which have been made a part of the record in
14 this case, and any stipulations of counsel.

15 I have the additional duty to charge you the law
16 applicable to this case. I the presiding Judge, I am the
17 sole Judge of the law in this case, and it is your duty
18 as jurors to accept and apply the law as I state it to
19 you. If you already have any idea as to what the law is
20 or what the law ought to be and it does not agree with
21 what I am now telling you the law is, you must abandon
22 this idea because you are sworn to accept the law and
23 apply the law exactly as I state it to you.

24 In every case tried in this court before a jury, the
25 jury becomes the sole and exclusive judge of the facts in

1 the case. A trial Judge cannot intimate, state, comment
2 on, or make any statement to a trial jury about the facts
3 of the case. Since you, the jury, are the sole judge of
4 the facts in this case, you are not to infer from what I
5 have said during the progress of this trial in ruling
6 upon admissibility of evidence, or otherwise. Or
7 anything that I say now during the course of this
8 instruction to you, that I have any opinion about the
9 facts in this case. The law does not allow me to have an
10 opinion about the facts in this case. This is a matter
11 solely for you, the jury, to determine. As jurors, it is
12 your duty to determine the effect, value and weight of
13 the evidence presented during this trial.

14 Now, there are two types of evidence generally
15 presented during a trial - direct evidence and
16 circumstantial evidence. Direct evidence directly proves
17 the existence of a fact and does not require deduction.
18 Circumstantial evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact.

20 Crimes may be proven by circumstantial evidence.
21 The law makes no distinction between the weight or value
22 to be given to either direct or circumstantial evidence,
23 however, to the extent the State relies on circumstantial
24 evidence, the circumstances must be consistent with each
25 other, and when taken together, point conclusively to the

1 guilt of the accused beyond a reasonable doubt. If these
2 circumstances merely portray the defendant's behavior as
3 suspicious, the proof failed.

4 The State has the burden of proving the defendant
5 guilty beyond a reasonable doubt. This burden rests with
6 the State regardless of whether the State relies on
7 direct evidence, circumstantial evidence, or some
8 combination of the two.

9 You must determine the credibility of witnesses who
10 have testified in this case and the evidence presented.
11 Credibility simply means believability. It becomes your
12 duty as jurors to analyze and evaluate the witnesses and
13 evidence and determine the credibility of the witnesses
14 and the evidence.

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

1 stand.

2 Now, the rules of evidence do not permit witnesses
3 to testify to opinions or conclusions. An exception to
4 this rule exists for witnesses we call "expert
5 witnesses". A witness who, by education and experience,
6 has become expert in some art, science, profession, or
7 calling may state an opinion as to a relevant and
8 material matter in which the witness claims to be an
9 expert, and may also state the reasons for the opinion.

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

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

23 Now, I instruct you and emphasize that the fact a
24 defendant did not testify is not a factor to be
25 considered by you in any way in your deliberation and in

1 your consideration on the question of guilt or innocence
2 of a defendant. It must not be considered by you in any
3 manner whatsoever. A defendant has the Constitutional
4 Right to remain silent, and the assertion of this right
5 must not be considered by you in your deliberations. I
6 repeat, under your oath, you are to draw no conclusion
7 whatsoever from the fact that a defendant in this case
8 did not testify. The fact that a defendant did not
9 testify should not even be discussed in the jury room.
10 The burden of proof, as I have stated to you, is on the
11 State. A defendant is not required to prove his or her
12 innocence. The burden of proof remains on the State to
13 prove guilt beyond a reasonable doubt.

14 Now, the indictments charge the defendant with
15 trafficking cocaine and possession with intent to
16 distribute methamphetamine. I remind you that the fact a
17 defendant was arrested, charged and indicted in this
18 case is not evidence and cannot be considered by you as
19 evidence of guilt in this case, nor does it create any
20 presumption or inference of guilt. These documents are
21 simply the formal written instruments which contain the
22 charges made against a defendant. These are the formal
23 documents by which this case is brought into this court.

24 Each indictment charges a separate and distinct
25 offense. You must decide each indictment separately on

1 the evidence and the law applicable to it uninfluenced by
2 your decision as to any other indictment. A defendant
3 may be convicted or acquitted on any or all of the
4 offenses charged and charges. You will be asked to write
5 a separate verdict of guilty or not guilty for each
6 indictment.

7 Now, the defendant had pled not guilty to these
8 indictments, and that plea puts the burden on the State
9 to prove the defendant guilty. A person charged with
10 committing a criminal offense in South Carolina is never
11 required to prove himself or herself innocent.

12 I charge you that it is an important rule of law
13 that a defendant in a criminal trial, no matter what the
14 seriousness of the charge may be, will always be presumed
15 to be innocent of the crime for which the indicted is
16 issued unless guilt has been proven by evidence
17 satisfying you of that guilt beyond a reasonable doubt.
18 This presumption of innocence does not end when you begin
19 your deliberations, but it accompanies a defendant
20 throughout the trial unless you reach a verdict of guilt
21 based on evidence satisfying you of that guilt beyond a
22 reasonable doubt.

23 The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of a defendant
25 which remains with a defendant unless it has been

1 stripped from a defendant by evidence satisfying you of a
2 defendant's guilt beyond a reasonable doubt.

3 The presumption of innocence is not mere legal
4 theory. It is not just a legal phrase. It is a
5 substantial right to which every defendant is entitled
6 unless you, the jury, are satisfied from the evidence of
7 a defendant's guilt beyond a reasonable doubt.

8 Now, the State has the burden of proving the
9 defendant guilty beyond a reasonable doubt. Some of you
10 may have served as jurors in a civil cases, where you
11 were told that it is only necessary to prove that a fact
12 is more likely true than not true, such as by the greater
13 weight or preponderance of the evidence. In criminal
14 cases, the State's proof must be more powerful than that.
15 It must be beyond a reasonable doubt.

