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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LARRY CHARLES JONES,

APPELLANT.

APPELLATE CASE NO. 2024-001013

RECORD ON APPEAL

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INDEX

INDEX	i
TRANSCRIPT DATED MAY 22-23, 2024	1
COURT DECLARES MISTRIAL	2
TRIAL TRANSCRIPT DATED JUNE 6, 2024	4
JURY QUALIFICATIONS	9
JURY SELECTION	19
OPENING STATEMENT BY MS. BARRY	32
OPENING STATEMENT BY MR. NIETERING	36
TESTIMONY	
RODERICK OGLESBY, JR.	
Direct Examination by Ms. Barry	38
Cross-Examination <i>in-camera</i> by Mr. Nietering	55
Redirect Examination <i>in-camera</i> by Ms. Barry	57
Cross-Examination by Mr. Nietering	58
Redirect Examination by Ms. Barry	71
TIMOTHY LAMAR TATE	
Direct Examination by Ms. Barry	74
Cross-Examination by Mr. Nietering	80
MICHAEL HUGHEY	
Direct Examination by Ms. Barry	83
Cross-Examination by Mr. Berry	90
Redirect Examination by Ms. Barry	106
ANNA MARIE DAVIS	
Direct Examination by Ms. Barry	108
Cross-Examination by Mr. Berry	113
HEATHER KELLY	
Direct Examination by Ms. Barry	120
STATE RESTS	122
STIPULATION AS TO STATE’S EXHIBIT NO. 4 (DRUG REPORT)	122

DEFENSE MOTION FOR A DIRECTED VERDICT BY MR. BERRY	123
RESPONSE BY MS. BARRY	124
COURT’S RULING DENYING DEFENSE MOTION FOR A DIRECTED VERDICT	124
DEFENSE RESTS.....	125
DEFENSE RENEWAL OF MOTION FOR DIRECTED VERDICT BY MR. NIETERING	126
COURT RENEWS RULING DENYING MOTION FOR DIRECTED VERDICT	126
TESTIMONY COLLOQUY WITH THE DEFENDANT	126
CLOSING ARGUMENT BY MS. BARRY	129
CLOSING ARGUMENT BY MR. NIETERING	137
CHARGE ON THE LAW	143
VERDICT	154
POLLING OF THE JURY.....	154
SENTENCING	161
INDICTMENT	163
SENTENCE SHEET.....	165
CERTIFICATE OF COUNSEL	167

**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 1 (DVD)]**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Larry Charles Jones,) 2022-GS-11-00544
6 Defendant.) May 22 - 23, 2024
7 Gaffney, South Carolina

8
9
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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

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16 EVAN M. HANEY, ESQUIRE
Attorneys for the State

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18 JAMES PRESSLEY NIETERING, ESQUIRE
Attorneys for the Defendant
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22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

1 MS. BARRY: No further questions, Your Honor.

2 THE COURT: You may step down.

3 we'll take a short break before we continue. I'll ask
4 the jury to please go to your jury room. Do not discuss
5 the case. I'll bring you back after that break.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: We'll be in recess for ten minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: There's no -- I've had conversations with
11 counsel in chambers and there is no objection to a mistrial
12 being declared in the case.

13 MS. BARRY: Nothing from the state, Your Honor.

14 MR. NIETERING: Nothing from the defense, Your Honor.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: Ladies and gentlemen, we've got a number
18 of issues that have arisen that's going to prevent us from
19 continuing with the trial of this case, and so it's not
20 going away. It just has to be retried another term of
21 court. We can't continue with it right now because of
22 certain issues that have arisen.

23 So we're sorry for imposition on your time, but we do
24 appreciate your participation as jurors this week.

25 You're going to be excused now for the balance of the

1 week. The clerk has your excuses for work, and I think
2 she's already told you about your pay, how you get paid.
3 So thank you again for your participation.

4 (Whereupon, the trial jury was excused.)

5 THE COURT: Mr. Nietering and Mr. Barry, based upon
6 the circumstances, which is sort of unusual in this case as
7 they stand now, there's going to have to be a new bond
8 order issued. I'll prepare that.

9 So he's in custody until that's done. But I'll do
10 that before lunch. But the surety will have to consent to
11 the bond order because it'll have conditions that were
12 present before.

13 MR. BERRY: Your Honor, would that -- would that
14 include an increase in surety or would it be the same
15 surety amount that they were already on, just add special
16 conditions?

17 THE COURT: It won't -- yeah. It won't increase it.
18 There will be added conditions. I'll prepare that and
19 y'all can see me before we break for lunch.

20 MR. BERRY: Yes, sir. Thank you.

21 END OF REQUESTED TRANSCRIPT OF RECORD
22
23
24
25

4

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENRAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Larry Charles Jones,) 2022-GS-11-00544
6 Defendant.) June 6, 2024
7 Gaffney, South Carolina

8

9

10

B E F O R E:

11

HONORABLE R. KEITH KELLY, JUDGE; and a jury

12

13

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

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16 EVAN M. HANEY, ESQUIRE
Attorneys for the State

17 MICHAEL ANTHONY BERRY, ESQUIRE
18 JAMES PRESSLEY NIETERING, ESQUIRE
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22 Linda D. Moffitt
23 Circuit Court Reporter

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18
19
20
21
22
23
24
25

INDEX

<u>WITNESSES</u>	<u>PAGE</u>
RODERICK OGLESBY, JR. (SW)	
Direct examination by Ms. Barry	35
Cross-examination by Mr. Nietering (In-camera)	52
Redirect examination by Ms. Barry (In-camera)	54
Cross-examination by Mr. Nietering	55
Redirect examination by Ms. Barry	68
TIMOTHY LAMAR TATE (SW)	
Direct examination by Ms. Barry	70
Cross-examination by Mr. Nietering	77
MICHAEL HUGHEY (SW)	
Direct examination by Ms. Barry	79
Cross-examination by Mr. Berry	87
Redirect examination by Ms. Barry	103
MARIE DAVIS (SW)	
Direct examination by Ms. Barry	105
Cross-examination by Mr. Berry	110
HEATHER KELLY (SW)	
Direct examination by Ms. Barry	117
LARRY CHARLES JONES	
Examination by the Court	123

6

1	Jury qualification	5
2	Jury sworn	23
3	Opening statements	29
4	Closing arguments	126
5	Jury charge	139
6	Verdict	150
7	Sentence	154
8	Certificate	159

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	D.V.D.	22	44
S-2	Photograph	22	49
S-3	Photograph	22	49
S-4	SLED report	22	120
S-5	Drugs	22	119

8 Jury qualification

1 (Proceedings June 6, 2024)

2 (The following takes place in the presence of the jury
3 venire.)

4 THE COURT: Ladies and gentlemen, we are about to try
5 the case of the State of South Carolina vs. Larry Charles
6 Jones.

7 It is alleged in 2022-GS-11-0544, it is alleged that
8 Mr. Jones committed the criminal offense known as
9 distribution of methamphetamine and that this occurred in
10 Cherokee County, South Carolina, on or about July 11 of
11 2021.

12 Ladies and gentlemen, I say this more than once. He
13 has entered a plea of not guilty, and that puts the burden
14 on the State of South Carolina to prove his guilt beyond a
15 reasonable doubt.

16 Under our system of justice he is presumed to be
17 innocent of the allegations contained in the indictment.

18 The indictment is not evidence against him. The
19 indictment is a piece of paper. It is the charging
20 instrument that brings him before the Court for trial.

21 Mr. Jones, I'm going to ask for you and your lawyer to
22 stand and face the jury just for about 15 seconds, please.

23 (Whereupon, the defendant stood and Mr. Nietering
24 stood.)

25 THE COURT: Okay. That's fine. Thank you.

1 Ladies and gentlemen, there are certain questions I'm
2 going to ask, and you were previously sworn and you remain
3 sworn.

4 Is any member of this jury panel related by blood or
5 marriage or ever related by blood or marriage to Larry
6 Charles Jones? If so, please stand.

7 (No response.)

8 THE COURT: Any member of the jury panel have a social
9 or personal relationship with Mr. Jones? If so, please
10 stand. You know him from school; you know him from work;
11 recreation, whatever it might be, please stand.

12 (No response.)

13 THE COURT: The following is a list of potential
14 witnesses in the case. Again, I say potential. We never
15 know who will or will not testify.

16 Deputy Roderick Oglesby; Lieutenant Timothy Tate;
17 Michael Hughey; Anna Marie Davis; Heather Kelly; and Lynn
18 Black.

19 Is there any member of the jury panel related by blood
20 or marriage, or ever related by blood or marriage, to any
21 of the potential witnesses in this case? If so, please
22 stand.

23 Any member of the jury panel -- okay. Yes, ma'am.

24 JUROR NO. 96: Akin to Roderick Oglesby.

25 THE COURT: Yes, ma'am. And your number again?

10 Jury qualification

1 JUROR NO. 96: Ninety-six.

2 THE COURT: Ninety-six. Would that interfere with
3 your ability to be fair and impartial?

4 JUROR NO. 96: No.

5 THE COURT: Thank you. You may stay.

6 Yes, sir.

7 JUROR NO. 20: No. 20. Akin to Roderick Oglesby also.

8 THE COURT: Would it interfere with your ability to be
9 fair and impartial?

10 JUROR NO. 20: No. It would not.

11 THE COURT: Sir, you may stay.

12 Anyone have a social or personal relationship with any
13 of the potential witnesses? If so, please stand.

14 (No response.)

15 THE COURT: I'm going to ask the lawyers to introduce
16 themselves. Ladies first.

17 MS. BARRY: Good morning. My name is Adrienne Barry.
18 I am one of the assistant solicitors here in the Seventh
19 Circuit in Cherokee County. And sitting with me is Evan
20 Haney, another assistant solicitor.

21 MR. NIETERING: My name is Pressley Nietering with the
22 Cherokee County Public Defender's Office.

23 This is Michael Berry, the Chief Public Defender at
24 the Cherokee Public Defender's Office.

25 THE COURT: Any member of the jury panel related by

1 blood or marriage, or ever related by blood or marriage, to
2 any of the lawyers in this case? If so, please stand.

3 (No response.)

4 THE COURT: Any member of the jury panel have a social
5 or personal relationship with any of the lawyers in this
6 case? If so, please stand.

7 (No response.)

8 THE COURT: Any member of the jury panel have a family
9 member or very close friend who is employed by the Seventh
10 Circuit Solicitor's Office? That includes Spartanburg and
11 Cherokee counties. And I know one's going to stand.

12 Yes, ma'am. Your number again.

13 JUROR NO. 107: 107.

14 THE COURT: 107. would it interfere with your ability
15 to be fair and impartial?

16 JUROR NO. 107: No, Your Honor.

17 THE COURT: Thank you. You may stay.

18 Any member of the jury panel, you have a family or
19 friend employed in the Seventh Circuit Public Defender's
20 Office which also includes Spartanburg and Cherokee
21 counties? If so, please stand.

22 (No response.)

23 THE COURT: Any member of this panel ever sought legal
24 advice from any of the lawyers, whether that be a real
25 estate matter, a criminal matter, personal injury?

12 Jury qualification

1 whatever it was, you talked with one of these lawyers about
2 a case. If so, please stand.

3 (No response.)

4 THE COURT: Any member of the jury panel ever been
5 summoned by either the public defender's office or the
6 solicitor's office to testify in a case? If so, please
7 stand.

8 (No response.)

9 THE COURT: Any member of the jury panel, you
10 yourself -- I will not embarrass anyone by asking these
11 follow-up questions. But you yourself or a family member
12 or very close friend ever been arrested for a drug offense?
13 If so, please stand.

14 Yes, sir, on the front. Your number, sir.

15 JUROR NO. 89: Eighty-nine.

16 THE COURT: Eighty-nine. Would it interfere with your
17 ability to be fair and impartial? Sir, you may stay.

18 Yes, sir.

19 JUROR NO. 9: Juror 9.

20 THE COURT: Would it interfere with your ability to be
21 fair?

22 JUROR NO. 9: No, sir.

23 THE COURT: Thank you. You may stay.

24 Yes, ma'am.

25 JUROR NO. 121: 121.

1 THE COURT: Would it interfere with your ability to be
2 fair and impartial?

3 JUROR NO. 121: No, Your Honor.

4 THE COURT: You may stay.

5 Yes, ma'am.

6 JUROR NO. 99: Juror 99.

7 THE COURT: Would it interfere with your ability to be
8 fair and impartial?

9 JUROR NO. 99: No, sir.

10 THE COURT: Thank you.

11 And, yes, sir.

12 JUROR NO. 51: Fifty-one.

13 THE COURT: Would it interfere with your ability to be
14 fair and impartial?

15 JUROR NO. 51: No, sir.

16 THE COURT: Thank you.

17 Any member of the jury panel, you yourself, ever been
18 a sworn law enforcement officer, whether that's military
19 police, city, county, state, whatever it might be. You
20 yourself, please stand.

21 (No response.)

22 THE COURT: Any member of the jury panel have a family
23 member -- brother, sister, cousin, son-in-law --
24 mother-in-law -- somebody who is in your family has now or
25 ever has been a law enforcement officer, please stand.

14 Jury qualification

1 Right here. Yes, ma'am.

2 JUROR NO. 100: One hundred.

3 THE COURT: Would it interfere with your ability to be
4 fair and impartial?

5 JUROR NO. 100: No.

6 THE COURT: You may stay.

7 Yes, sir.

8 JUROR NO. 9: Juror 9.

9 THE COURT: Would it interfere with your ability to be
10 fair and impartial?

11 JUROR NO. 100: No.

12 THE COURT: Thank you, sir. You may stay.

13 Yes, ma'am.

14 JUROR NO. 138: 138.

15 THE COURT: Would it interfere with your ability to be
16 fair and impartial?

17 JUROR NO. 138: No.

18 THE COURT: Thank you. You may stay.

19 JUROR NO. 65: Sixty-five.

20 THE COURT: Would it interfere with your ability to be
21 fair and impartial?

22 JUROR NO. 65: No.

23 THE COURT: You may stay.

24 Yes, ma'am.

25 JUROR NO. 1: Juror 1.

1 THE COURT: Would it interfere with your ability to be
2 fair and impartial?

3 JUROR NO. 1: No, Your Honor.

4 THE COURT: Thank you. You may stay.

5 JUROR NO. 99: Ninety-nine.

6 THE COURT: Would it interfere with your ability to be
7 fair and impartial?

8 JUROR NO. 99: No, sir.

9 THE COURT: You may stay.

10 Yes, sir.

11 JUROR NO. 51: Fifty-one.

12 THE COURT: Would it interfere with your ability to be
13 fair and impartial?

14 JUROR NO. 51: In this case, I believe it will.

15 THE COURT: In this case you will be -- you will be
16 excused from the trial of this case, sir. You may have a
17 seat.

18 Yes, sir.

19 JUROR NO. 69: Sixty-nine.

20 THE COURT: Would it interfere with your ability to be
21 fair and impartial?

22 JUROR NO. 69: No, sir.

23 THE COURT: You may stay.

24 Is there any member of this jury panel who has had
25 formal or informal legal training including, but not

16 Jury qualification

1 limited to, law school, business college law course or
2 paralegal training? I know we have one.