16 Proof beyond a reasonable doubt is proof that leaves
17 you firmly convinced of the defendant's guilt. There are
18 very few things in this world we know with absolute
19 certainty, and in criminal cases the law does not require
20 proof that overcomes every possible doubt. If, based on
21 your consideration of the evidence, you are firmly
22 convinced that the defendant is guilty of the crime
23 charged, you must find the defendant guilty. If on the
24 other hand, you think there is a real possibility that
25 the defendant is not guilty, you must give the defendant

1 the benefit of the doubt and find him not guilty.

2 In order to establish criminal liability, criminal
3 intent is required. For example, the mental state
4 required to be proven by the State for a particular crime
5 might be purpose, intent, knowledge, recklessness, or
6 criminal negligence. Criminal intent must be proven by
7 the State beyond a reasonable doubt. Criminal intent is
8 always a matter that must be determined by the jury from
9 the circumstances surrounding the situation. There is no
10 way to prove intent to a mathematical certainty. There
11 is no way medical science can dissect a person's brain
12 and determine what that person had in mind, so the law
13 says that criminal intent may be inferred from the
14 circumstances shown to have existed. This is how you
15 make a determination of whether or not the element
16 requiring intent was present. It is not necessary to
17 establish intent by direct and positive evidence, but
18 intent may be established by inference in the same way as
19 any other fact taking into consideration the acts of the
20 parties and all the facts and circumstances of the case.

21 Criminal intent is a mental state, a conscious wrong
22 doing. It is up to you to determine what the defendant
23 intended to do based on the circumstances shown to have
24 existed.

25 Criminal intent can arise from action or a failure

1 to act. It may arise from negligence, recklessness, or
2 an indifference to duty or to consequences that is
3 considered by the law to be the equivalent of criminal
4 intent.

5 The defendant has been charged with trafficking
6 cocaine. There are three elements to this offense that
7 the State must prove beyond a reasonable doubt. (1) That
8 the substance involved was in fact cocaine; (2) That the
9 defendant had possession of that cocaine, either actual
10 possession or constructive possession; and (3) That the
11 defendant possessed more than 28 grams of cocaine, but
12 less than 100 grams of cocaine.

13 The State must prove beyond a reasonable doubt that
14 the defendant knowingly sold, manufactured, cultivated,
15 delivered, purchased, brought into this state, provided
16 financial assistance or otherwise aided, abetted,
17 attempted, or conspired to sell, manufacture, cultivate,
18 deliver, purchase, or bring into this state, or was
19 knowingly in actual or constructive possession, or
20 knowingly attempted to become in actual or constructive
21 possession of the cocaine.

22 Actual possession means the cocaine was in the
23 actual physical custody of the defendant.

24 Proof of constructive possession means the State
25 must prove the defendant had the right and power to

1 exercise control over the drugs. The State must also
2 prove the defendant had knowledge of the drugs and the
3 intent to control the disposition of those drugs.

4 Possession means more than simply having a
5 controlled substance in one's possession. There must be
6 a knowing possession. The State must prove possession of
7 the cocaine by the defendant and the further fact that
8 the defendant knew he had the cocaine in his possession.

9 The State must also prove beyond a reasonable doubt
10 that the amount of the cocaine was 28 grams or more, but
11 less than 100 grams. The mere presence of a defendant
12 where the controlled substance is found or the mere
13 association by a defendant of people who possessed the
14 controlled substance is insufficient proof that the
15 defendant himself possessed the controlled substance.
16 The mere presence of a defendant where the controlled
17 substance is found or the mere association by a defendant
18 with people who possess the controlled substance is
19 insufficient proof that the defendant himself possessed
20 the controlled substance. Possession requires more than
21 mere presence.

22 Now, possession with intent to distribute
23 methamphetamine. To prove possession with intent to
24 distribute methamphetamine, there are three elements to
25 the offense that the State must prove beyond a reasonable

1 doubt: (1) That the substance involved was in fact
2 methamphetamine; (2) That the defendant had possession of
3 that methamphetamine, either actual possession or
4 constructive possession; and (3) That the defendant
5 possessed the methamphetamine with the intent to
6 distribute.

7 The State must prove the substance involved is in
8 fact methamphetamine. The State must further prove the
9 defendant had actual or constructive possession of the
10 methamphetamine. What does possession of methamphetamine
11 mean under the law? The law says methamphetamine is a
12 controlled substance. Possession means more than simply
13 having a controlled substance in one's possession. There
14 must be knowing possession. The State must prove
15 possession of the methamphetamine by the defendant and
16 the further fact that the defendant knew he had the
17 methamphetamine in his possession.

18 The State is not required to show the purpose for
19 which the defendant may have had possession of the
20 methamphetamine. That is not part of the State's
21 required degree of proof. The State must show beyond a
22 reasonable doubt that there was possession of the
23 methamphetamine and that the defendant knew he had the
24 methamphetamine in his possession.

25 There are two kinds of possession recognized in the

1 law of this state: (1) Actual possession; and (2)
2 Constructive possession.

3 Actual possession occurs when the controlled
4 substance is found to be in the actual physical custody
5 of the person charged with possession.

6 Constructive possession is when a person has
7 dominion or control, or the right to exercise dominion or
8 control, over either the object or the premises upon
9 which the object is located.

10 The mere presence of a defendant where the
11 controlled substance is found or the mere association by
12 a defendant with people who possess the controlled
13 substance is insufficient proof that the defendant
14 himself possessed the controlled substance. Possession
15 requires more than mere presence.

16 Possession of more than one or more grams of
17 methamphetamine creates a permissive inference that the
18 defendant possessed the methamphetamine with intent to
19 distribute it. This inference does not relieve the State
20 from proving beyond a reasonable doubt that the defendant
21 had the intent to distribute. It is simply an
22 evidentiary fact to be taken into consideration by you,
23 along with the other evidence in this case, and to be
24 given the weight you decide it should have.

25 If you find that the State has failed to prove

1 beyond a reasonable doubt that the defendant is guilty of
2 possession with intent to distribute methamphetamine, you
3 may consider whether the State has proved beyond a
4 reasonable doubt that the defendant is guilty of simple
5 possession of methamphetamine. Simple possession does
6 not require an intent to distribute the methamphetamine.