3 Please stand. Yes, ma'am.

4 JUROR NO. 107: 107.

5 THE COURT: Would it interfere with your ability to be
6 fair and impartial?

7 JUROR NO. 107: No, Your Honor.

8 THE COURT: You may stay.

9 Is there any member of this jury panel who contributes
10 either financially or with volunteering time to any pro-law
11 enforcement group such as Mothers Against Drunk Driving,
12 South Carolina Law Enforcement Officers Association, state
13 office of victims assistance and other like organizations?
14 You either contribute money or you volunteer your time. If
15 so, please stand.

16 Okay. No. 107.

17 JUROR NO. 107: 107.

18 THE COURT: Would it interfere with your ability to be
19 fair and impartial?

20 JUROR NO. 107: No, Your Honor.

21 THE COURT: You may stay.

22 Yes, ma'am.

23 JUROR NO. 138: 138.

24 THE COURT: And would it interfere with your ability?

25 JUROR NO. 138: No, Your Honor.

1 THE COURT: Thank you. You may stay.

2 I asked a similar question earlier, but I'll ask this
3 one.

4 Any member of the jury panel, you yourself or
5 relatives or very close friend, been the victim of a
6 drug-related crime? Again, I will not ask any follow-up
7 questions. If so, please stand.

8 Okay. No. 107.

9 JUROR NO. 107: 107.

10 THE COURT: Would it interfere with your ability to be
11 fair and impartial?

12 JUROR NO. 107: No, Your Honor.

13 THE COURT: You may stay.

14 Yes, sir.

15 JUROR NO. 9: Juror 9.

16 THE COURT: Would it interfere with your ability to be
17 fair and impartial?

18 JUROR NO. 9: No, sir.

19 THE COURT: Okay. You may stay.

20 JUROR NO. 89: Eighty-nine.

21 THE COURT: Eighty-nine. Would it interfere? You may
22 stay.

23 Yes, ma'am.

24 JUROR NO. 109: 109.

25 THE COURT: Would it interfere with your ability to be

18 Jury qualification

1 fair and impartial?

2 JUROR NO. 109: No.

3 THE COURT: You may stay.

4 Yes, ma'am.

5 JUROR NO. 99: Ninety-nine.

6 THE COURT: Would it interfere with your ability to be

7 fair and impartial?

8 JUROR NO. 99: No, sir.

9 THE COURT: You may stay.

10 I did not ask this question. The lawyers asked --

11 give me some questions to ask too.

12 Is there any member of the jury panel know any of this

13 defendant's relatives? If so, please stand.

14 Okay. Yes, ma'am.

15 JUROR NO. 36: I'm Juror No. 36.

16 THE COURT: Thirty-six.

17 JUROR NO. 36: Yes, sir.

18 THE COURT: Would it interfere with your ability to be

19 fair and impartial?

20 JUROR NO. 36: Yes, sir.

21 THE COURT: You may be excused from the trial of this

22 case. Thank you.

23 Anything?

24 Is there any juror, know of any reason why he or she

25 should not try the case? If so, please stand.

1 (No response.)

2 THE COURT: Anything from the state?

3 MS. BARRY: Nothing from the state, Your Honor.

4 THE COURT: From the defense?

5 MR. NIETERING: Nothing further from the defense, Your
6 Honor.

7 THE COURT: Okay. Thank you.

8 we'll have a jury.

9 THE CLERK: When I call your name, please come
10 forward. Please bring your personal belongings with you.
11 If I tell you you are to take a seat in the jury box,
12 you'll take a seat over here. If I tell you that you've
13 been excused, you'll take a seat back out in the jury pool.

14 Juror No. 70, Teresa Jefferies.

15 what says the state?

16 MS. BARRY: Please excuse this juror.

17 THE CLERK: You've been excused.

18 Juror 76, Jeffrey Lail.

19 what says the state?

20 MS. BARRY: Please seat this juror.

21 THE CLERK: what says the defense?

22 MR. NIETERING: Please admit Mr. Lail.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 130, Derrick Upton.

25 what says the state?

Jury qualification

1 MS. BARRY: Please seat this juror.

2 THE CLERK: What says the defense?

3 MR. NIETERING: Please admit Mr. Upton.

4 THE CLERK: Please take a seat in the jury box.

5 Juror 21, Myra Byars.

6 What says the state?

7 MS. BARRY: Please seat this juror.

8 THE CLERK: What says the defense?

9 MR. NIETERING: Please excuse Ms. Byars.

10 THE CLERK: You've been excused.

11 Juror 39, Utaya Edrington.

12 What says the state?

13 MS. BARRY: Please excuse this juror.

14 THE CLERK: You've been excused.

15 Juror 99, Toni Mittnacht.

16 What says the state?

17 MS. BARRY: Please seat this juror.

18 THE CLERK: What says the defense?

19 MR. NIETERING: Please excuse Ms. Mittnacht.

20 THE CLERK: You've been excused.

21 Juror 141, Gina Whelchel.

22 What says the state?

23 MS. BARRY: Please seat this juror.

24 THE CLERK: What says the defense?

25 MR. NIETERING: Please admit Ms. Whelchel.

1 THE CLERK: Please take a seat in the jury box.

2 Juror 104, Jose Oviedo.

3 what says the state?

4 MS. BARRY: Please seat this juror.

5 THE CLERK: what says the defense?

6 MR. NIETERING: Please admit Mr. Oviedo.

7 THE CLERK: Please take a seat in the jury box.

8 Juror 79, Briyonna Leach.

9 what says the state?

10 MS. BARRY: Please seat this juror.

11 THE CLERK: what says the defense?

12 MR. NIETERING: Please admit Ms. Leach.

13 THE CLERK: Please take a seat in the jury box.

14 Juror 74, Jeremy Kierstead.

15 what says the state?

16 MS. BARRY: Please seat this juror.

17 THE CLERK: what says the defense?

18 MR. NIETERING: Please admit Mr. Kierstead.

19 THE CLERK: Please take a seat in the jury box.

20 Juror 123, Trina Smith.

21 what says the state?

22 MS. BARRY: Please seat this juror.

23 THE CLERK: what says the defense?

24 MR. NIETERING: Please admit Ms. Smith.

25 THE CLERK: Please take a seat in the jury box.

22 Jury qualification

1 Juror 69, Brian Jackson.

2 what says the state?

3 MS. BARRY: Please seat this juror.

4 THE CLERK: what says the defense?

5 MR. NIETERING: Please excuse Mr. Jackson.

6 THE CLERK: You've been excused.

7 Juror 107, Tracie Parker.

8 what says the state?

9 MS. BARRY: Please seat this juror.

10 THE CLERK: what says the defense?

11 MR. NIETERING: Please excuse Ms. Parker.

12 THE CLERK: You've been excused.

13 Juror 42, Andrew Flack.

14 what says the state?

15 MS. BARRY: Please excuse this juror.

16 THE CLERK: You've been excused.

17 Juror 14, Mark Boswell.

18 what says the state?

19 MS. BARRY: Please excuse this juror.

20 THE CLERK: You've been excused.

21 Juror 137, Jeanie Warren.

22 what says the state?

23 MS. BARRY: Please seat this juror.

24 THE CLERK: what says the defense?

25 MR. NIETERING: Please admit Ms. Warren.

1 THE CLERK: Please take a seat in the jury box.

2 Juror 98, Ruth Merritt.

3 what says the state?

4 MS. BARRY: Please seat this juror.

5 THE CLERK: what says the defense?

6 MR. NIETERING: Please admit Ms. Merritt.

7 THE CLERK: Please take a seat in the jury box.

8 Juror 143, Ronnie Wilkins, Jr.

9 what says the state?

10 MS. BARRY: Please seat this juror.

11 THE CLERK: what says the defense?

12 MR. NIETERING: Please admit Mr. Wilkins.

13 THE CLERK: Please take a seat in the jury box.

14 Juror 100, Katherine Morris.

15 what says the state?

16 MS. BARRY: Please seat this juror.

17 THE CLERK: what says the defense?

18 MR. NIETERING: Please admit Ms. Morris.

19 THE CLERK: Please take a seat in the jury box.

20 Juror 118, Ka'varius Sarratt.

21 what says the state?

22 MS. BARRY: Please seat this juror.

23 THE CLERK: what says the defense?

24 MR. NIETERING: Please admit Mr. Sarratt.

25 THE CLERK: Please take a seat in the jury box.

24 Jury qualification

1 The next juror seated will be for the alternate.

2 Juror 146, Angelina Worley.

3 What says the state?

4 MS. BARRY: Please admit this juror.

5 THE CLERK: What says the defense?

6 MR. NIETERING: Please excuse Ms. Worley.

7 THE CLERK: You've been excused.

8 Juror 20, Timothy Brown.

9 What says the state?

10 MS. BARRY: Please seat this juror.

11 THE CLERK: What says the defense?

12 MR. NIETERING: Please excuse Mr. Brown.

13 THE CLERK: You've been excused.

14 Juror 29, Jordan Clark.

15 What says the state?

16 MS. BARRY: Please seat this juror.

17 THE CLERK: What says the defense?

18 MR. NIETERING: Please admit Mr. Clark.

19 THE CLERK: Please take a seat in the jury box.

20 Juror 33, Anthony Courtney.

21 What says the state?

22 MS. BARRY: Please seat this juror.

23 THE CLERK: What says the defense?

24 MR. NIETERING: Please admit Mr. Courtney.

25 THE CLERK: Please take a seat in the jury box.

1 (Whereupon, a jury was impaneled.)

2 THE COURT: Anything from the state or defense?

3 MS. BARRY: Nothing from the state, Your Honor.

4 MR. NIETERING: None from the defense, Your Honor.

5 THE COURT: Okay.

6 (Whereupon, the remaining members of the jury venire
7 were excused.)

8 (D.V.D. marked State's Exhibit No. 1 for
9 Identification; photograph marked State's Exhibit No. 2 for
10 Identification; photograph marked State's Exhibit No. 3 for
11 Identification; SLED report marked State's Exhibit No. 4 for
12 Identification; drugs marked State's Exhibit No. 5 for
13 Identification.)

14 THE COURT: Okay. Juror No. 98 is Ms. Merritt. Where
15 are you? I am asking this. I am not ordering this. Would
16 you serve as the forelady for me?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: Thank you -- thank you.

19 At the break -- not now -- please be seated. At the
20 break when we return, if you would, trade seats with this
21 gentleman right on the end here. That's the forelady's
22 seat, foreperson's seat. I try very hard to have a foreman
23 and forelady.

24 And then the alternates, you two are seated exactly
25 where you need to be. You're always at the end of the

1 jury.

2 Everyone else now can trade seats. You can sit on the
3 front, sit on the back, whatever you want to do. It does
4 not matter to me. Just those three people will have
5 assigned seats.

6 Okay. All right. Ms. Brandy, will you swear this
7 jury to try this case?

8 (Whereupon, the jury was duly sworn.)

9 THE COURT: Everybody ready?

10 Ladies and gentlemen, you are now the jury in this
11 case, and I will take a few moments to tell you something
12 about your service as jurors and provide some instructions.

13 At the close of the case I will provide detailed
14 instructions which will control your deliberations.

15 This criminal case has been brought by the State of
16 South Carolina. Sometimes I refer to the state as the
17 prosecution or the government.

18 Each -- each, the government and the defense, are
19 represented by lawyers.

20 As I told you earlier, in 2022-GS-11-00544 it is
21 alleged that this defendant, Larry Charles Jones, committed
22 the offense known as distribution of methamphetamine and he
23 did so in Cherokee County, South Carolina, on or about
24 June 11 of 2021.

25 He has entered a plea of not guilty, and under our

1 system he is presumed innocent of the allegations made
2 against him.

3 Again, I tell you that this is a piece of paper. It
4 is not evidence against him. He has entered a plea of not
5 guilty and, again, presumed innocent of those charges.

6 Now, South Carolina law makes you 12 the finders of
7 the facts, and you will do that by hearing the evidence,
8 deciding what the facts are and apply those facts to the
9 law that I provide at the end of the case. In doing so --
10 and this is how you will reach a verdict. In doing so you
11 must follow the law whether you agree with it or not.

12 Now, evidence will consist of testimony of witnesses,
13 documents and any other items received into evidence.

14 The same law, ladies and gentlemen, that makes you 12
15 the finders of facts makes me the judge of the law. Our
16 rules of evidence control what can be received into
17 evidence, and I'm going -- this is my evidence book right
18 here.

19 When a lawyer asks a question or offers an exhibit
20 into evidence and a lawyer on the other side believes it is
21 not permitted by our rules, the lawyer may object. This
22 simply means the lawyer is requesting that I make a
23 decision on a particular rule of evidence.

24 Now, South Carolina law forbids me and all trial
25 judges from making a comment to a jury about a fact in a

1 case. And because it may be necessary for me to comment on
2 a fact in applying the rules, it may be necessary for me to
3 speak with the lawyers outside of your hearing by having
4 what's known as a bench conference while you are in the
5 courtroom or excusing you from the courtroom.

6 Now, a bench conference would be where I motion the
7 lawyers with my hand usually, and I say I want to see the
8 lawyers. I will do that on this side of the bench so that
9 we can talk and not be picked up on the microphone about
10 whether or not one of these rules apply.

11 Now, certain things are not evidence. Statements,
12 arguments, questions and comments made by the lawyers are
13 not evidence. Objections are not evidence.

14 Lawyers have a duty to object when they believe
15 something is improper under our rules, and you should not
16 be influenced by an objection.

17 If I sustain the objection, you must ignore the
18 question or the exhibit, and do not try to guess what the
19 answer might have been or what the exhibit may have
20 contained. And do not give any special attention to the --
21 to it if -- because it drew an objection. Anything you see
22 and hear about this case outside of this courtroom is not
23 evidence.

24 Now, some of you may have heard the terms direct
25 evidence and circumstantial evidence.

1 Direct evidence is testimony by a witness about what
2 that witness personally saw, heard or did.

3 Circumstantial evidence is indirect evidence. It is
4 proof of one or more facts from which one can find or infer
5 another fact.

6 You 12 may consider both direct and circumstantial
7 evidence. Our law permits you to give equal weight to
8 both, but it is for you to decide how much weight to give
9 any evidence.

10 Now, in deciding what the facts are you may have to
11 decide what testimony you believe and what testimony you do
12 not believe.

13 In deciding what to believe you may consider a number
14 of factors, which include, but are certainly not limited
15 to, the witness' ability to hear, see or know the things
16 about which he or she testifies, the quality of the
17 witness' memory, the witness' manner in testifying or
18 whether or not the witness has any motive, bias or
19 prejudice.

20 It is my duty to rule as a matter of law as to whether
21 the testimony is admissible, but once it is admitted it is
22 up to you 12 to decide how much weight to give it.

23 Now, to ensure fairness, you as jurors must not talk
24 among yourselves about this case or about anyone involved
25 in the case until the case goes to the jury room to decide

1 the verdict.

2 Do not talk with anyone about it or anyone who has
3 something to do with it. And that includes members of your
4 family and friends. You may tell them that you are a
5 juror, but do not talk about the case until you have been
6 discharged as a juror.

7 Do not let anyone talk to you about the case, and if
8 someone should try to do so, please report that to madam
9 forelady, and she will report that to me.

10 Madam Forelady, if something like that happens and we
11 need to talk, you and I will never meet in private. You
12 would come in here on the record in front of the lawyers
13 and tell me whatever the issue is while we're on the
14 record.

15 Now, do not read any news stories, articles, if any,
16 about this case or anyone involved in it, and do not do any
17 research on the internet about anything in the case.