7 Knowingly possess means with knowledge, consciously,
8 not accidentally.

9 Intentionally means willfully; intending the result
10 which actually occurs; not accidentally or involuntary.
11 Intent may be shown by acts and conduct of the defendant
12 and other circumstances which you may naturally and
13 reasonably infer intent.

14 To prove possession, the State must prove beyond a
15 reasonable doubt that the defendant had both the power
16 and the intent to control the disposition or use of the
17 methamphetamine. Possession may be either actual or
18 constructive.

19 Now, there are two possible verdicts for each charge
20 that you may find in this case. There is no significance
21 whatsoever in the order in which I state these possible
22 verdicts; it is simply that one must be stated first.

23 Ladies and gentlemen, your verdict must be a
24 unanimous one as to each charge. Mr. Foreman, when the
25 jury agrees on a verdict, you will initial on the line

1 next to the verdict on the verdict form for each charge
2 and sign your name as foreperson, and inform the bailiff
3 that you have reached a verdict. At that time we will
4 receive you back into the courtroom.

5 Now, a verdict in this case cannot be based upon
6 sympathy, passion, prejudice or emotion, or some other
7 consideration not found in the evidence. I charge you
8 that as jurors you must decide the issues involved in
9 this proceeding based solely upon the evidence which you
10 hear during the course of the trial. Your verdict must
11 be without bias and without prejudice to any party. You
12 cannot allow yourselves to be governed by sympathy, by
13 prejudice, by passion, by public opinion, or some other
14 consideration not found in the evidence.

15 Let me say something about your deliberations.
16 Deliberation is defined as "careful consideration,
17 weighing up with a view to decision."

18 The genius of our jury system is that it allows 12
19 good men and women from 12 different backgrounds, life
20 experiences, and perspectives to consider the evidence,
21 talk about it, and ultimately, reach a verdict.

22 We call them deliberations for a reason. You are to
23 consider the evidence in this case carefully and
24 deliberately, and discuss it a calm, thorough, and
25 courteous manner.

1 Remember, you are not partisans or advocates for
2 either side, favoring one side or the other. You are the
3 judges. You're judges of the facts.

4 Listen to the views of all your fellow jurors;
5 consider other people's points and points of view, and
6 talk through and discuss the evidence. And remember, if
7 you are doing something deliberately, you are not in a
8 big hurry, and you should not be in a big hurry here. This
9 case is very important to both sides, and this is their
10 only day in a court.

11 When you retire to the jury room, you should discuss
12 this case with your fellow jurors to reach agreement if
13 you can do so. Your verdict must be unanimous.

14 Each of you must decide the case for yourself, but
15 you should do so only after you have impartially
16 considered all the evidence, discussed it fully with the
17 other jurors, and listened to the views of your fellow
18 jurors.

19 Do not be afraid to change your opinion if the
20 discussion persuades you that you should. But do not
21 come to a decision simply because other jurors think it
22 is right.

23 It is important that you attempt to reach a
24 unanimous verdict but, of course, only if each of you can
25 do so after having made your own decision. Do not change

1 an honest belief about the weight and effect of the
2 evidence simply to reach a verdict. In other words, do
3 not change an opinion solely for the sake reaching a
4 unanimous verdict.

5 Ladies and gentlemen, your verdict must be a
6 unanimous one. As I said earlier, when you agree on a
7 verdict, Mr. Foreman, you'll write the verdict on the
8 verdict form and sign your name as foreperson and knock
9 on the door and alert the bailiff and we will receive you
10 back in the courtroom at that time.

11 I will give a copy of these instructions to you in
12 written form. During your deliberations, you may refer
13 to the instructions to guide your decision making. You
14 must consider the instructions as a whole and not follow
15 some and ignore others. Please return these instructions
16 to the Court at the time your verdict is rendered.

17 Now, at this time I'll ask you to return to your
18 jury room, but do not begin your deliberations until
19 you're told to do so by the clerk or the bailiff. There
20 are additional matters that I need to take up with the
21 attorneys before you can begin your deliberations. At
22 this point return to your jury room. We'll give you
23 further instructions soon. Please do not discuss the
24 case yet.

25 (Whereupon, the jury entered the jury room at 10:54

1 a.m.)

2 MS. WILLIAMS: Your Honor, if I may put on the record
3 right now that I would renew my motions or objections, I
4 guess, to the jury charges and the verdict form based on
5 the prior discussions.

6 THE COURT: Okay. So noted. There is one sentence
7 I did not read.

8 MS. WILLIAMS: The one about the split vote.

9 THE COURT: Yes. I didn't want to open that door
10 yet. I haven't done that in the past. Did you add that?

11 MS. WILLIAMS: No, Your Honor. It was in there and
12 I approved of it.

13 THE COURT: I'm just not gonna -- I don't want to
14 tell that to them yet. I do tell them they can reach a
15 verdict if they're able to do so, but if they can't, I
16 don't want to start by telling them if they're split,
17 don't tell me how they're split. And now I don't want to
18 bring them back in here to bring more attention to it.
19 I've never charged that before.

20 MS. WILLIAMS: I understand Your Honor's position.
21 For the sake of the record we object.

22 THE COURT: Okay. Fair enough. I'll just edit it
23 out that paragraph, not even a full paragraph, three
24 lines, and I'll send the remaining instructions back to
25 the jury, okay?

1 MS. WILLIAMS: Would you mind if I read into the
2 record what that portion is?

3 THE COURT: I'll read it. Sure. I'll be happy to.
4 As I just said, I read, I ask you now to return to the
5 jury room, but do not begin your deliberations until you
6 are told to do so by the clerk or the bailiff to do so.
7 There are some matters which must be discussed with the
8 attorneys before you begin your deliberations, and I
9 stopped. And in the proposed charge it's quote, "in the
10 event during your deliberations there is a split in the
11 vote, the Court does not at any time want to be informed
12 of the actual split by number in the vote, if one
13 exists." We did have that come up once, but that's one
14 time in four years. I don't think I want to make that a
15 standard charge.

16 MS. WILLIAMS: Understood, Your Honor.

17 THE COURT: All right. But your objection is noted.
18 Anything else? We'll make sure the evidence is all in
19 order. We'll send it back in two minutes. I need to get
20 the alternates back out.

21 MR. PINCELLI: That's the only other thing, Your
22 Honor.

23 THE COURT: No other issue with the charge itself,
24 right?

25 MS. WILLIAMS: No, Your Honor.

1 MR. PINCELLI: Nothing from the State.

2 THE COURT: I'm gonna go ahead and get the
3 alternates back in here. I want alternates 110 and 48.

4 (Whereupon, the verdict form, exhibits, and jury
5 charge were sent back to the jury room and deliberations
6 began at 11:00 a.m.)

7 (Deliberation recess.)

8 THE COURT: All right. We have received a question
9 from the jury. Quote, "How many grams of meth did the
10 chemist weigh?" I have talked with counsel. I have
11 drafted a response which states, "You must rely on your
12 recollection of the testimony. You may ask me additional
13 questions if needed." That way they can start with
14 relying on their recollection and if they decide they
15 want to hear any testimony, they can do that if they
16 think it's appropriate. So this will be Court Exhibit 5
17 and Court Exhibit 6. I'm gonna walk down the hall, read
18 them the question, read them the response, and come back.
19 Is that suitable?

20 MR. WILLIAMS: Yes, sir.

21 MR. PINCELLI: Yes, sir.

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

23 (Verdict at 11:55 a.m.)

24 THE COURT: All right. We've got everybody we need?

25 MR. PINCELLI: Yes, Your Honor.

1 THE COURT: Let's bring the jury in please.
2 (Whereupon, the jury entered the court room at 12:00
3 noon.)
4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, it's my understanding you have a
6 verdict; is that correct?
7 FOREMAN: Yes.
8 THE COURT: All right. Is your verdict unanimous?
9 FOREMAN: Yes.
10 THE COURT: All right. Please hand it to the
11 bailiff.
12 FOREMAN: (Complies.)
13 THE COURT: Madam clerk.
14 THE CLERK: Indictment 2020-GS-32-01965, State
15 versus Maxie Wagner, we, the jury, as to the charge of
16 possession with intent to distribute methamphetamine
17 unanimously find the defendant guilty, and it is so
18 signed by the foreperson May 12th, 2022. Indictment
19 2020-GS-32-01964, State versus Maxie Wagner, we, the
20 jury, as to the charge of trafficking cocaine more than
21 28 grams but less than 100 grams unanimously find the
22 defendant guilty, and it is so signed by the foreperson
23 May 12th, 2022. Mr. Foreman, ladies and gentlemen of the
24 jury, if these are your verdicts, please indicate each of
25 you by raising your right hand. All hands are raised,

1 Your Honor.

2 THE COURT: Any other matter for the jury?

3 MR. WILLIAMS: Yes, Your Honor. Individual poll.

4 THE COURT: Very well.

5 THE CLERK: Ladies and gentlemen, I'll be calling
6 your jury number. If you will hold your hand up where I
7 can recognize you, I will ask you as to the verdicts,
8 were these your verdicts and are they still your
9 verdicts. At that time give me your response please.

10 Number 14, as to the verdicts, were these your
11 verdicts and are they still your verdicts?

12 WADE C. BILTOFT: Yes.

13 THE CLERK: Number 170, as to the verdicts, were
14 these your verdicts and are they still your verdicts?

15 YESENIA SALCEDO: Yes.

16 THE CLERK: Number 191, as to the verdicts, were
17 these your verdicts and are they still your verdicts?

18 DAVID W. STARK: Yes.

19 THE CLERK: Number 121, as to the verdicts, were
20 these your verdicts and are they still your verdicts?

21 JAMESON C. LOVETT: Yes, ma'am.

22 THE CLERK: Number 145, as to the verdicts, were
23 these your verdicts and are they still your verdicts?

24 MERRELL K. MYHAND: Yes.

25 THE CLERK: Number 3, as to the verdicts, were these

1 your verdicts and are they still your verdicts?

2 NANCY L. ADDISON: Yes, ma'am.

3 THE CLERK: Number 139, as to the verdicts, were
4 these your verdicts and are they still your verdicts?

5 JOHN H. MORANT, JUNIOR: Yes, ma'am.

6 THE CLERK: Number 157, as to the verdicts, were
7 these your verdicts and are they still your verdicts?

8 BRIAN T. PETREE: Yes, ma'am.

9 THE CLERK: Number 16, as to the verdicts, were
10 these your verdicts and are they still your verdicts?

11 CASEY M. BLANTON: Yes, ma'am.

12 THE CLERK: Number 35, as to the verdicts, were
13 these your verdicts and are they still your verdicts?

14 CORY A. CATES: Yes, ma'am.

15 THE CLERK: Number 70, as to the verdicts, were
16 these your verdicts and are they still your verdicts?

17 DONALD S. FROST, JUNIOR: Yes, ma'am.

18 THE CLERK: Number 77, as to the verdicts, were
19 these your verdicts and are they still your verdicts?

20 LAWRENCE F. GIRARD: Yes, ma'am.

21 THE CLERK: Jury polled, Your Honor.

22 THE COURT: All right. Anything else?

23 MR. WILLIAMS: Nothing else from the jury, Your
24 Honor.

25 THE COURT: All right. Ladies and gentlemen, you

1 came in here on Monday not knowing if you would get
2 selected. You had a little lull on Tuesday, you listened
3 to the case yesterday, you heard further arguments and
4 did your deliberations today, so on behalf of all of us
5 we want to thank you for your service on jury duty this
6 week. I can't characterize it any other way than just by
7 saying we value your public service, your being here
8 hearing these case and making these decisions so you are
9 certainly free to go at this time. I hope your
10 experience on jury duty was a good one. You're free to
11 go. You're also free to stay if you wish to stay
12 afterwards. Madam Clerk, are there any other work
13 excuses that we need to give?