18 Do not consult a blog or a dictionary or any reference
19 materials, and please do not do any independent
20 investigation on your own.

21 Ladies and gentlemen, you are to keep an open mind
22 until the very end when you discuss it with your fellow
23 jurors.

24 Sometimes I'm asked by jurors about taking notes. You
25 are not to take notes, and the reason is we want you to pay

1 close attention to each witness as he or she testifies.

2 Now, the first step in a trial will be known as the
3 opening statement. The solicitor will make an opening
4 statement and tell you about what evidence the state
5 intends to put before you. And just as the indictment is
6 not evidence, neither is the opening statement.

7 After the state makes an opening statement the defense
8 may make an opening statement if they choose to do so.

9 Next the state will offer evidence to support the case
10 made against this defendant.

11 Now, I remind you again that he is presumed innocent,
12 and the state must prove his guilt beyond a reasonable
13 doubt. The defendant does not have to prove his innocence.

14 And after you have heard all the evidence and the --
15 from the state or the defense, the closing arguments will
16 come next. And in the closing arguments the lawyers will
17 attempt to summarize and help you understand what the
18 evidence is.

19 The final part of the trial occurs when I instruct you
20 on the law and then you retire to your jury deliberation
21 room to begin your deliberation process.

22 Is the state ready?

23 MS. BARRY: The state's ready, Your Honor.

24 THE COURT: Is the defense ready?

25 MR. NIETERING: Yes, Your Honor.

32 opening statements

1 THE COURT: Okay. Madam Forelady and ladies and
2 gentlemen, give your attention to the solicitor.

3 MS. BARRY: Thank you, Your Honor. May it please the
4 Court -- defense counsel.

5 Good morning, ladies and gentlemen. I know it's been
6 a long week. You guys had to come in every day. But I
7 just want to start by thanking you for your patience with
8 all of us, for giving us your time and your attention as
9 you hear the trial today.

10 So, we're here today because on June the 11th of 2021
11 there were two undercover informants working with the
12 Cherokee County Sheriff's Office. Their names are Michael
13 Hughey and Anna Marie Davis. She goes by Marie.

14 And on that date they met up at the sheriff's office
15 with our two law enforcement officers, Deputy Oglesby and
16 Lieutenant Tate, and they were equipped with \$20 and an
17 audio recording device.

18 They then went to the defendant's residence located
19 here in Cherokee County, and they bought methamphetamine
20 from the defendant. And that was captured on the audio
21 recording device.

22 So, you are going to hear from those two informants.
23 Mr. Hughey will tell you that he called Captain Painter who
24 is the head of the narcotics investigations unit and said
25 that he could buy methamphetamine and he could buy it from

1 Mr. Jones.

2 So, Marie takes him to the sheriff's office.

3 Mr. Hughey doesn't have a license. So, Marie has to drive
4 him places.

5 So she goes with him. He meets up with Deputy Oglesby
6 and Lieutenant Tate. They put the camera on and they give
7 him the \$20, and then they take Mr. Hughey to the Buffalo
8 Fire Department, and then he gets in the car with Marie and
9 they go to the defendant's address.

10 Now, when you hear from Mr. Hughey, you're going to
11 hear that Mr. Hughey has a prior record. He's working off
12 charges, and he currently has a charge.

13 And the defense is going to want you to focus on that
14 rather than the fact that their client sold drugs to
15 Mr. Hughey. But don't fall for it. That's not at issue
16 here.

17 You are going to hear from Ms. Davis. Ms. Davis
18 basically, like I said, was Mr. Hughey's driver. She also
19 has a pending charge. They're going to want you to focus
20 on that. Also, not important here.

21 Then you're going to hear from Deputy Oglesby and
22 Lieutenant Tate. And Deputy Oglesby who was the lead
23 investigator, he's the one who equips everybody with what
24 they need, and he's searching Mr. Hughey prior to going to
25 the defendant's address. And what's important about that

34 opening statements

1 is he will tell you that he has to make sure that they
2 don't have their own drugs on them, that they're not going
3 to show up to the defendant's home and try to set him up.

4 And when he searches them, he doesn't find anything
5 there. And then when they come back, he searches them
6 again to make sure that they haven't taken something for
7 themselves. He doesn't find anything.

8 Lieutenant Tate's job, his job, is to search the car,
9 again, to make sure that they're not taking their own drugs
10 in the car, set up Mr. Jones. And then when they come back
11 they search it, and in both instances no drugs are found.
12 So, the drugs in this case come from Mr. Jones.

13 And then you're also going to get to see the video.
14 And this video is of the interaction between Mr. Hughey,
15 Ms. Davis and the defendant.

16 And the defense and I both are going to ask you to
17 focus on this video. It's probably the most important
18 piece of evidence. And what the defense is going to tell
19 you, it's a horrible video, you don't see anything, it's
20 terrible quality. I'm going to respectfully disagree.

21 Now, I will admit you don't see the hand-to-hand
22 transaction. You don't. But I want you to remember this.
23 The judge is going to charge you on the law and he's going
24 to charge you that I have to prove three elements beyond a
25 reasonable doubt. That the substance was methamphetamine;

1 that the defendant possessed the methamphetamine; and that
2 the defendant sold the methamphetamine.

3 At no point is he going to charge you that this has to
4 be captured on video. I don't even have to have a video.
5 These cases were tried without videos. But when you watch
6 the video I want you to listen out for certain things,
7 because there are certain things that will clue you in that
8 this defendant has drugs and that he is selling these drugs
9 to the C.I.s.

10 He tells Mr. Hughey did you bring a bowl, please tell
11 me you brought a bowl. And Deputy Oglesby will tell you
12 that a bowl is commonly used to smoke drugs, and in this
13 case it's methamphetamine. And then later on in the video
14 he'll say I can't believe you didn't bring a bowl.

15 And then what I think is probably the most important
16 part of this video is there's a moment where the bag of
17 drugs comes into view. Mr. Hughey is holding it.

18 Mr. Jones is looking directly at that bag, and
19 Mr. Jones will say I don't think I shut that bag, make sure
20 that it's sealed. And then Mr. Hughey will take it and
21 he'll give it to Marie and they leave.

22 So, this is the evidence that you're going to have
23 when you guys go back to deliberate. You're going to have
24 the testimony from our C.I.s who were there. They
25 participated in it. You're going to have testimony from

36 opening statements

1 law enforcement and you're going to have this video.

2 So, what is this going to mean? well, it's going to
3 mean that I have firmly convinced you that this defendant
4 sold drugs. And I believe that I will meet my burden, and
5 I will ask you -- and I think you will -- find him guilty
6 of distribution. Thank you.

7 THE COURT: Yes, sir.

8 MR. NIETERING: Thank you, Your Honor. May it please
9 the Court.

10 THE COURT: Yes, sir.

11 MR. NIETERING: I appreciate the candor of the
12 government over there in talking about Mr. Hughey on
13 multiple criminal charges. Now, after this he picks up
14 additional charges.

15 Credibility is always an issue. The government wants
16 to hand rig that and say this time it counts, this time Mr.
17 Hughey is telling the truth.

18 Mr. Hughey was a desperate man. He was working off
19 multiple charges and he was willing to frame his own family
20 members. The government would have you believe that he
21 wouldn't stoop that low.

22 Now, the government will say that they don't need his
23 testimony, that his testimony is backed up by this video.
24 You're going to watch the video. You're not going to see
25 anything they resembles a drug deal. You're not going to

1 see any scales, any weight, anything that's like, you know,
2 here's this amount of meth for this amount of money.
3 You're not going to see anything like that. We want you to
4 see that video. We want you to see the poor conditions
5 that my client lived in.

6 He doesn't have two nickels to rub together. You just
7 heard the government say that he didn't have a bowl, he
8 didn't have a lighter. That guy's a drug dealer? That's
9 what the government wants you to believe.

10 You just heard Judge Kelly tell you this and the
11 governor -- the government reiterate that they have the
12 burden of proof.

13 They can't prove anything. They can't prove anything
14 to reasonable doubt. They can't prove anything directly
15 because they have to rely on the testimony of criminals,
16 criminals that were criminals before and criminals after.

17 The government wants to say this time it counts, this
18 time he's telling the truth and you can believe him.

19 Credibility is always an issue, and the video doesn't
20 support anything. You're not going to have any idea about
21 what happened after you saw that, after you watch the
22 video. So, we ask that you do the right thing and find my
23 client not guilty. Thank you.

24 THE COURT: Solicitor.

25 MS. BARRY: Thank you, Your Honor.

38 Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 The state would call Deputy Oglesby to the state.

2 Roderick OGLESBY, JR., having
3 been first duly sworn, testified as follows:

4 THE COURT: Officer, tell us who you are, and spell
5 your last name for my court reporter, please.

6 THE WITNESS: I'm Deputy Roderick Oglesby, Jr.
7 Oglesby is O-G-L-E-S-B-Y.

8 THE COURT: Thank you.
9 Solicitor.

10 MS. BARRY: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MS. BARRY

12 Q Good morning, Deputy Oglesby. Where are you currently
13 employed?

14 A I'm currently employed by the Cherokee County
15 Sheriff's Office.

16 Q And how long have you been employed there?

17 A I've been employed there for seven years.

18 Q And in what capacities have you worked at the
19 sheriff's office?

20 A Uniform patrol, special investigations division.

21 Q Okay. And in what capacity were you working on June
22 the 11th of 2021?

23 A In the special investigation division, primarily
24 narcotics.

25 Q What were your duties in narcotics?

1 A In narcotics, it was our duty to investigate drug
2 users, drug sellers and pretty much just investigate those
3 type of crimes.

4 Q Okay. So, let's talk about drug buys. When I say
5 C.I., what does that mean?

6 A C.I. stands for confidential informant.

7 Q And how do you determine who's going to work as a
8 confidential informant?

9 A How we determine who wants to be a confidential
10 informant is usually two ways, someone who we've charged
11 previously with a drug crime and they want to get some help
12 for their crime or somebody who wants to volunteer
13 information and work for us that way.

14 Q Okay. And are they working in an undercover capacity?

15 A Yes, ma'am, they are.

16 Q Okay. And determining -- how did you determine -- let
17 me ask this. Were you the officer who signed up Mr. Hughey
18 and Ms. Davis to be informants?

19 A No, ma'am. I was not.

20 Q But are you still allowed to work with them even
21 though you don't?

22 A Yes, ma'am. That's correct.

23 Q Do you know how they came to be informants for the
24 sheriff's office?

25 A I do not.

40

Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 Q So, tell the jury about what a controlled buy is.

2 A So, a controlled buy is when a C.I. comes to us and
3 says, hey, this person has a quantity of drugs in their
4 house and we can buy from them.

5 From there we do a little deep dive into that suspect.
6 We determine whether most of the information is correct as
7 far as the address, if they have any drug history, if they
8 have anything of that nature.

9 From there if we deem everything to be decent and in
10 order, we'll have them come in. We'll equip them with the
11 audio-video recording device. We'll give them the money to
12 make the buy.

13 From there we control it from start to finish. We'll
14 follow them in. We'll monitor them while they're there.
15 We'll follow them out. A search of their vehicle and their
16 person is conducted, again, to ensure that they didn't take
17 anything with them or bring anything out with them.

18 Q Okay. Who -- who identifies the target?

19 A Most of the time the C.I. will identify the target.

20 Q And then you -- you take that information that they
21 give you and you verify it.

22 A Yes, ma'am. That's correct.

23 Q And is that the case in this case against Mr. Jones?

24 A Yes, ma'am.

25 Q Okay. So, let's talk about the search of the

1 individuals. Describe how you search them.

2 A So, with the -- the male C.I.s, the way I search is
3 like I search anybody else. Michael in this case.

4 I'll pat him down, pull his pockets inside out. I'll
5 make sure he has nothing on his waist line. It's just a
6 full search.

7 Unfortunately, in this situation we didn't have a
8 female to search Ms. Marie. So, the way I usually search
9 Ms. Marie is I will have her turn her pockets inside out on
10 her own.

11 From there I'll have her pull shirt -- not pull shirt.
12 Pull shoes off. And from the outside of her shirt I'll have
13 her pull her brassier straight out. I have her kinda fluff
14 the bottom of her shirt and make sure nothing falls out.

15 Then if they have any purses or anything -- in this
16 case Ms. Marie didn't have a purse. I will fully search
17 that purse just like I will search any bag or anything else.

18 Q And did Mr. Hughey have anything on him when you
19 searched him?

20 A No, ma'am. He did not.

21 Q Did Ms. Davis have anything on her when you searched
22 her?

23 A No, ma'am. She did not.

24 Q Describe what the recording device was in this case.

25 A So, in this case the recording device was a button

42 Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 camera. A button camera is pretty much a camera that we
2 attach to the inside of their shirt. This camera is pretty
3 stable. It sits about top of the stomach area. That way
4 you can try to get the hand-to-hand. So, there's usually
5 some issue. Just depends.

6 The perfect scenario for that button camera, that both
7 parties are standing up the way you get your hand-to-hand.
8 But when people start changing levels, it gets a little
9 difficult because they can't manipulate the camera.

10 Q So, for instance, if I'm standing and I have the
11 camera on and you're sitting, am I going to catch the
12 hand-to-hand?

13 A Nine times out of ten, no, ma'am.

14 Q Okay. So, when the informants leave you guys after
15 they're equipped with everything, are they allowed to stop
16 anywhere?

17 A No, ma'am. They are not.

18 Q So, on June the 11th of 2021, how does this operation
19 begin?

20 A So, on the incident date and time, they come to the
21 office first. I searched their person. Lieutenant Tate
22 searches the vehicles.

23 We then equipped Mr. Michael Hughey with the audio
24 recording device. We give him the money. We ask him to get
25 in the car with us, and just due to the distance between the

1 incident location and the sheriff's office.

2 From there we drive from the sheriff's office to the
3 Buffalo Fire Department, which is right up the street from
4 the incident location.

5 We start our video. We give them our spill as far as
6 our standard operating procedures -- where we're going, what
7 we're doing and who we're doing it to or doing it with.

8 We start the video. He then gets in the car with Marie
9 who we had followed from the sheriff's office to the
10 incident location.

11 Q And where was that incident location?

12 A [REDACTED] Coleman Road in Blacksburg.

13 Q And is that here in Cherokee County?

14 A Yes, ma'am. It is.

15 Q And at any time -- and you're able to observe them, I
16 guess, while they're not in the location, but you can
17 surveil the trailer that they're in.

18 A Yes.

19 Q And at any point prior to them leaving to meet you did
20 they leave?

21 A No, ma'am. They do not.

22 Q When they go from the Buffalo Fire Department to [REDACTED]
23 Coleman Road, do they make any stops?

24 A They do not.

25 Q Okay. Do you know about how long they're in the

44 Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 trailer at [REDACTED] Coleman Road?

2 A They're in there for a little while.

3 Q Okay.

4 A Couldn't give you the exact amount of time, but
5 they're there for a little while.

6 Q Okay. And then they leave. Do you get in behind
7 them?

8 A Yes, ma'am.

9 Q And where do they go?

10 A From there we had predesignated for them to go back to
11 the fire department. A turn was missed. So, they end up
12 going all the way back to the sheriff's office. But we
13 followed them to the sheriff's office almost until the
14 point where they get directly at the sheriff's office. But
15 then we kind of loop around them to get to the door first
16 so nobody sees them coming in and out of the building. So,
17 we follow them up until the last minute, and then they get
18 out and come to the sheriff's office.

19 Q And from the trailer to the sheriff's office do they
20 make any stops?

21 A They did not.

22 Q What happens when you get back to the sheriff's
23 office?

24 A When we get back to the sheriff's office the same
25 process is beginning. I search his person. I do the same

1 search with Ms. Davis, and I search Ms. Davis' purse to
2 make sure that they didn't bring anything other than what
3 we had them purchase back with them.

4 Lieutenant Tate does the same thing with the vehicle.
5 He searched the vehicle again to make sure nothing was left
6 behind and make sure it's in the same condition as it was
7 when we started the incident.

8 Q Okay. Does Mr. Hughey give you anything?

9 A He does.

10 Q What does he give you?

11 A He brings me back \$20 worth of methamphetamine.

12 Q I'm going to show you what's been marked as State's
13 Exhibit 5. Do you recognize those?

14 A Yes, ma'am. I do.

15 Q What are those?

16 A That's the bag of methamphetamines that Mr. Hughey
17 brought back to me.

18 Q Okay. And once Mr. Hughey brought those drugs to you,
19 what did you do?

20 A From there I put the methamphetamine inside of a BEST
21 kit, which is a kit that has a tamper-proof seal. Once
22 it's put in that tamper-proof seal, it's put in another
23 envelope and then we drop it into our evidence drop box.

24 Q And where is the evidence drop box?

25 A The evidence drop box is located at the Cherokee

46 Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 County Sheriff's Office.

2 Q And where does it go once you put it into the evidence
3 drop box?

4 A From the evidence drop box the evidence custodian will
5 take it, send it down to SLED, and SLED performs their
6 testing to ensure that it is what we said it was.

7 Q And once you put it in the evidence drop box, do you
8 have access to it after that?

9 A No, ma'am. I do not.

10 Q So, the last time that you come in contact with these
11 drugs is when you put it in the evidence drop box.

12 A Yes, ma'am.

13 Q Now, the interaction between Mr. Hughey and Ms. Davis
14 and the defendant, was it recorded?

15 A Yes, ma'am. It was.

16 Q I'm going to show you what's been premarked as State's
17 Exhibit 1. Do you recognize that?

18 A Yes, ma'am. I do.

19 Q Have you had an opportunity to watch this?

20 A Yes, ma'am. I have.

21 Q Has it been altered or changed in any way?

22 A No, ma'am. It has not.

23 Q And does it fairly and accurately represent the
24 interaction that occurred on June the 11th of 2021?

25 A Yes, ma'am. It does.

1 MS. BARRY: Your Honor, at this time I'd like to admit
2 State's Exhibit 1 into evidence.

3 THE COURT: Any objection?

4 MR. NIETERING: No objection, Your Honor.

5 THE COURT: Without objection, State's 1 is admitted.

6 MS. BARRY: Thank you, Your Honor.

7 (D.V.D. marked State's Exhibit No. 1.)

8 MS. BARRY: Permission to publish, Your Honor.

9 THE COURT: Yes. Let me see the lawyers.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 THE COURT: Madam Forelady and ladies and gentlemen,
13 I'm told by madam clerk -- and confirmed with the lawyers
14 here -- that you haven't had a break yet. And, so, we're
15 going to take a break at this time and let you refresh
16 yourselves, get some water, get some coffee, whatever you
17 might need. Let the bailiffs know. They'll be happy to
18 accommodate you.

19 So, we're going to take a good about 15-minute break.

20 And, Madam Forelady, if you will, take your jury with
21 the bailiff.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Okay. Let's take about 15 minutes.

25 (Whereupon, a recess was taken.)

48

Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 THE COURT: Come on back up.

2 we'll have the jury.

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: All right. Everything good with the jury,
6 Madam Forelady?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: All right. Solicitor.

9 (Whereupon, the video was played for the jury.)

10 BY MS. BARRY

11 Q Deputy Oglesby, what does Mr. Hughey have in his
12 hands?

13 A Looks like money.

14 Q And what else does he get out of the car? Those
15 shoes?

16 A Yes, sir. A pair -- yes, ma'am. I apologize. It's
17 shoes.

18 Q Now, were those searched as well?

19 A Lieutenant Tate searched the vehicle and he did say
20 that he did search the shoes.

21 (Whereupon, the video was played for the jury.)

22 Q And what is this in Mr. Hughey's hand right here?

23 A That's the \$20 cash that I provided.

24 Q And he doesn't come back with that \$20 cash, correct?

25 A Correct.

1 (Whereupon, the video was played for the jury.)

2 Q Now, we just heard the defendant ask if Mr. Hughey has
3 a bowl. Can you tell the jury what a bowl is?

4 A So, a bowl is a -- a glass device typically used to
5 smoke illegal narcotics, primarily, mainly,
6 methamphetamines.

7 (Whereupon, the video was played for the jury.)

8 Q Just a few more questions, Deputy Oglesby.

9 So, there is this bag that you received from
10 Mr. Hughey, correct?

11 A Yes, ma'am.

12 Q Okay. And then you were watching the video with us.

13 A Yes, ma'am.

14 Q And we hear the defendant say, "I don't think I shut
15 that bag."

16 A Yes, ma'am.

17 Q So, when you search Mr. Hughey prior to him going to
18 the location do you find any type of bag or baggy on him?

19 A No, ma'am. I do not.

20 Q And you would say that you search him pretty
21 thoroughly.

22 A Yes, ma'am.

23 Q And then when you searched Ms. Davis, it is a limited
24 search because she is a female.

25 A Correct.

Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 Q But when you search her do you find that kind of bag
2 or baggy on her?

3 A No, ma'am. I do not.

4 Q And then when they come back is that the only bag that
5 you retrieved from those two individuals?

6 A Yes, ma'am. It is.

7 Q And you searched them afterwards and there's no other
8 baggy found.

9 A Yes, ma'am.

10 Q There's no other drugs found that they could have put
11 in a baggy.

12 A No, ma'am. There are not.

13 Q Have you signed up informants before?

14 A Yes, ma'am. I have.

15 Q Okay. When you sign up informants, people come to you
16 who are trying to work off charges, right?

17 A Correct.

18 Q And then what was the other reason that they would
19 come?

20 A To volunteer information.

21 Q And when these people would come to volunteer
22 information, or those who are working off charges, are they
23 clean-cut looking individuals?

24 A No, ma'am. I mean, sometimes they are, but for the
25 most part they're people who have been involved in the drug

1 world.

2 Q And you -- how long were you in narcotics?

3 A At this point, I believe two or three years.

4 Q Okay. And how many drug buys would you say you've
5 been involved in?

6 A Hundreds.

7 Q Now, would you say that somebody is more willing to
8 sell drugs to somebody who looks like they've been involved
9 with drugs or somebody who looks like they haven't been
10 involved with drugs?

11 A They're more likely to sell to somebody that looks
12 like a user.

13 Q And would you say that Mr. Hughey fits that bill?

14 A Yes, ma'am. I do.

15 MS. BARRY: One moment, Your Honor.

16 (Pause.)

17 Q Also, on the video we see the entire ride from when
18 you leave the informant or when the informants leave you to
19 the location.

20 A Correct.

21 Q And in watching that video, they don't stop anywhere.

22 A Correct.

23 Q They don't deal with any other individuals.

24 A Correct.

25 Q And then when they leave the defendant's house and

Roderick Oglesby, Jr.
Direct examination by Ms. Barry

1 come back to the sheriff's office, do they stop anywhere?

2 A No, ma'am. They do not.

3 Q Do they come in contact with any other individuals?

4 A No, ma'am. They do not.

5 Q Okay. I'm going to show you what's been premarked as

6 State's Exhibit 2 and State's Exhibit 3. Can you take a

7 look at those?

8 A Yes, ma'am.

9 Q Do you recognize these?

10 A Yes, ma'am. I do.

11 Q Okay. Are these the still shots or some still shots

12 from the video that we just watched?

13 A Yes, ma'am. They are.

14 MS. BARRY: Your Honor, at this time I'd like to admit

15 State's Exhibit 2 and State's Exhibit 3 into evidence.

16 THE COURT: Any objection?

17 MR. NIETERING: No, Your Honor.

18 THE COURT: State's 2 and 3 are without objection.

19 (D.V.D. marked State's Exhibit No. 2; D.V.D. marked

20 State's Exhibit No. 3.)

21 MS. BARRY: Permission to publish, Your Honor.

22 THE COURT: Yes.

23 BY MS. BARRY

24 Q I'm going to show you what's been marked as State's

25 Exhibit 2. Can you tell us what that is?

1 A That's Mr. Larry Jones.

2 Q Okay. And then State's Exhibit 3. Can you tell us
3 what that is?

4 A That's also Mr. Larry Jones.

5 Q And what's going on in that photo?

6 A That's where he was sitting on the couch during the
7 actual drug transaction.

8 Q Okay. And what is this right here? You can step down
9 if you need to.

10 A Okay.

11 (Whereupon, the witness left the stand.)

12 (Whereupon, the witness returned to the stand.)

13 A That's the baggy of the methamphetamines.

14 Q Who is holding it?

15 A Looks as if Mr. Davis -- Ms. Hughey is holding it.

16 Q I have no further questions. If you will, answer any
17 that Mr. Nietering may have for you.

18 MR. BERRY: Your Honor, may we approach briefly?

19 THE COURT: Sure.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 THE COURT: Madam Forelady, ladies and gentlemen, we
23 were talking time over here and time management.

24 We're going to break for lunch at this point in time.

25 We're going to reconvene at 1:30. Okay. That's going to

54 Roderick Oglesby, Jr. (In-camera)
Cross-examination by Mr. Nietering

1 give you about an hour and 14 or 15 minutes, something like
2 that. I usually try to do an hour and a half, but I want
3 to keep going here.

4 So, at 1:30 -- at 1:30 -- we'll be back ready to
5 work -- 1:30.

6 Don't talk about the case; don't try to learn anything
7 about the case whatsoever. It's certainly not over.

8 Madam Forelady, if you will, take the jury out for
9 lunch.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Officer, you can leave the stand and get
13 some lunch, but you cannot talk to anyone about your
14 testimony. You understand that.

15 THE WITNESS: Yes, sir.

16 THE COURT: Yes, sir. We're going to break for lunch.
17 And be back here and ready to go at 1:30.

18 THE WITNESS: Yes, sir.

19 (Whereupon, a recess was taken.)

20 THE COURT: Do you want to proffer something?

21 MR. NIETERING: Your Honor, I'm going to ask Detective
22 Oglesby about -- Deputy Oglesby about a phone call that he
23 made to -- to Ms. Davis and -- and if he had testified to
24 that previously two weeks ago.

25 THE COURT: Sure. Do you want to proffer that? You

1 want to proffer that.

2 MR. NIETERING: Yes, Your Honor -- yes, Your Honor.

3 THE COURT: All right. Give your attention to the
4 lawyer.

5 Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. NIETERING

8 Q Two weeks ago you testified about that you called
9 Ms. Davis.

10 A Yes, sir.

11 Q And you -- you called them on the way to -- while they
12 were on their way to Mr. Jones' house, correct?

13 A Yes, sir.

14 Q Okay. And then shortly thereafter you hung up on the
15 phone call, correct?

16 A Yes.

17 Q After the -- after they left the house, correct?

18 A Somewhere between the time they left the house and
19 while they were --

20 Q Okay. And when did you call them? When exactly did
21 you call them?

22 A I don't recall the exact time I called them. No, sir.

23 Q Okay.

24 (Pause.)

25 Q I'm going to play a video for you.

56 Roderick Oglesby, Jr. (In-camera)
Redirect examination by Ms. Barry

1 Do you remember at what point you started hearing
2 conversations between Ms. Davis and Mr. Hughey in the
3 vehicle?

4 A I do not recall, no, sir.

5 Q Okay.

6 (Whereupon, the video was played.)

7 Q All right. I want you to indicate and have us stop
8 the video when you called. Okay?

9 A It is going to be hard to do because I don't recall
10 exactly what time I called them.

11 (Whereupon, the video was played.)

12 Q You don't remember when you started, first started,
13 hearing them?

14 A I don't recall when I made the phone call, but I do
15 remember hearing them.

16 Q Do you remember any details about that phone call?

17 A No, sir. As I said before, it was a lot of mumble
18 stuff going on. I don't know if you know. The signal's
19 pretty bad back through there. So, I couldn't really tell,
20 pinpoint, who was saying what or who was doing what.

21 Q Do you have an iPhone or an Android phone?

22 A Iphone.

23 Q And that iPhone has recording capabilities.

24 A Yes, sir.

25 Q But you didn't make an audio recording.

1 A No, sir. I didn't.

2 Q And you didn't produce any phone records to the
3 solicitor's office.

4 A No, sir. I didn't.

5 Q So, your testimony today is that you called her but it
6 did not ring, correct --

7 A Well, you can --

8 Q -- or her phone number rang.

9 A Some people keep their phones on silence. So, it's --
10 it's possible it did not ring.

11 Q But then her phone rang later, correct?

12 A Yes, sir.

13 Q Thank you.

14 MS. BARRY: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. BARRY

17 Q But you do remember making a phone call.

18 A Yes, ma'am. I do.

19 MS. BARRY: No further questions.

20 THE COURT: Anything else?

21 MR. NIETERING: Thank you, Your Honor.

22 THE COURT: Yes, sir. Anything else?

23 Okay. Are we ready for the jury?

24 MR. NIETERING: Yes, Your Honor.

25 THE COURT: Okay. We'll have the jury.

Roderick Oglesby, Jr.
Cross-examination by Mr. Nietering

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Madam Forelady, everything good with the
4 jury?

5 THE FOREPERSON: Yes, Your Honor.

6 THE COURT: Thank you.
7 Counsel.

8 MR. NIETERING: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. NIETERING

11 Q Good afternoon, Deputy. Thank you for coming.

12 A Yes, sir.

13 Q You work in the sheriff's office?

14 A I do, sir.

15 Q Did you work in the narcotics division at the time?

16 A Yes, sir. I did.

17 Q And now you're a patrol officer, correct?

18 A Correct.

19 Q And you worked there for two or three years in the
20 narcotics division?

21 A Correct, yes, sir.

22 Q Did you ever make mistakes during your time?

23 A Yes, sir. I have.

24 Q But you try not to make the same mistake twice,
25 correct?

1 A Correct.

2 Q And when you make a mistake, you're cross-examined
3 about that mistake, correct?

4 A Correct.

5 Q Now, as part of your training you went to the police
6 academy, correct?

7 A Correct.

8 Q And they taught you how to write police reports.

9 A That's correct.

10 Q And they taught you to write police reports that were
11 complete.

12 A Correct.

13 Q And that were thorough.

14 A Yes, sir.

15 Q And that were accurate.

16 A Yes, sir.

17 Q And then as part of your time during at the Cherokee
18 County Sheriff's Office you write a lot of police reports,
19 correct?