14 THE CLERK: I've already got them.

15 DEPUTY: They've already got them, Your Honor.

16 THE COURT: All right. Thank you again for your
17 service. You're free to go.

18 (Whereupon, the jury was released from further jury
19 duty at 12:10 p.m.)

20 THE COURT: I need the foreman.

21 MR. COX: You need the foreman, Your Honor.

22 THE COURT: Motions. I'm sorry. He's not here.

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: Mr. Solicitor, do you have post trial
25 sentencing? Are you ready to proceed?

1 MR. PINCELLI: We are, Your Honor. Mr. Cox is
2 getting the sentencing sheets right now.

3 THE COURT: Any post trial motions?

4 MR. WILLIAMS: Yes, Your Honor. At first we would
5 renew all prior motions that were made throughout this
6 entire trial which would be the motions made dealing with
7 all the searches and dealing with the directed verdict at
8 the end of the State's case as well as at the end of the
9 defendant's case and then we would move to set aside the
10 jury's verdicts on the basis that, and to grant the
11 defendant a new trial, in that the evidence taken as a
12 whole is insufficient as a matter of law for this jury to
13 return a verdict of guilty on either one of the two
14 indictments that he went to trial on, that dealing with
15 the cocaine as well as the methamphetamine, trafficking
16 cocaine as well as the PWID meth.

17 THE COURT: All right. Well, the record will
18 reflect your pretrial motions, objections, and trial
19 objections are renewed as well as prior motions that were
20 denied before closing arguments. Any comment from the
21 State on the motion for a new trial?

22 MR. PINCELLI: Your Honor, I believe the State put
23 forth a sufficient amount of evidence for the jury to
24 render a true and fair verdict, and I think they did just
25 that. I have no further argument on that.

1 THE COURT: Okay. I'll deny the motion for a new
2 trial. I think there was sufficient evidence for this
3 jury to make a decision one way or another. I think they
4 weighed the evidence and came up with a verdict according
5 to how they weighed it so the motion for a new trial is
6 respectfully denied. Any input from the State on the
7 sentencing?

8 MR. PINCELLI: On sentencing, yes, Your Honor. I
9 guess briefly from Investigator Gietz and I'll make a
10 follow up with his record and some further input.

11 THE COURT: Yes, sir. You just gonna tell me his
12 record?

13 MR. PINCELLI: Sir?

14 THE COURT: You gonna tell me his record?

15 MR. PINCELLI: Yes.

16 THE COURT: Okay.

17 INVESTIGATOR GIETZ: Just if it pleases the Court.
18 Maxie Wagner is a former member of the Warlocks MC which
19 is a documented international traditional gang with a
20 history of violence, narcotics distribution. Mr. Wagner
21 himself has a history of distribution and running from
22 law enforcement. While Mr. Wagner was with the Warlocks
23 MC he attempted to flee law enforcement and if not for
24 crashing his motorcycle would not have been detained.
25 Mr. Wagner has been arrested for stolen firearms and

1 cocaine on previous occasions.

2 In fact, Mr. Wagner attempted to bring cocaine into
3 the Lexington County Detention Center during one of those
4 occasions. If it weren't for the difficulties with covid
5 19, it's the State's belief that charges would have
6 already been adjudicated with that charge. And even with
7 the seriousness of today's charges and the case that we
8 have heard, he still had a pending case with a higher
9 threshold at a higher amount of narcotics, over 100 grams
10 of methamphetamine, PWID marijuana, possession of
11 cocaine, and failure to stop for a blue light.

12 THE COURT: That are pending today?

13 MR. PINCELLI: That's correct, Your Honor.

14 THE COURT: Weren't there some charges that were
15 also dismissed?

16 MR. PINCELLI: That's also correct, Your Honor. For
17 the record, those charges were unlawful carry of a
18 weapon, furnishing contraband, and possession with intent
19 to distribute a schedule one or two substance cocaine.

20 THE COURT: Okay. So that's the ones we discussed
21 that are still pending, there's another pending
22 trafficking charge that still has not been adjudicated?

23 INVESTIGATOR GIETZ: Correct, Your Honor. Over 100
24 grams.

25 THE COURT: But hasn't been adjudicated. All right.

1 Just so I'm clear, the prior convictions are possession
2 of a stolen firearm?

3 INVESTIGATOR GIETZ: No. Those were the ones that
4 were dismissed.

5 THE COURT: Okay. What are his prior convictions?

6 MR. PINCELLI: Your Honor, he has a conviction from
7 Arkansas in 2007. It's a felony possession of a
8 controlled substance. It's marked as a third offense. I
9 don't have any other prior offenses before that, but
10 that's what NCIC shows. In 2010 a simple possession of
11 marijuana. The 2018 charges were dismissed from the
12 State. Again, there's no bearing, they're not
13 convictions. They were dismissed for trial scheduling
14 purposes. I wanted to try this case rather than be
15 forced to try the PWID first.

16 THE COURT: Okay. So just so I'm clear, prior
17 convictions were the felony, possession of a controlled
18 substance, and the simple possession of marijuana?

19 MR. PINCELLI: That's correct, Your Honor.

20 THE COURT: Okay. Yes, sir.

21 INVESTIGATOR GIETZ: So also if Your Honor remembers
22 earlier in the week when we were selecting out of the
23 jury pool, the question was asked how many people have
24 been affected by drugs in this county just out of our
25 jury pool and the number of people that stood up and said

1 my family has been affected by narcotics in some way, it
2 was staggering, right? And this is truly a chance to
3 strike a blow at people that are poisoning our streets
4 and our communities, affecting these families. We look
5 at the overdose rates and how high it is and this gives
6 us a chance. Mr. Wagner has already proven pre this case
7 and post this case that he's gonna continue to sell
8 narcotics.

9 THE COURT: You said Wagner. The defendant, right?
10 I've heard Maxie all week. When I heard Wagner, I was
11 thinking of another Wagner.