20 A Correct.

21 Q And they want you to write reports that are complete.

22 A Yes, sir.

23 Q And that are correct.

24 A Yes, sir.

25 Q And that are accurate.

1 A Yes, sir.

2 Q Now, you wrote the report that -- you wrote part of
3 the report attached to this case, correct?

4 A Yes, sir.

5 Q You only mentioned one confidential informant in this
6 case, correct?

7 A Correct.

8 Q You only wrote -- you only searched one confidential
9 informant, correct?

10 A Correct.

11 Q Now, the purpose of these police reports is to remind
12 you about what happened years later, correct?

13 A Yes, sir.

14 Q It's also to inform other people about your work,
15 correct?

16 A Correct.

17 Q Now, you testified that you worked in the narcotics
18 division at the time.

19 A Yes, sir.

20 Q And you said that you had made hundreds of undercover
21 buys, correct, or been a part of a hundred?

22 A Yes, sir, been involved, yes, sir.

23 Q Now, the Cherokee County Sheriff's Office probably had
24 several cameras that they could use, correct?

25 A Correct.

1 Q And these are different models of cameras?

2 A Yes, sir. Correct.

3 Q And you only used one camera in this case.

4 A That's correct, yes, sir.

5 Q And you only picked -- you picked this particular
6 camera, correct?

7 A Yes. Correct.

8 Q There were other options of camera that you could have
9 used though.

10 A Correct, yes, sir.

11 Q Now, you picked the confidential informants in this
12 case, correct?

13 A I didn't necessarily pick them, but, yes, sir,
14 correct.

15 Q You had a stack of people that you could have chosen
16 for this case, and you chose Mr. Hughey and Ms. Davis
17 specifically, right?

18 A No, sir. As previously testified, what happens
19 particularly is they will come to us with that person, and
20 that person will tell us, hey, we can buy from them or we
21 cannot buy from them.

22 Q Okay.

23 A And that's how it was determined in this case. They
24 actually brought the information to us.

25 Q Okay. Do you talk to the C.I.'s before sending them

1 out?

2 A Yes, sir.

3 Q And do you ask them their motive for being a C.I.?

4 A Yes, sir.

5 Q You ask them if they're turning in a family member.

6 A No, sir.

7 Q Do you ask them if they're seeking revenge?

8 A No, sir.

9 Q Now, you said that you were not a part, you were not
10 involved when Hughey signed up as a C.I. on October the
11 17th of 2019.

12 A Correct.

13 Q Did you see his sheet that he turned in to the
14 sheriff's office initialing it?

15 A No, sir. I didn't.

16 Q Have you seen this paperwork before?

17 A Yes, sir. I have.

18 Q And that's a copy of the confidential agreement --

19 A Correct.

20 Q -- that Mr. Hughey initialed on October 17th of 2019,
21 correct?

22 A Correct.

23 Q And he was agreeing to work off charges, correct?

24 A Yes, sir.

25 Q And as part of that agreement he said that he would

1 turn in traffickers, correct?

2 A He has -- he has -- he has checked in the boxes
3 trafficking, PWID, which is possession with intent to
4 distribute, street pushers and users, marked as the people
5 he could arrest or have arrested.

6 Q So, you thought that he might turn in potentially
7 someone big, correct?

8 A Not necessarily big in my opinion, just somebody who
9 was selling illegal narcotics.

10 Q And Mr. Hughey was trying to work off some charges at
11 the time.

12 A Correct, yes, sir.

13 Q And may I see this agreement?

14 A Yes, sir.

15 Q As part of this agreement he agreed to not violate
16 criminal law and further into gathering information or
17 providing service to the Cherokee County Sheriff's Office,
18 correct?

19 A Correct.

20 Q But he had to comply with the law. He had to comply
21 with the law otherwise.

22 A Correct.

23 Q So, he -- when he signed the charges, he was working
24 off -- when he signed this he was working off charges in
25 2019, correct?

1 A Correct.

2 Q However, on October 18th of 2020 he was arrested for
3 possession of other controlled substances in Schedule I to
4 V. And that did not disqualify him as a c.I., correct?

5 A To my knowledge, correct, yes, sir.

6 Q And then months before this incident on
7 February 2nd of 2021 he was arrested for possession of meth
8 third or subsequent, and that did not disqualify him as a
9 C.I. either though, correct?

10 A Correct.

11 Q So, to clarify, he had charges that he was working off
12 as a C.I., correct?

13 A Yes, sir.

14 Q And then he picked up two additional charges that he
15 also needed to work off, correct?

16 A Correct.

17 Q And if he does not work off these charges, he would do
18 additional -- he would time, correct?

19 A Correct.

20 Q And he would also do additional time for these two
21 other charges as well.

22 A Correct.

23 Q Now, he was on home detention at the time of this
24 incident, correct?

25 A To my knowledge, correct.

1 Q And that would have been monitored by the Cherokee
2 County Sheriff's Office.

3 A Correct.

4 Q And as part of that he entered into an agreement to be
5 drug tested regularly, correct?

6 A Correct.

7 Q Now, you testified that you talked to Mr. Hughey
8 before he was set up to go to Larry's place, correct?

9 A Correct.

10 Q And did you prepare him?

11 A What do you mean by prepare?

12 Q You train him about what to do and what to say?

13 A Typically, what we do is we tell them where the camera
14 is. We tell them, hey, this is kind of how you'd be
15 positioned in certain situations. And, so, as far as
16 preparing, it's pretty much letting them know, hey, this is
17 where the camera is and this is where we need to try to get
18 everything done.

19 Q So, you didn't tell him to stare at the wall and the
20 ceiling, correct?

21 A Correct.

22 Q And you also told him to meet you at the Buffalo Fire
23 Department afterwards, correct?

24 A Correct.

25 Q Now, you just mentioned that -- you testified that you

1 have worked with hundreds of narcotics cases, correct?

2 A Correct.

3 Q And you searched Hughey in this case, correct?

4 A Correct.

5 Q And he had nothing on him, correct?

6 A No illegal items on him, correct.

7 Q Okay. what else did he have on him?

8 A Just based off the video and, I guess, knowledge, he

9 had a lighter. He had a dollar in his pocket, I believe.

10 But, like I said, just items that people would keep in

11 their pockets. Nothing illegal though.

12 Q But this wasn't mentioned in your report?

13 A Correct.

14 Q And you -- so, you work for the Cherokee County

15 Sheriff's Office.

16 A Yes, sir.

17 Q And they employ female officers, correct?

18 A Correct.

19 Q And usually female officers search females, correct?

20 A Correct.

21 Q But you searched Ms. Davis.

22 A Correct.

23 Q Do you admit that you did not search her as thoroughly

24 as you searched Mr. Hughey?

25 A That's correct.

1 Q Do you remember calling Ms. Davis as they were on
2 their way to Larry's house?

3 A Yes, sir.

4 Q But you didn't tell us earlier about that, correct?

5 A What do you mean, sir?

6 Q On direct you did not testify to that, correct?

7 A No.

8 Q Okay. I'm about to play for you a video, and I'd like
9 for you to indicate when you call her. Okay?

10 A Correct.

11 (Whereupon, the video was played for the jury.)

12 Q All right. Just please let us know when to stop and
13 when you call in. Okay?

14 A I will, but it's hard to recall it's been so long ago
15 when I examined and made the call, so.

16 (Whereupon, the video was played for the jury.)

17 Q You did not hear it ring, did you?

18 A No, sir. I did not.

19 Q Did you hear her say though I ain't waiting on that
20 phone to ring though, correct?

21 A I did not hear that, no, sir.

22 Q So, you were listening during the alleged transaction?

23 A Correct.

24 Q Did you hear anything that sounded like a drug deal?

25 A I was not able to, no, sir.

1 Q Did you hear any talk about weights or money being
2 exchanged?

3 A No, sir.

4 Q Now, you said that you worked with hundreds of C.I.s
5 at this point, correct?

6 A I've been involved with hundreds of buys but not
7 hundreds of C.I.s., so, at this point in my career, not at
8 that point in my career.

9 Q Did they -- do they usually reassure each other about
10 what happened after the event?

11 A Sometimes they do, yes, sir.

12 Q So, Ms. Hughey and Ms. -- Mr. Hughey and Ms. Davis
13 were supposed to follow your instructions at all times,
14 correct?

15 A Correct.

16 Q And you instructed them to go towards the Buffalo Fire
17 Department?

18 A Correct, yes, sir.

19 Q But they didn't.

20 A That's correct.

21 Q And then you said that you -- you testified that you
22 followed them, correct?

23 A I was, for lack of a better term, in my Chevelle.

24 Q Okay.

25 A Not necessarily in front or behind.

1 Q So, they knew that you were behind them.

2 A They knew we were in the area, yes, sir.

3 Q And-but they still felt the need to tell you about
4 their locations?

5 A Yes, sir, according to the video.

6 Q They felt the need to tell you that they were at the
7 Citgo, that they passed the Citgo?

8 A Yes, sir.

9 Q Even though you were following them.

10 A Correct.

11 Q Are you familiar with zip-lock bags at the grocery
12 store?

13 A Yes, sir.

14 Q And they come in different sizes, correct?

15 A Correct.

16 Q And there's different brands.

17 A Correct.

18 Q And different brands potentially come and have
19 different sizes.

20 A Correct.

21 Q Now, you've been a narcotics agent for -- you had been
22 for years at this point, right?

23 A Correct.

24 Q Are drugs usually sold by the bag?

25 A Yes, sir.

70

Roderick Oglesby, Jr.
Redirect examination by Ms. Barry

1 Q They're sold by the bag.

2 A Correct.

3 Q Instead of by weight.

4 A They're usually in baggies. They're sold by the
5 weight, but they're usually packaged in baggies.

6 Q So, when Mr. Hughey comes to you at the end, he
7 doesn't present you with a particular weight of meth,
8 correct?

9 A Correct. Because usually when we do our buys, we
10 don't ask for a weight. We ask for a money value, and so
11 in this particular case we asked for \$20 worth. \$20 worth
12 may be a gram to some people. To some people it may be a
13 half a gram. Some people, it might be two grams. It
14 varies.

15 Q A drug dealer would usually mention that at some point
16 though, right?

17 A They have in the past in some cases, yes, sir.

18 (Pause.)

19 Q You selected Mr. Hughey as your confidential
20 informant?

21 A No, sir. I did not.

22 Q Well, he came to the sheriff's office. But you
23 decided to use him as a confidential informant.

24 A Correct, yes, sir.

25 Q Did you review his criminal history?

1 A At some point I believe I would have, yes, sir. I
2 don't recall exactly.

3 Q But that did not make it in your report.

4 A Correct.

5 MR. NIETERING: No further questions, Your Honor.

6 THE COURT: Anything?

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

8 REDIRECT EXAMINATION

9 BY MS. BARRY

10 Q I'd like to start with the C.I. packet that
11 Mr. Nietering asked you about.

12 So, you've seen C.I. packets, and it's standard
13 language, right?

14 A Correct, yes, ma'am.

15 Q So, Mr. Nietering didn't actually continue on with the
16 question about committing crimes, did he?

17 A No, ma'am. He didn't.

18 Q It's "I will not violate criminal law in furtherance
19 of gathering information or providing services to the
20 Cherokee County Sheriff's Office."

21 A Correct.

22 Q Right? So, do you have knowledge that Mr. Hughey
23 violated the criminal law in furtherance of gathering
24 information or providing services to the Cherokee County
25 Sheriff's Office?

1 A I do not, ma'am.

2 Q Okay. And he asked you about, well, they'll get
3 additional time on these charges that he picked up, right?

4 A Correct.

5 Q But you're not in charge of sentencing, are you?

6 A No, ma'am. I'm not.

7 Q So, you don't know if Mr. Hughey is going to be
8 convicted of these crimes and how he's going to be
9 sentenced, do you?

10 A No, ma'am. I do not.

11 Q And they were supposed to follow instructions at all
12 times.

13 A Correct.

14 Q And you've watched this video in court and prior to.

15 A Correct.

16 Q And Mr. Hughey attempts to follow your instructions,
17 doesn't he?

18 A Correct.

19 Q Because he tells Marie you actually need to turn here,
20 we're supposed to meet them back at the Buffalo Fire
21 Department.

22 A Correct.

23 Q But Ms. Davis is the one who says she's going to keep
24 on going to the sheriff's office.

25 A Correct.

1 Q And you review criminal histories for those who are
2 going to be confidential informants.

3 A Yes, ma'am.

4 Q And informants are going to have criminal histories,
5 aren't they?

6 A Most of the time, yes, ma'am.

7 Q Okay. You're not going to send a boy scout to go buy
8 drugs.

9 A Correct.

10 MS. BARRY: No further questions, Your Honor.

11 THE COURT: Anything at all?

12 MR. NIETERING: None from the defense, Your Honor.

13 THE COURT: Thank you.

14 Officer, you may step down. Please be careful.

15 MS. BARRY: Your Honor, at this time the state would
16 call Lieutenant Tate to the stand.

17 TIMOTHY LAMAR TATE, having
18 been first duly sworn, testified as follows:

19 THE COURT: Sir, tell us who you are, and spell your
20 last name for my court reporter, please.

21 THE WITNESS: Timothy Lamar Tate. Last name T-A-T-E.

22 THE COURT: Thank you.

23 MS. BARRY: Thank you, Your Honor.

24

25

Timothy Lamar Tate
Direct examination by Ms. Barry

1 DIRECT EXAMINATION BY MS. BARRY

2 Q Good afternoon, Lieutenant Tate.

3 A How are you doing?

4 Q Good. How are you?

5 A Doing fine.

6 Q Good. Where are you employed?

7 A At the Cherokee County Sheriff's Office.

8 Q And how long have you been employed there?

9 A Eight years.

10 Q And what is your role at the sheriff's office?

11 A I work for special investigation narcotics.

12 Q Okay. And do you hold a rank?

13 A Lieutenant.

14 Q Okay. And what are your duties in the special
15 investigation narcotics?

16 A We work alcohol buys; undercover buys; we work heavy
17 drug areas.

18 Q Okay. And were you involved in this drug buy in June
19 of 2021?

20 A I was.

21 Q And what was your role for this particular buy?

22 A To assist Deputy Oglesby.

23 Q Okay. So, where did everybody meet?

24 A At the sheriff's office.

25 Q Okay. And when everybody comes to the sheriff's

1 office, what do you do?

2 A So, once the C.I.s get there, they let us know who
3 they buying from. I ask where the key's at, and I go
4 search the vehicle that the C.I.s be driving in.

5 Q Okay. So you search the car.

6 A That's correct.

7 Q Can you describe for the jury how you searched that
8 car?

9 A Okay. On this day I go out to the C.I.'s car. I
10 always start on the driver's side. I always try to keep it
11 the same on every car.

12 I open up the driver's-side door and start from the
13 dashboard. I work my way down under the dashboard, pull
14 back the floor mats, under the seats, down beside the seats.
15 And I come out and I go around to the driver's -- passenger
16 side. Same thing. Search that all the way back up to the
17 back window.

18 Then I go to the passenger side. Same thing.

19 Once I do that I search the glove compartment, center
20 console and any and everything that's left in the vehicle.

21 Then after that I go open the trunk, look under the
22 trunk and the hood of the car. well, inside the trunk and
23 under the hood of the car.

24 Q And were there any bags or anything in Ms. Davis' car?

25 A No. It was a fairly clean car. Maybe a pair of

1 shoes, pocketbook, a cup here and there.

2 Q Okay. Did you search the pair of shoes?

3 A I did.

4 Q Anything found in the pair of shoes?

5 A Nothing.

6 Q Did you search the pocketbook?

7 A I did.

8 Q And how would you search the pocketbook?

9 A Just like a regular search. I sat it in -- wherever
10 it's located at. Most of the time I set it up in the seat.
11 Most of the time take all of the contents out, go through
12 the pocketbook and put all the contents back in.

13 Q Okay. And was there anything found in Ms. Davis'
14 purse?

15 A Nothing.

16 Q Was there anything illegal found in Ms. Davis' car?

17 A Nothing illegal.

18 Q Okay. And then once you searched the car, what do you
19 do from there?

20 A Once -- once I complete the search of the car, I go
21 back inside and assist Deputy Oglesby.

22 Q Okay. You don't outfit the C.I. with any type of
23 camera or anything in this case.

24 A No. I'm not the controlling officer.

25 Q Okay. So, you basically follow the informants. Well,

1 you drive to the Buffalo Fire Department.

2 A Yes. I was the driver that day. We drove to Buffalo
3 Fire Department.

4 Q Okay.

5 A The short -- the drive in the video.

6 Q Okay. Did the videos have a low battery power or
7 something?

8 A Sometime. It get -- maybe it get hot on the C.I.

9 Q Okay.

10 A Because if for a long period of time, that little
11 packet get hot.

12 Q Okay. So, who's in the car with you?

13 A Me, Deputy Oglesby and Michael Hughey.

14 Q Okay. Where is Ms. Davis?

15 A She's driving her car.

16 Q Okay. Do you see her as you're driving from the
17 sheriff's office to the Buffalo Fire Department?

18 A Yes. We probably maybe five or six car lengths behind
19 her.

20 Q Okay. Does she ever veer off and go somewhere else?

21 A No. She didn't.

22 Q She stays with you and goes to the fire department.

23 A That's correct.

24 Q Okay. What happens when you get to the fire
25 department?

1 A When we got to the fire department Rod read his --
2 excuse me -- Deputy Oglesby read his spill. We gave him
3 the money. We let Michael Hughey out. He got in the car
4 with Marie Davis.

5 Q Okay. And when he gets in the car with Marie Davis,
6 where do they go?

7 A To [REDACTED] Coleman Road.

8 Q Okay. And that's here in Cherokee County?

9 A Yes. It is.

10 Q And what do you and Deputy Oglesby do?

11 A Basically, tell them that we're going to meet back
12 here. And after they go up the road we kinda fall in
13 behind them, like, say, five or six car lengths behind
14 them, and make sure they go to the right location.

15 Q And did they go to the right location?

16 A Yes. They did.

17 Q And once they got to that location, what did you and
18 Deputy Oglesby do?

19 A Basically, go up the road so to keep view on the --
20 the location where they at.

21 Q Okay. Besides them meeting back with you, do they
22 ever leave the location?

23 A No.

24 Q From Buffalo Fire Department to the location, do they
25 fear veer off and go somewhere?

1 A No.

2 Q Okay. So, they eventually leave Coleman Road.

3 A Yes.

4 Q And what do you and Deputy Oglesby do?

5 A Once we see that they done left, we kind of slowly
6 trail out so we won't bring no suspicion to us. And as
7 soon as we got on the, I want to say Black -- not Black --
8 yeah, Blacksburg Highway, we seen that they had missed a
9 turn, so we just got in behind them.

10 Q Okay.

11 A Like I say, like four or six car lengths behind them.

12 Q Okay. And where did they go from there?

13 A Back to the sheriff's department.

14 Q Okay. And did they make any stops on their way back
15 to the sheriff's department?

16 A No. They didn't.

17 Q Okay. So, you get back to the sheriff's department.

18 A Yes.

19 Q And what do you do?

20 A So, once we get back to the sheriff's department, they
21 all let back into the office, and I go back and I do the
22 same thing on the search like I did the first time.

23 Q Okay. So that thorough front to back truck --
24 trunk -- and hood of the car.

25 A That's correct.

1 Q Did you find anything?

2 A Not a thing.

3 Q Any bags that were in the car?

4 A Uh-uh.

5 Q Okay.

6 A Like I said, just a cup and the shoes.

7 Q Okay.

8 A well, I think they had took the shoes out. Had a few
9 cups just laying around.

10 Q Okay. And do you handle the drugs in this case?

11 A No. I don't.

12 Q I have no further questions. If you will, answer any
13 that Mr. Nietering may have for you.

14 A Okay.

15 THE COURT: Yes, sir.

16 MR. NIETERING: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. NIETERING

19 Q Thank you, Lieutenant, for being here today.

20 A Thank you.

21 Q So, you searched the vehicle in this incident?

22 A I did.

23 Q So, when you saw Ms. Davis, you introduced yourself
24 and got the keys to the vehicle.

25 A That's correct.

1 Q And you testified that you searched her shoes.

2 A A pair of shoes.

3 Q A pair of shoes.

4 A Yes.

5 Q How did you search that pair of shoes?

6 A Basically, take the shoe, pull them up, loose the lace
7 up, open them up, look in them. If the sole come out or
8 the sole's out, shake it. Put them back in there.

9 Q You testified in great detail about how you searched
10 the vehicle and the shoes, correct?

11 A Yes.

12 Q You -- in your report for this case you only wrote two
13 sentences, correct?

14 A That's correct.

15 Q And that did include -- that did not include any
16 detail, right?

17 A It's just what I done.

18 Q You just said, basically, stated briefly that you
19 searched the vehicle.

20 A I searched the vehicle.

21 Q Now, how long have you worked for the Cherokee County
22 Sheriff's Office?

23 A Eight years.

24 Q And in that time you've handled numerous drug cases.

25 A That's correct.

Michael Hughey
Direct examination by Ms. Barry

1 Q And usually drug cases involve a weight of drugs,
2 correct?

3 A That's correct.

4 Q It's usually a given amount of weight for X amount of
5 money.

6 A That's correct.

7 MR. NIETERING: No further questions, Your Honor.

8 THE COURT: Anything at all?

9 MS. BARRY: No, sir, Your Honor.

10 THE COURT: Lieutenant, be careful stepping down.

11 THE WITNESS: Thank you, sir.

12 MS. BARRY: Your Honor, at this time the state would
13 call Michael Hughey to the stand.

14 MICHAEL HUGHEY, having been
15 first duly sworn, testified as follows:

16 THE COURT: Sir, tell us who you are, and spell your
17 last name for my court reporter, please.

18 THE WITNESS: Michael Hughey. It's H-U-G-H-E-Y.

19 THE COURT: I'm going to ask you to speak up a little
20 louder, sir. She has to record and we have to hear it.

21 THE WITNESS: Michael Hughey. H-U-G-H-E-Y.

22 THE COURT: Thank you.

23 Solicitor.
24
25

1 DIRECT EXAMINATION BY MS. BARRY

2 Q Okay. Mr. Hughey, I'm going to need you to use your
3 outside voice, okay, so the jurors back here can hear you.
4 Okay.

5 A Yes, ma'am.

6 Q Okay. So, Mr. Hughey, are you working anywhere?

7 A Disabled.

8 Q Okay. And were you working with the Cherokee County
9 Sheriff's Office in June of 2021?

10 A Yes, ma'am.

11 Q And how were you working with them?

12 A A charge actually.

13 Q Okay. So, you were working with them to work off a
14 charge.

15 A Yes.

16 Q Do you remember what that charge was?

17 A Meth. I think it was meth.

18 Q Okay. And not only were you working off a charge, but
19 you have a criminal history, is that correct?

20 A Yes, ma'am. I do.

21 Q Okay. I'm just going to go over that with you real
22 quick.

23 Okay. In 2012, you have a burglary and a grand
24 larceny, is that correct?

25 A That's correct.

Michael Hughey
Direct examination by Ms. Barry

1 Q Okay. 2015, you have a possession of methamphetamine,
2 is that correct?

3 A Yes, ma'am.

4 Q 2015, you also have a petty larceny.

5 A Yes.

6 Q Okay. And then in 2017, possession of methamphetamine
7 second offense.

8 A Yes.

9 Q Okay. And then in 2017, you have a forgery less than
10 \$10,000 enhanced, isn't that correct?

11 A I do.

12 Q Okay. 2023, you have a petty larceny, is that
13 correct?

14 A Yes.

15 Q Okay. And then, Mr. Hughey, you also have a pending
16 charge right now, is that correct?

17 A I do.

18 Q And have you been offered anything as far as that
19 charge goes for your testimony here?

20 A No. I haven't.

21 Q So, let's go back to you working for the sheriff's
22 office.

23 Were you the confidential informant that participated
24 in the buy on June the 11th of 2021?

25 A I was.

1 Q And who was with you?

2 A Marie Davis.

3 Q Okay.

4 A Yeah.

5 Q How did you come to be involved in this particular
6 buy? Who set the buy up?

7 A The captain did.

8 Q Who did you meet with?

9 A I met with, well, Mr. Tate and Mr. Oglesby, but I
10 talked to Mr. Painter first, but.

11 Q Okay. And what name did you give them that you were
12 going to buy from?

13 A Larry Jones.

14 Q Okay. And how do you know Mr. Jones?

15 A I've known him my whole life pretty much.

16 Q Whole life. Okay. So you set up that you're going
17 to -- you give the name Larry Jones, is that correct?

18 A Yeah.

19 Q Okay. So, what happens when you are at the sheriff's
20 office?

21 A I was -- I was searched, wired with audio and video.

22 Q Okay.

23 A And handed the money.

24 Q Okay. So, searched, audio-video.

25 A Everything.

1 Q where do you go from the sheriff's office?

2 A I think we went to the Buffalo Fire Department.

3 Q Okay.

4 A And I rode with the officers. The officers let me
5 out. I don't have a license, so, I didn't drive. That's
6 why Ms. Davis was driving.

7 Q Okay. Okay. And where does Ms. Davis drive you?

8 A Open Air Trailer Park.

9 Q Okay. who lives at Open Air Trailer Park?

10 A Larry. Larry did.

11 Q Okay. When you were searched did you have anything on
12 you?

13 A No, ma'am.

14 Q When you're setting up this buy, do you call
15 Mr. Jones?

16 A Yeah, yes, ma'am.

17 Q And what is that conversation?

18 A It was just a -- I asked him about a buy.

19 Q Okay. You asked him if you could buy what?

20 A Meth.

21 Q And what did he say?

22 A Come on.

23 Q Come on. Okay. So that's what you told law
24 enforcement.

25 Okay. So you go to Mr. Jones. What happens while

1 you're at Mr. Jones?

2 A I walked in. Looked at the trinkets on the wall. He
3 handed me that and I handed him the money.

4 Q Okay. So, he handed you the methamphetamine and you
5 handed him the money.

6 A Yeah.

7 Q How much money was it?

8 A Twenty dollars.

9 Q Twenty dollars. Okay. I'm going to show you what's
10 been marked as State's Exhibit 5. Is this the
11 methamphetamine that Mr. Jones handed to you?

12 A Yeah, that's, yeah.

13 Q Okay. Now, do you keep that methamphetamine in your
14 hand the whole time?

15 A Actually, no.

16 Q Okay. Who do you give it to?

17 A I gave it to Marie. She -- actually I'm clumsy, would
18 have lost it or whatever.

19 Q Okay.

20 A And that's my opinion of it.

21 Q Okay. Do you ever get the drugs back from Marie?

22 A Yes. I do, I do.

23 Q Okay. What do you do with those drugs once you get
24 them back from Marie?

25 A I gave it to the officer at the door. I think it was

1 Mr. Tate. I couldn't --

2 Q Give it to Mr. Tate or Mr. Oglesby?

3 A Mr. -- Mr. Oglesby, I think it was.

4 Q Now, I'm going to show you what's been admitted as
5 State's Exhibit 2 and State's Exhibit 3.

6 Before I do that, Mr. Hughey, is Mr. Jones here in the
7 courtroom today?

8 A Yeah.

9 Q Can you point him out for us? And what's he wearing?

10 A Brown jacket.

11 MS. BARRY: Your Honor, let the record reflect that
12 Mr. Hughey has pointed out the defendant.

13 THE COURT: So noted.

14 BY MS. BARRY

15 Q Mr. Hughey, this is State's Exhibit 2. Who is that?
16 And you can step down if you need to.

17 A That's Larry Jones.

18 Q And you stated you've known Larry your whole life.

19 A Yes. I have. Yes, ma'am.

20 Q And this is State's Exhibit 3. And you may need to
21 step down for this one.

22 (Whereupon, the witness left the stand.)

23 Q Okay. I'm going to ask you. Who is this right here?

24 A That's Larry.

25 Q Okay. And what is this right here?

1 A That's the meth.

2 Q That's the meth.

3 Okay. You can take a step back on the witness stand.

4 (Whereupon, the witness returned to the stand.)

5 Q And who gave you that methamphetamine?

6 A Larry.

7 Q When you and Ms. Davis were going from the Buffalo
8 Fire Department to the defendant's house, did you make any
9 stops anywhere?

10 A No.

11 Q Okay. When you went from the defendant's house to the
12 sheriff's office, did you make any stops?

13 A No. Didn't make any stops.

14 Q Now, you were actually supposed to meet them at the
15 fire department, right?

16 A I think, yes, ma'am.

17 Q Okay. What happened?

18 A Marie got in her normal self, and we ended up. She
19 drove straight -- she went straight to the sheriff's
20 office.

21 Q So, instead of -- you know, she got to talking.

22 A Yeah, and she did.

23 Q And she went to the sheriff's office. And no stops
24 along the way.

25 A No stops, no. I'm sure they also were together.

Michael Hughey
Cross-examination by Mr. Berry

1 Q Mr. Hughey, I have no further questions.

2 A All right.

3 Q If you will, answer any Mr. Nietering may have for
4 you, or Mr. Berry. Excuse me.

5 CROSS-EXAMINATION

6 BY MR. BERRY

7 Q Mr. Hughey --

8 A Yes, sir.

9 Q -- you talked about criminal record already. The last
10 ten years, how long have you been either charged with a
11 crime, on probation for a crime, or have a crime pending
12 against you?

13 A At least half of that probably.

14 Q Half? Sure about that?

15 A I would say at least half, I mean.

16 Q Just half?

17 A We'd go seven or eight probably.

18 Q What about all ten years?

19 A I was on parole when I first got out. You're right.

20 Q So, for the past ten years you've been a criminal here
21 in Cherokee County.

22 A I've been not a model citizen, yeah.

23 Q But, in spite of that, you were allowed the
24 opportunity to work, right?

25 A I was.

1 Q who gave you that opportunity?

2 A Captain Painter, I guess.

3 Q Okay. Was Captain Painter part of this?

4 A I'm sure he is. He's the captain of the narcotics.

5 Q Did you ever talk to him about this?

6 A Yeah. We talked. He told me.

7 Q About this crime involving Larry Jones.

8 A No, no.

9 Q Okay.

10 A That I know of, no, sir.

11 Q All right. So, this distribution that you're
12 testifying about here today, who did you work with?

13 A Mr. Oglesby and Mr. Tate.

14 Q Okay. And, so, that's who made the deal with you.

15 A Right, right.

16 Q The ten-year criminal. And they're here in the
17 courtroom today?

18 A They are.

19 Q Okay. And, so, when did you sign up to become a C.I.?

20 A '21, I guess.

21 Q '21. Would that have been why you maybe got
22 additional charges in '20, because you didn't remember when
23 you signed up to become a C.I.?

24 A '20.

25 Q Can you look at the bottom of that and see when that

1 form is dated?

2 A Yeah. I do.

3 Q And read that date for the jury.

4 A It's actually 10/17/19.

5 Q 2019.

6 A Yes, sir.

7 Q And when did this occur?

8 A '21.

9 Q When?

10 A June maybe -- June.

11 Q You're close. June 11th of 2021 this crime occurs.

12 So, we're at least a year and a half out from when you
13 became a C.I. Have you conducted other buys, done other
14 deals for the sheriff's office before this one?