12 INVESTIGATOR GIETZ: But I think this is an
13 opportunity for us to truly do some good in the
14 community.

15 THE COURT: Okay. Anything else, Mr. Pincelli?

16 MR. PINCELLI: Your Honor, this is not in regards to
17 your sentencing, but more where the State was coming from
18 pretrial. There was an offer of 15 years to dispose of
19 all cases. That included the 100 and 200 gram
20 trafficking, that's a 25 year mandatory minimum. Your
21 Honor, previous to that there had been a 10 year offer
22 and there was some back and forth on that. Your Honor,
23 to be honest, in the report for this trial there's no
24 mention of a child and I wasn't really aware of that
25 until we got into it. Selling drugs is bad. Doing it

1 with your kid in the back seat, that's all I'm going to
2 say, Your Honor.

3 THE COURT: Very well. Ms. Williams.

4 MS. WILLIAMS: Your Honor, I think they hit the nail
5 on the head when they said that he was a former member of
6 the Warlocks. I don't think Maxie would stand up here
7 and say that he's squeaky clean. He certainly has made
8 mistakes in the past but, Your Honor, he woke up from
9 them. He's no longer a member of the Warlocks. He has a
10 job. He works at CRM. He is the primary bread winner
11 for his family. His wife Erin has a part time job. Erin
12 actually had a child before Maxie. That child's name is
13 Tyler, and while it's his stepson, he treats him like a
14 son. He's 23. The child in question is the one that he
15 was referring to, his name is Bryson. He's almost 12.

16 And so, Your Honor, I am not trying to say that
17 these are not serious charges because they are, or
18 serious -- I guess he's been charged. He's been found
19 guilty, but he is changing. He has changed and I
20 certainly think that given the opportunity to do so he is
21 becoming a productive member of society. So we would ask
22 that Your Honor be as lenient as possible in your
23 sentencing so that he can go back home to that family and
24 those children and have and continue to prove himself.

25 THE COURT: And obviously the range we're talking

1 here is seven to 25; is that correct?

2 MS. WILLIAMS: That's my understanding.

3 THE COURT: PWID is zero to 15?

4 MS. WILLIAMS: Yes, Your Honor.

5 THE COURT: Mr. Wagner wish to say anything?

6 MAXIE WAGNER: I've been doing the right thing since
7 I came home. Now I've got a full time job. I've been
8 doing nothing but going home, like going to work. Uhm, I
9 just want to take care of my son and my family now.

10 THE COURT: How long have you been out on bond?

11 MAXIE WAGNER: For this charge?

12 THE COURT: Yeah.

13 MAXIE WAGNER: I've been out on bond for a little
14 over --

15 THE COURT: Two years, I guess. Two years and three
16 months.

17 MAXIE WAGNER: I have been on house arrest since I
18 came home this last time.

19 THE COURT: Anything else, sir?

20 MAXIE WAGNER: No, sir.

21 THE COURT: All right. Anything else from anyone?

22 MR. WILLIAMS: Yes, Your Honor.

23 THE COURT: Yes, sir.

24 MR. WILLIAMS: If you would give me a shot at it. I
25 would like to emphasize the only convictions that he's

1 had was the 2007 in Arkansas and the 2010 in South
2 Carolina. It's my understanding that both of those
3 convictions are marijuana convictions and even though it
4 says the third thing on it and that it is simple
5 possession of marijuana, so even though he's got a boat
6 load, no question about it, there's a boat load of
7 charges that he got involved in, but back then he had no,
8 had simple possession and I think an accurate
9 representation was made by him just a while ago that I
10 think it's fairly obvious based on what was seized in the
11 truck, that is there was a syringe in the truck, had the
12 methamphetamine in the truck, I think he was a user.

13 MAXIE WAGNER: I was. I did have a drug problem. I
14 quit using. Like I said, I'm going to work and coming
15 home.

16 MR. WILLIAMS: That's all I have, Your Honor.

17 THE COURT: Thank you. We'll take a short recess
18 and be right back. Thanks.

19 (Short break.)

20 THE COURT: Please be seated. All right. I tried
21 to consider everything I have heard this week and the
22 presentations and come up with a sentence which is fair
23 and reasonable under the circumstances. So, Mr. Wagner,
24 on both the charge of possession with intent to
25 distribute methamphetamine, and trafficking cocaine, you

1 will be sentenced to concurrent time of 12 years in the
2 Department of Corrections. That's all.

3 MR. WILLIAMS: Thank you, Your Honor.

4 MR. PINCELLI: Thank you, Your Honor.

5 THE COURT: Thank you to the attorneys for your
6 efforts during trial and for their professionalism. We
7 will be in recess until two.

8 (Whereupon, Court's Exhibits #3 through #6 were
9 marked for identification.)

10 WHEREUPON, THE TRIAL WAS CONCLUDED.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 9th, 11th and 12th day of May,
11 2022.

12 I FURTHER CERTIFY that the forgoing 390 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 26th day of October, 2022.

18

19

By:s/Steven E. LeBlanc

20

21

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

22

23

24

25

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL
SESSIONS

THE STATE OF SOUTH CAROLINA,

Indictment No(s). 2020GS3201964 & 65

Plaintiff,

vs.

MAXIE PAUL WAGNER,

**NOTICE OF MOTION AND
MOTION TO SUPPRESS EVIDENCE**

Defendant.

TO: LUKE A. PINCELLI, ASST. SOLICITOR, ELEVENTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned attorney, shall move, as soon as counsel may be heard, for an Order of the Court Suppressing any introduction of evidence seized as a result of the stop and search of Defendant's vehicle on February 10, 2020 as well as the introduction of any other evidence attained by virtue of this unlawful stop and seizure. Any statements allegedly made by the Defendant are likewise sought to be suppressed.

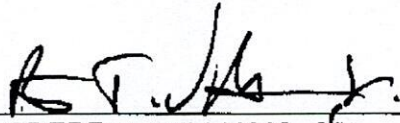
The basis of this motion is provided by protections ordered by the 4th and 14th Amendment rights under the South Carolina Constitution and the United States Constitution.