15 A One, I think, yeah.

16 Q One. What was the timeframe that they gave you? How
17 long did you have to work your charges off?

18 A I don't think -- actually maybe -- I tell you, I don't
19 remember if I did.

20 Q Okay. So, you could just -- you could say, hey, I'm
21 going to do this deal for you, it's coming, I promise you
22 I'm going to do it and --

23 A If I give my word, I give my word.

24 Q Okay.

25 A In the last ten years, I do. In 2016 I was in an

1 accident, my brain's wrong, and I have changed a little
2 bit. That's just all I can say. My neck. I broke my neck
3 back.

4 Q You changed a lit bit.

5 A I have.

6 Q But you've got a pending charge against you?

7 A I got a pending charge that just asked that's pending.

8 Q Pending, which means that law enforcement had probable
9 cause to get a warrant for you, right?

10 A They -- yeah. They did have probable cause.

11 Q Okay. But you changed.

12 A Physically, yeah; mentally, yeah.

13 Q I'm sorry?

14 A Mentally, I've changed some, yeah.

15 Q Mentally, you've changed some. Okay.

16 A I mean, I -- that's not my choice, you know. Just I
17 was in a coma for 24 days, stayed in the hospital 48 or 49
18 days at Spartanburg Regional, and that was in 2016.

19 Q And when was that?

20 A '16.

21 Q Okay. Now, let's start from the beginning of this
22 day, June 11th of 2021. How did you contact Detective
23 Oglesby?

24 A I think I called him that day.

25 Q You called him. What did you tell him?

1 A I was going to make a buy.

2 Q Okay. What did you do after that?

3 A Went up to the sheriff's office. I fitted, wired,
4 checked, they said.

5 Q Well, start from the beginning. You pulled in the
6 parking lot. What happens? Tell us the chain of events.

7 A Like I say, parking lot. I knock on the door. It
8 opened.

9 Q Did you go in the front or side door or --

10 A Went in the main door, the front, office door.

11 Q Okay. So, directly into the sheriff's office.

12 A Well, it'd be on this side. So, it'd be the back
13 side. It could be the back side.

14 Q Okay.

15 A But it's the sheriff -- in the sheriff's office.

16 Q All right. And then what happens?

17 A I think I made a -- I made a call. Then they fitted
18 me with audio-video. Gave me the money.

19 Q Hold on, hold on right there.

20 A That's what they --

21 Q You made a call?

22 A Yeah.

23 Q Who did you make a call to?

24 A Larry.

25 Q In the sheriff's office, you made a call.

- 1 A On my phone, yeah.
- 2 Q First time I'm hearing about that.
- 3 A That's just how.
- 4 Q But you called someone in the sheriff's office.
- 5 A I -- actually, yes, I did. I did right then.
- 6 Q Okay. Then what happens?
- 7 A And I was searched.
- 8 Q Okay.
- 9 A Car was searched.
- 10 Q Who did the search of you?
- 11 A The officers.
- 12 Q The officers.
- 13 A Officers.
- 14 Q Okay. All right. And then who did the search of the
- 15 car?
- 16 A Same officers.
- 17 Q Both went out and searched the car?
- 18 A I'm sure. I think one did -- one.
- 19 Q Which one?
- 20 A Probably Officer Tate.
- 21 Q Officer Tate goes and searches the car. How long was
- 22 Officer Tate out there?
- 23 A I don't remember.
- 24 Q Don't remember.
- 25 A I mean, I couldn't say really.

1 Q Do you remember how long it was that you were at the
2 sheriff's office?

3 A Fifteen minutes.

4 Q Fifteen minutes.

5 A Maybe 15 or 20 minutes. Not sure really as far as
6 time, I mean, you know.

7 Q Okay. All right. Then what happens?

8 A Then I arrive with officers to the Buffalo Fire
9 Department. Well, we followed Ms. Davis in her car.

10 Q Okay.

11 A I think got out, and that's went -- went to the
12 trailer park.

13 Q All right. You testified that you'd known Larry for a
14 long time.

15 A Yeah.

16 Q How long?

17 A My life.

18 Q Your life. Why is that?

19 A Just known him a long time.

20 Q Are you related to him?

21 A Could be, yes, sir.

22 Q You could be or you are?

23 A I am related, yes.

24 Q How?

25 A Cousin.

1 Q what level?

2 A First, second, first.

3 Q First cousin.

4 A Yeah.

5 Q All right. But known him for a long time.

6 A He has me.

7 Q All right. You testified earlier for the state that
8 you were working off a charge. Is that true?

9 A Yes.

10 Q Just one, a charge.

11 A Well, I could get into more, but they were dropped
12 because of -- I think that they'd killed an officer. I'm
13 sure you remember it. I heard. So, that charge --

14 Q I'm sorry. I don't.

15 A What I mean, it's a different story, but the charge
16 I'm working off is the charge I was charged with. As I
17 said, the meth.

18 Q Well, would it be fair to say that as a result of this
19 there were actually three charges that were dismissed? Is
20 that right?

21 A They were dismissed, but I actually came to court on
22 it. So, not all of them dismissed because of that.

23 Q What do you mean, you came to court? You had a trial
24 and were found not guilty.

25 A I was going to trial.

1 Q Well, tell us what happened. Enlighten the jury.
2 what happened with those charges?

3 A They were -- they were dismissed.

4 Q Why?

5 A Robin File was my attorney. I talked to him.

6 Q So, your attorney got the charges dismissed.

7 A I was offered a -- I can explain this. I -- when I
8 took him on on Christmas Eve he burn -- I was going to see
9 my daughter. A friend of mine used to be --

10 MS. BARRY: Your Honor, I'm going to object to --

11 THE WITNESS: Yeah.

12 THE COURT: Hold on.

13 THE WITNESS: I'm sorry.

14 MS. BARRY: Any detail in the crimes, I'm not going to
15 -- I don't think that's allowed. And may we approach?

16 THE COURT: Yeah. Sure can.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Continue, Mr. Berry.

20 BY MR. BERRY

21 Q All right. You had a few minutes to get your thoughts
22 together. How many charges were dismissed?

23 A Three.

24 Q Okay. And that's as a result of you working, making
25 these deals, right?

1 A I guess so.

2 Q Don't guess about it. I mean, were they dismissed for
3 some other reason?

4 A They were dismissed. Well, I was offered a -- a
5 30-day sentence on one that I'd already done 30 days on
6 before I made a bond on one.

7 Q What was that charge?

8 A They had me for first degree burglary. That's my
9 uncle. I had a key. I lived there. I was gone that day,
10 and it was a mistake that somebody else told. And when
11 I -- when I was offered 30 days, I turned that down because
12 I didn't do it. And there wasn't no burglary there to
13 start with on that -- on that charge.

14 Q I wasn't too concerned about that one. Okay.
15 These -- these are the three that I was concerned about. I
16 just want to sure that we're clear.

17 A Two meth charges and --

18 Q Possession of Xanax from October of 2020. Dismissed
19 because you were working.

20 A But I did have a prescription for Xanax, but I didn't
21 have one in the bottom. I don't -- I don't remember the
22 other two. No. I wasn't working. I don't think on that
23 one. I don't remember though. I remember the charge.

24 Q February 2 of '21, possession of meth. That was
25 dismissed because you were working.

1 A It was dismissed because I was working then.

2 Q Well, is that what happened? I mean, I'm just wanting
3 to get it.

4 A I guess it was, yeah.

5 Q I'm sorry?

6 A It was, I guess, yes, sir.

7 Q Well, don't guess about it. You're the only one who
8 knows.

9 A Right. I guess I am. I mean, I am. You asked me a
10 question if it was dismissed, but, yes, yes.

11 Q Okay. All right. October 2 of 2019, possession of
12 methamphetamine. Dismissed because you're working, right?

13 A What year -- '22?

14 Q 2019.

15 A 2019, yes.

16 Q Okay. You got a pending charge, right?

17 A Yeah.

18 Q Did you happen to know who the prosecutor was on those
19 charges that got dismissed?

20 A Dismissed?

21 Q I'm sorry?

22 A Ms. Berry, I guess, on one of them. As to that, I'm
23 not sure, I mean, because.

24 Q You're right. She was. Who's the prosecutor on the
25 pending charge right now?

1 A Now, that I don't have no intentions.

2 Q You haven't talked to anybody about that?

3 A I haven't talked to anybody, no, sir.

4 Q Okay. So, your first cousin that you've known a long
5 time, you set up to buy meth from. Has Larry had a lot in
6 his life? I mean, did he have a lot of money, he had nice
7 things?

8 A I don't -- I can't answer that one. I mean, he worked
9 hard pretty much like I did for years.

10 Q Okay. But you had interactions with him, right?

11 A I have, yeah.

12 Q You have. Okay. So, how often would you see Larry?

13 A Ever -- every month or so maybe.

14 Q Every month or so.

15 A Past years, I mean.

16 Q I'm sorry?

17 A For the past year.

18 Q For the past year?

19 A Years or whatever.

20 Q Years. Okay.

21 A Ten years, as you call it.

22 Q Did you ever have Larry do work for you?

23 A No.

24 Q Never asked him for any type of help on anything?

25 A I don't -- I don't think so, no, as I -- no.

1 Q Was Larry particularly good at anything?

2 A He's real good.

3 Q At what?

4 A At building.

5 Q Okay. He ever help you build anything?

6 A I ain't never built anything.

7 Q Never built. Did he ever build anything for you?

8 A I don't -- no.

9 Q No?

10 A I wouldn't say he did.

11 Q Did you ever borrow anything from him or --

12 A Actually bought a trunk from him one time.

13 Q A what?

14 A A chest or trunk or whatever.

15 Q A chest or a trunk. Okay.

16 A I don't know if he built it or not though.

17 Q Okay. All right. Backing up just a little bit.

18 So, when you're at the sheriff's office and they're
19 conducting the search, both officers were present, correct?

20 A Yes.

21 Q Okay. Did they -- did you know both of them prior to
22 you going there on June 11th of '21?

23 A Did I know them?

24 Q Yeah. You ever worked with them before?

25 A No, I -- no. I don't guess. Maybe once. I -- that I

1 can't remember, I mean, I can't remember. Like I say, my
2 memory's not what it used to be. I mean, that's the
3 honest. I mean, I have talked. I guess I have talked to
4 them.

5 Q We're guessing now. You're the only one that knows.

6 A Well, I talked to them. They pretty good fellows.

7 Q Why did you just hesitate?

8 A I mean, I had to think, because did I do that?

9 Because I don't remember. And you asked me a question and
10 told you the truth. I can't remember that, particularly if
11 I worked with them.

12 Q So, did they have to introduce themselves to you or
13 did you know who they were when they came in the room?

14 A They were introduced to me. We introduced or whatever
15 and...

16 Q Okay.

17 A They -- I know now. I do.

18 Q All right. Did they ever separate you and Ms. Davis?

19 A Probably so, yes, sir. I'd say so. But yeah. As a
20 matter of fact, when I was -- when I was talking to Captain
21 Painter, I mean, they just carried on a regular
22 conversation.

23 In other words, she had me going to work. So, they
24 did. Maybe she did. And if you -- if you know that you
25 wouldn't bring it out because I really don't remember that.

104 Michael Hughey
Cross-examination by Mr. Berry

1 I'm pretty sure as far as being in the office, that stuff,
2 she may have been ten feet from me. How about that? That's
3 pretty much.

4 Q My question was did they separate. Were you ever out,
5 like, in a different room from Ms. Davis?

6 A I think when she was talking to captain, yeah, yes,
7 yeah. I don't think they actually separated. So, I think
8 she went in there and talked to him.

9 Q Okay. All right. So, picking back up, you said your
10 first cousin Larry -- again -- had gone in and got the drug
11 deal gone down that's not captured on camera. What happens
12 after that?

13 A Took it back to the sheriff's office.

14 Q Okay. Did you follow all of the directions on what
15 you were supposed to do?

16 A Besides, we went -- actually not. I don't guess. We
17 were supposed to stop at the Buffalo Fire Department.
18 Again, I don't think she seen. She was talking like she
19 does. And I think they followed us from that point on.

20 Q Okay.

21 A So, they was doing -- because pretty sure out of
22 sight. I couldn't tell you.

23 Q Let's talk about you and Ms. Davis. Y'all got a
24 pretty good relationship?

25 A Pretty good.

1 Q She trusts you?

2 A Yeah. I'd say she does.

3 Q She does. Okay. Any problems in y'all's
4 relationship?

5 MS. BARRY: Objection, Your Honor. Relevance.

6 A No more than usual, any other.

7 THE COURT: Wait a minute, sir.

8 Make it relevant.

9 MR. BERRY: I believe I am, Judge.

10 THE COURT: I'll give you a little lead.

11 BY MR. BERRY

12 Q Mr. Hughey, we talked about pending charge. Now, any
13 more arrests?

14 MS. BARRY: Objection, Your Honor.

15 MR. BERRY: I'll withdraw that; I'll withdraw that.

16 BY MR. BERRY

17 Q Do you recall Ms. Davis asking you who was with Deputy
18 Oglesby?

19 A I don't -- I don't recall it, no.

20 Q You don't recall it?

21 A I -- I -- who was with that dep -- Deputy Oglesby, but
22 I don't recall it.

23 Q Okay. But if it's on video, you wouldn't dispute it,
24 right?

25 A If it's on video, I wouldn't dispute it, no.

106 Michael Hughey
Redirect examination by Ms. Barry

1 (Pause.)

2 Q I think my last question. So, you're signed up in '19
3 to become a C.I., and then you get these new charges during
4 the course of you working for the sheriff's office. Does
5 anyone ever talk to you about that or your status as a
6 C.I.?

7 A Not that I remember, no. I don't remember.

8 Q Not that you remember?

9 A I mean no.

10 Q At some point somebody had to talk to you, because
11 charges got dismissed, right?

12 A Yes. They did get dismissed, but I -- I just leave
13 it. I can leave it there. Yeah. They were dismissed.

14 MR. BERRY: No further questions.

15 REDIRECT EXAMINATION

16 BY MS. BARRY

17 Q Mr. Hughey, a lot was asked of you giving a
18 step-by-step of what happened on June the 11th of 2021. Do
19 you remember what you had for breakfast that day?

20 A No, no, I don't remember that, no.

21 Q Do you remember what you were wearing that day?

22 A No.

23 Q Do you remember all of the places that you went to
24 that day?

25 A I remember going to the sheriff's office and back.

1 Q Okay. So, the big thing that happened that day is you
2 bought methamphetamine from Mr. Jones.

3 A Yes.

4 Q Now, you testified earlier that you did make a call to
5 Mr. Jones.

6 A Yeah.

7 Q And what did he tell you, again?

8 A He said come on.

9 Q Because you had asked for methamphetamine.

10 A Yes.

11 Q And Mr. Berry asked you about these charges that were
12 dismissed and that I was the prosecutor that signed off on
13 them. Have you and I ever talked about this?

14 A No.

15 Q Okay. And the pending charge where I'm the
16 prosecutor, again, have I ever asked or made you any offers
17 for your testimony here today?