Defendant further requests the Court suppress the search also as based on Federal, State and Appellant Court cases as exist.

FILED
2022 MAY -3 AM 9:54
LISA M. CONNOR
CLERK OF COURT
LEXINGTON, SC

WILLIAMS, STITELY & BRINK, PC

By:



ROBERT T. WILLIAMS, SR.
P.O. Box 39
200 East Main Street
Lexington, SC 29071
(803) 359-9000

ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

May 2, 2022

FILED
2022 MAY -3 AM 9:54
USA M. COMER
CLERK OF COURT
LEXINGTON SC

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL
SESSIONS

THE STATE OF SOUTH CAROLINA,

Indictment No(s). 2020GS3201964 & 65

Plaintiff,

CERTIFICATE OF SERVICE

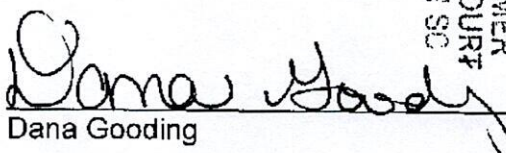
vs.

MAXIE PAUL WAGNER,

Defendant.

I, Dana Gooding, a Paralegal with the Law Firm of Williams, Stitely & Brink, PC, do hereby certify that I have this date served a copy of the **NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE; MOTION FOR SUPPRESSION OF INVOLUNTARY STATEMENTS and MOTION TO SEQUESTER WITNESSES** upon the individual(s) named below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the address(es) below:

Luke Pincelli, Asst. Solicitor
Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072


Dana Gooding

LISA M. COWDER
CLERK OF COURT
LEXINGTON, SC

2022 MAY -3 AM 9:53

FILED

Lexington, South Carolina

May 2, 2022

ARREST WARRANT

2020A3210200301

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

THE STATE
against
Maxie Paul Wagner
Address: Loner Rd
Blythewood, SC 29016-9050

Phone: SSN:
Sex: M Race: W Height: 6 Weight: 230
DL State: SC DL #:
DOB: Agency ORI #: SC0320000
Prosecuting Agency: Lexington County Sheriff
Prosecuting Officer: John T Gietz - A04109
Offense: Drugs / Distribution, etc. of methamphetamine, 1st
(Excludes manufacturing meth; see CDR Code
Offense Code: 3198
Code/Ordinance Sec: 44-53-0375 (B)(1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
is to be arrested and brought before me to be
dealt with according to the law.

Date: (L.S.)
Signature of Judge:

RETURN

A copy of this arrest warrant was delivered to
defendant
on Maxie Paul Wagner
February 11, 2020

RETURN WARRANT TO:
General Sessions
Mark H. Westbrook Judicial Center
205 East Main Street
Lexington, SC 29072

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

Personally appeared before me the affiant John T Gietz who
being duly sworn deposes and says that defendant Maxie Paul Wagner
did within this county and state on or about 2/10/2020 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Distribution, etc. of methamphetamine, 1st (Excludes manufacturing meth; see CDR Code
3776)

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:

On 2/10/2020, at the 4200 block of Plat Springs Rd. in the Three Fountains area of Lexington County, South Carolina, the
defendant Maxie Wagner did commit the crime of P.W.D Methamphetamine 1st offense. This was confirmed when the defendant
was found to be in possession and control of a quantity Methamphetamine greater than 5 grams during a traffic stop for a suspended
tag. Post Miranda, Maxie admitted to possessing drugs that were found during a probable cause search for marijuana as well as drug
paraphernalia observed in plain view. The Methamphetamine in the defendant's possession was stored multiple bags that were
packaged for sale and found with a digital scale. This is further supported by LCSD Case #20-002766.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

Affiant's Address 521 Gibson Road
Lexington, SC 29072-
Affiant's Telephone (803)785-2400

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 2/10/2020 defendant Maxie Paul Wagner
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribution, etc. of methamphetamine, 1st (Excludes manufacturing meth; see CDR Code
3776)

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 2/11/2020

 (L.S.)
Signature of Issuing Judge
Arthur I. Myers (Magistrate)
Judge Code: 7252

Judge's Address 139 East Main St
Lexington, SC 29072-
Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT

2020A3210200302

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

20002766

Maxie Paul Wagner

Address: Lotter RdBlythewood, SC 29016-9050Phone: [REDACTED] SSN: [REDACTED]Sex: M Race: W Height: 6 Weight: 230DL State: SC DL #: [REDACTED]DOB: [REDACTED] Agency ORI #: SC0320000Prosecuting Agency: Lexington County SheriffProsecuting Officer: John T Gietz - A04109Offense: Drugs / Trafficking in cocaine, 28 g or more, butless than 100 g - 1st offenseOffense Code: 2359Code/Ordinance Sec: 44-53-0370(e)(2)(X)

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 Maxie Paul Wagneron February 11, 2020[Signature]

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

Mark H. Westbrook Judicial Center

205 East Main Street

Lexington, SC 29072

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Lexington

Personally appeared before me the affiant John T Gietz

being duly sworn deposes and says that defendant Maxie Paul Wagner

did within this county and state on or about 2/10/2020

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

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:

On 2/10/2020, at the 4200 block of Platt Springs Rd. in the Three Fountains area of Lexington County, South Carolina, the defendant Maxie Paul Wagner did commit the crime of Trafficking Cocaine Greater than 28 Grams but Less than 100 Grams 1st offense. This was confirmed when the defendant was found to be in possession and control of a quantity Cocaine greater than 48 grams during a traffic stop for a suspended tag. Post Miranda, Maxie admitted to possessing drugs that were found during a probable cause search for marijuana as well as drug paraphernalia observed in plain view. The cocaine in the defendant's possession was stored multiple bags that were packaged for sale and found with a digital scale. This is further supported by LCSD Case #20-002766.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address 521 Gibson RoadLexington, SC 29072-Affiant's Telephone (803)785-2400

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 2/10/2020

defendant Maxie Paul Wagner

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offense

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 2/11/2020

Signature of Issuing Judge [Signature] (L.S.)Judge's Address 139 East Main StLexington, SC 29072-

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

DEFENDANT COPY DEFENDANT COPY

WITNESSES

Lexington County Sheriff's Department

John T Gietz

Law Enforcement Case #: 20002766

DOCKET NO. 2020GS3201994**The State of South Carolina**

County of Lexington

ARREST WARRANT NUMBER

2020A3210200301

COURT OF GENERAL SESSIONS**OCTOBER TERM 2020****THE STATE**

vs.

Maxie Paul Wagner

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date: *10/12/20***VERDICT**

CDR #: 3188

Indictment for

Possession with Intent to Distribute
Methamphetamine

§ 44-53-0375 (B) (1)

Foreperson of Petit Jury
Date:**S.R. Hubbard III, SOLICITOR**

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Possession with Intent to Distribute
Methamphetamine

§ 44-53-0375 (B) (1)

At a Court of General Sessions, convened on October 2020, the Grand Jurors of
Lexington County present upon their oath:

That Maxie Paul Wagner did in Lexington County, South Carolina, on or about
2/10/2020, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abets,
attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or
possess with intent to distribute, dispense, or deliver methamphetamine, in violation of
the provisions of Section 44-53-370

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

John T Gietz

Law Enforcement Case #: 20002766

BJY

ARREST WARRANT NUMBER

2020A3210200302

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date: 10/12/20**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2020GS3201985****The State of South Carolina**
County of Lexington**COURT OF GENERAL SESSIONS****OCTOBER TERM 2020****THE STATE****vs.****Maxie Paul Wagner****CDR #: 2356****Indictment for****Trafficking Cocaine - 28-100 grams****§ 44-53-0370(e)(2)(b)1****S.R. Hubbard III, SOLICITOR**

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Trafficking Cocaine - 28-100 grams
§ 44-53-0370(e)(2)(b)1

At a Court of General Sessions, convened on October 2020, the Grand Jurors of Lexington County present upon their oath:

That **Maxie Paul Wagner** did in Lexington County, South Carolina on or about February 10, 2020 knowingly and intentionally, willfully and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of cocaine, a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, in a quantity of twenty eight (28) grams or more but less than one hundred (100) grams, in violation of § 44-53-370 (e)(2)(b)1, Code of Laws of South Carolina, 1976, as amended. Such being the first offense.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

0-15

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Maxie Paul Wagner

AKA:

Race: White Sex: M Age: 35DOB: -1987 SS#: [REDACTED]Address: Loner RdCity, State, Zip: Blithewood, SC 29016-9050DL# [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 - GS - 32 - 01964AW#: 2020A3210200301Date of Offense: 2/10/2020S.C. Code §: 44-53-0375 (B) (1)CDR Code #: 3198

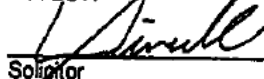
SENTENCE SHEET

RECEIVED
May 13 2022

SC Court of Appeals

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Drugs/ manufacture, distribution, etc. of methamphetamine, 1stIn violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3198☒ 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:



103254

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 12 days/months/years/Time Served ☐ Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDOC _____ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

A TRUE COPY

Lex. Ct. C.C.C.P. G.S. & E.C.

STATE VS. Maxie Paul Wagner INDICTMENT/CASE#: 2020 - GS - 32 - 01964

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	\$ _____
\$14-1-206 (Assessments 107.5%)			\$ _____
\$14-1-211 (A)(1)(Conv. Surcharge)			\$ _____
\$14-1-211 (A)(2)(DUI Surcharge)	\$100		\$ 100
\$56-5-2995 (DUI Assessment)	\$100		\$ _____
\$56-1-286 (DUI Breath Test)	\$12		\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25		\$ _____
\$14-1-213 (Drug Court Surcharge)	\$25		\$ 25
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$150		\$ 150
\$50-21-114 (BUI Breath Test Fee)	\$41		\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$50		\$ _____
3% to County (if paid in installments)	\$40/ea		\$ _____
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	TBD		\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	\$500		\$ _____
	TBD		\$ _____
	TOTAL		\$ 275.00

Clerk of Court/Deputy Clerk: Lisa Come TP
Court Reporter: Steve LeBlanc

Presiding Judge: Wahjalla
Judge Code: 2765
Sentence Date: 5-12-2022

7-25

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Maxie Paul Wagner

AKA:

Race:

Sex:

M

Age:

35

DOB:

1987

SS#:

Address:

Loner Rd

City, State, Zip:

Blythewood, SC 29016-9050

DL#:

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2020 - GS - 32 - 01965AW#: 2020A3210200302Date of Offense: 2/10/2020S.C. Code §: 44-53-0370(e)(2)(b)1CDR Code #: 2359

SENTENCE SHEET

RECEIVED

May 13 2022

SC Court of Appeals

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Drugs / Trafficking in cocaine, 28 g or more, but less than 100 g - 1st offenseIn violation of § 44-53-0370(e)(2)(b)1 of the S.C. Code of Laws, bearing CDR Code # 2359☐ 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:

[Signature]

103254

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 12 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served 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 Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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 SCDOD days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 It is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

A TRUE COPY

[Signature]
Lex. Ct. C.C.C.P. G.S. & F.C.

STATE VS. Maxie Paul Wagner INDICTMENT/CASE#: 2020 - GS - 32 - 01965

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☒ Other: ATU FOR DRUG ADDICTION

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____	\$ _____
§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
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41
§50-21-114 (BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (If paid in installments)	TBD

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees

☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

TOTAL \$ 275.00

Clerk of Court/Deputy Clerk: Lisa Comer
 Court Reporter: Steve LeBlanc

Presiding Judge: W. J. McLeod
 Judge Code: 2765
 Sentence Date: 5-12-2022

A TRUE COPY
Steve LeBlanc
 LEX-CP, C.C.C.P., G.S. & P.O.

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."

RECEIVED**Aug 11 2023****SC Court of Appeals**

Respectfully Submitted,



Breen R. Stevens

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 11th day of August, 2023.