18 A No.

19 Q You've known Larry all of your life. You saw him a
20 lot, enough to know that he dealt drugs?

21 A Yeah.

22 Q And that's how you knew you could drugs from him.

23 A Yeah.

24 MS. BARRY: No further questions, Your Honor.

25 THE COURT: Anything at all?

Marie Davis
Direct examination by Ms. Barry

1 MR. NIETERING: Nothing further, Your Honor.

2 THE COURT: Sir, you may step down. Please be
3 careful.

4 MS. BARRY: Your Honor, may this witness be excused?

5 THE COURT: Any objection?

6 MR. BERRY: No objection, Your Honor.

7 THE COURT: Sir, you may stay or go whichever you
8 choose.

9 MS. BARRY: Your Honor, at this time the state would
10 like to call Marie Davis to the stand.

11 MARIE DAVIS, having been first
12 duly sworn, testified as follows:

13 THE COURT: Ms. Davis, using your outside voice, tell
14 us who you are, and spell your last name for my court
15 reporter, please.

16 THE WITNESS: Okay. My name's Anna Marie Davis. My
17 last name.

18 THE COURT: Spell your name, last name.

19 THE WITNESS: D-A-V-I-S.

20 THE COURT: Okay. I'm going to ask you use a little
21 outside voice. Okay.

22 THE WITNESS: Okay. D-A-V-I-S.

23 THE COURT: Thank you.

24 Give your attention to the solicitor.

25 DIRECT EXAMINATION BY MS. BARRY

1 Q Hi, Ms. Davis. How are you?

2 A Hi. All right.

3 Q So, I'm going to need you to speak up so that the
4 jurors back here and hear you. Okay?

5 A All right.

6 Q Okay. Ms. Davis, are you working anywhere?

7 A I'm disabled. I'm on S.S.I.

8 Q Okay. And who is Michael Hughey to you?

9 A He's my partner.

10 Q Okay. And were you with him when he was working for
11 the sheriff's office in June of 2021?

12 A I was.

13 Q And what were you doing with Mr. Hughey?

14 A He doesn't drive. I drive. We'd go everywhere
15 together.

16 Q Okay. So, you're his driver.

17 A I'm -- I'm his -- yeah, I guess.

18 Q Okay. Did you drive him to the incident location
19 where Mr. Jones sold him drugs?

20 A Yes. I drove him there.

21 Q Okay. Let me back up a little bit. Did you start out
22 at the sheriff's office?

23 A Oh, me. I suppose I did.

24 Q Okay. And then where do you go from the sheriff's
25 office, do you remember?

110 Marie Davis
Direct examination by Ms. Barry

1 A No. I -- I didn't go inside as far as that goes.
2 That was him. I was in the car. We went. I made the
3 wrong turn and/but we went to Blacksburg. I think that's
4 on 29.

5 Q Okay. Do you remember where in Blacksburg you went?

6 A I don't.

7 Q Okay. If I said that you went to the Blacksburg Fire
8 Department?

9 A Uh-huh.

10 Q Okay. Is that -- would that sound familiar?

11 A Yes. I did have to go there.

12 Q The Buffalo Fire Department? Excuse me.

13 A Yeah, because I missed the turn.

14 Q All right. From the Buffalo Fire Department, where do
15 you go, do you remember?

16 A I don't know that much about Blacksburg.

17 Q Do you go to Mr. Jones' house?

18 A I been there, I think, twice.

19 Q Ms. Davis, did you go from the Buffalo Fire Department
20 to Mr. Jones' house?

21 A Yes.

22 Q Okay.

23 A Okay. But I can't tell you how I got there. That was
24 a long time ago.

25 Q Perfect. I understand.

1 A Right.

2 Q So, was Mr. Hughey with you when you went from the
3 fire department to the house?

4 A Yes, yes.

5 Q Okay. Did you at any point take part in the actual
6 deal of drugs?

7 A No. I did not.

8 Q Okay. Did Mr. Hughey at any point ever hand you the
9 drugs?

10 A Yes. He did.

11 Q Okay. Why did he do that?

12 A I asked him to.

13 Q Okay.

14 A So they wouldn't be a discrepancy.

15 Q Okay. And when you there wouldn't be discrepancies,
16 what do you mean by that?

17 A I mean, that I don't have any drug charges.

18 Q Okay.

19 A And that was in his prior or anything I didn't want.
20 I didn't want it to come back.

21 Q Okay. I'm going to show you what's been marked as
22 State's Exhibit 5. Are these the drugs that Mr. Hughey
23 handed you that day?

24 A Well, I -- I suppose it is. I had my hand on it,
25 yeah.

112

Marie Davis
Cross-examination by Mr. Berry

1 Q Okay. And these are those drugs.

2 A I don't know. I mean, I'm saying I had -- I had a
3 bag.

4 Q Okay. Does this look like that bag right here?

5 A No. It was in a bag, uh-huh.

6 Q Okay. And then did you give that bag back to Mr.
7 Hughey at any point?

8 A When we got to the police station.

9 Q Okay. And then that's the last time you handled that
10 bag.

11 A Yes.

12 Q Okay. And, Ms. Davis, you have a pending charge,
13 right, right now?

14 A I do.

15 Q Okay. Do you know that I'm the prosecutor on that
16 charge?

17 A I do.

18 Q Okay. Have I ever offered you anything on that charge
19 for your testimony here today?

20 A No.

21 MS. BARRY: No further questions, Your Honor.

22 THE COURT: Counsel.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. BERRY

3 Q I'm sorry, Ms. Davis. I didn't hear your answer, or
4 if it was even asked. How long have you known Larry?

5 A Who? Larry Jones? He's an acquaintance. I do not
6 know him personally. That is to my understanding, it's
7 Michael's cousin. And that's what I know about him. It's
8 not like he's a family friend. I'm not family. It's
9 Michael's -- Michael's family.

10 Q How many times before June 11th of '21 had you seen
11 him?

12 A Two or three times tops.

13 Q Two or three.

14 A Yeah. There was no -- I mean, you know, no reason
15 other than, you know, he does great work on different
16 things. You know, household, whatever. But that's -- I
17 don't know anything about him in that manner other than he
18 is Michael's cousin.

19 I did drive him over there and I have been around.
20 I've been there and all, but, you know, it's not like he's a
21 friend or a close friend or anything.

22 Q Would you offer to take someone that you described
23 that way, would you offer to take them a sandwich?

24 A Sure. I'd take him a sandwich. I mean, I would take
25 him a sandwich and, you know, or, I mean, I don't have

1 any -- I know him as knowing him, but as far as knowing him
2 for a period of time, no. I have not. As far as being
3 around him, I've been around him. But, you know, it -- I
4 don't go a lot of places for a lot -- you know, or stay.
5 It was just -- it was a visit, family visit, whatever, what
6 have you.

7 Q How long prior to this have you and Mr. Hughey been in
8 a relationship?

9 A Me and Mr. Hughey's been in a relationship for six
10 years. I've known him since I was a ten.

11 Q So, starting when?

12 A I guess that relationship-wise, '19, 2019.

13 Q Okay. Had you ever had Larry do any work for you?

14 A No.

15 Q Ever borrowed anything from Larry?

16 A No.

17 Q Ever borrowed a ladder? You don't recall telling him
18 that we're going to go get this ladder back to you soon the
19 day that this occurred?

20 A No. I never did the communication part of it.

21 Q You didn't talk?

22 A Well, I mean, I talked to him when I saw him.

23 Q I'm talking about on June 11th of '21.

24 A No. I didn't talk.

25 Q Oh, you didn't talk.

1 A I don't recall talking to him.

2 Q Okay.

3 A If I did, it wouldn't have been about nothing, you
4 know.

5 Q All right. Who is Houdini to you?

6 A Who?

7 Q Houdini.

8 A I don't know a Houdini.

9 Q You don't know Houdini.

10 A No. I do not.

11 Q No. Any reason that you would have called Mr. Hughey
12 that?

13 A Mr. Hughey that?

14 Q Yeah.

15 A I called him several things, but I don't recall. I
16 don't recall Houdini, but I'm not going to say I haven't
17 ever called him that, amongst other things.

18 Q Well, what would you mean by it if you called him
19 Houdini?

20 A Oh, man. You don't know Mr. Hughey. Let's see. In
21 that he's funny, he's this, he's that, you know. But no.
22 I don't recall that.

23 Q Do you trust him?

24 A Of course I trusted him.

25 Q Do you remember calling him a liar?

1 A Of course I have.

2 Q On this day?

3 A No. I don't recall that on that day.

4 Q You haven't called him a liar?

5 A If I was upset or this or that or whatever. I don't
6 think I've called him a liar. That's something, one word,
7 I don't use. My parents taught me not -- not to say that.
8 It's not a very nice word. Misjudge maybe.

9 Q But if it were on video, you wouldn't disagree with
10 it, right?

11 A I saw the video. No. I'm not disagreeing with it.

12 Q Oh, you didn't call him a liar on the video?

13 A I don't know if I did or not. Like I said, you know,
14 I may have called him --

15 Q You said you didn't because you didn't use the word.

16 A Right.

17 Q And you don't remember calling him Houdini.

18 A I don't remember it on that day, no. I do not. That
19 was a long time ago, and I called him several things on
20 several different occasions jokingly, you know.

21 Q Well, how many before this did you have to act as his
22 driver to go and get him places so that he could set people
23 up to buy drugs from them?

24 A Never have.

25 Q You didn't?

1 A That's never happened, no, sir.

2 Q Never?

3 A One time, once.

4 Q Okay. What about not buying drugs while he's working
5 with the sheriff's office? Have you ever driven him to
6 buy?

7 A He never asked me to, no, no. I didn't go with him on
8 those occasions or whatever. That was before our time. I
9 drink. Excuse me?

10 Q When did you sign up with the sheriff's office to
11 become a C.I.?

12 A I didn't. Oh, I did. I'm sorry, because there is
13 paperwork on that. That this was the first time and only
14 time and last time. There never has been another time, and
15 that was Mr. Hughey and -- and I was with him. I drove. I
16 did all of that. But as far as being involved, I was never
17 asked to be.

18 Q Do you know people who you personally prior to
19 June 11th of 2021, did you know people who had drugs or
20 could get drugs or that you could buy drugs from?

21 A Sure. I have known that all of my life. There's
22 people everywhere that can get drugs, can do this, do that.

23 I'm just saying that I haven't been with him in -- when
24 he -- prior to that. He does not do drugs now. I know that
25 prior years ago he did. He had a record of it.

118 Marie Davis
Cross-examination by Mr. Berry

1 I wasn't here. It wasn't during our time. So, you
2 know, what he does, I'm not with him 24-7, and I don't ask
3 him any questions about it. But if you're asking me if I
4 was with him that day, did drugs, no. I drove the car, yes.

5 Q That's not what I asked.

6 A All right.

7 Q I ask if you knew --

8 A Whenever I got back there, I left him, and I went
9 somewhere else.

10 Q Again, I asked if you knew people who you could get
11 drugs from or that had drugs, that could work for purchase,
12 and your answer was yes, right?

13 A I have known people, yes, I have.

14 Q Okay. So, when you say --

15 A Sure. There's people like that everywhere. You know,
16 not that I personally got drugs from them. Drugs is not my
17 choice of, you know, but, yes, I've known them, you know.
18 It's no different than a construction worker or anything
19 else really. You know, ever -- they just consider it a
20 job, or that's what they said. But no. I did not purchase
21 the drugs if that's what you're asking me.

22 Q It's not.

23 A Okay.

24 Q But, again, it's not. But we'll move on.

25 I'm a little bit confused about what you said. You

1 said this was the first time, only time, never again. what
2 did you mean by that?

3 A Just what I said. It's the only time.

4 Q So, the only time.

5 A There was another involvement of any kind.

6 Q The only time you ever drove Larry Jones -- or excuse
7 me -- Michael Hughey to buy drugs allegedly was from Larry
8 Jones?

9 A Yes.

10 Q The only time.

11 A Only time.

12 Q We're not even going to get into the video. I don't
13 have any further questions. Thank you.

14 THE COURT: Thank you.

15 MS. BARRY: No further questions, Your Honor.

16 THE COURT: Ma'am, you may step down. Please be
17 careful.

18 THE WITNESS: All right. Thank you.

19 MS. BARRY: Your Honor, may this witness be excused?

20 THE COURT: Any objection to her being excused?

21 MR. BERRY: No objection, Your Honor.

22 THE COURT: Ma'am, you're excused. You may stay or
23 go, whichever.

24 (Whereupon, the witness was excused.)

25 MS. BARRY: Your Honor, may we approach just briefly?

120 Heather Kelly
Direct examination by Ms. Barry

1 THE COURT: Yes.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 MS. BARRY: Your Honor, at this time the state would
5 call Heather Kelly to the stand.

6 HEATHER KELLY, having been
7 first duly sworn, testified as follows:

8 THE COURT: Tell us who you are, please, and spell
9 your last name for madam court reporter.

10 THE WITNESS: I'm Heather Kelly. K-E-L-L-Y.

11 DIRECT EXAMINATION BY MS. BARRY

12 Q Thank you, Ms. Kelly.

13 where were you employed in June of 2021?

14 A I was employed with the Cherokee County Sheriff's
15 Office.

16 Q And what was your role there?

17 A At that time I was the evidence custodian.

18 Q Okay. And did you come in contact with the drugs in
19 this case?

20 A I did.

21 Q Okay. When did you or how did you become in contact
22 with them?

23 A So, as being the evidence custodian, evidence is
24 placed in a drop box. And, according to our chain of
25 custody that we maintain, I retrieved those items from our

1 evidence drop box on June 14th of 2021.

2 Q Okay. And what did you do with those items?

3 A So, once I receive an item, I look over to make sure
4 that nothing's been tampered with and everything is still
5 correctly, make sure all of the documentation is in order.
6 And then I place a bar code on it. It's input into our
7 database called our B-system. It generates a bar code, and
8 it's labeled and then put wherever before we go to take it
9 to the lab.

10 Q Okay. And did you take it to SLED?

11 A I did.

12 Q And when did you take it to SLED?

13 A So, according, again, to the chain of custody, I took
14 the item the very next day after being logged on
15 June 15th of 2021.

16 Q And when you received it from the drop box, did it
17 appear to be tampered with?

18 A No, ma'am. I would not have taken it to SLED.

19 Q Okay. And then did you at any other time come in
20 contact with these drugs after you took them to SLED?

21 A I did. In this particular case I also brought the
22 drugs back from SLED once the testing had occurred.

23 Q Okay. And do you have that date?

24 A I do. Give me just a moment.

25 (Pause.)

1 A So, I signed for the drugs to come back to the
2 Cherokee County Sheriff's Office on August 30th of 2022.

3 Q Okay. And, Ms. Kelly, I'm going to show you what's
4 been marked as State's Exhibit 5. Are those the drugs?

5 A Yes, ma'am. It is.

6 MS. BARRY: Your Honor, at this time I'd like to admit
7 State's Exhibit 5 into evidence.

8 THE COURT: Any objection?

9 MR. NIETERING: No, Your Honor.

10 THE COURT: Without objection, State's 5 is admitted.
11 (Drugs marked State's Exhibit No. 5.)

12 MS. BARRY: Your Honor, the state has no further
13 questions.

14 THE COURT: Okay. Counsel.

15 MR. NIETERING: Nothing from the defense, Your Honor.

16 THE COURT: Okay. You may step down. Please be
17 careful.

18 MS. BARRY: Your Honor, may this witness be excused?

19 THE COURT: Any objection?

20 MR. NIETERING: No, Your Honor.

21 THE COURT: You may stay or go, whichever you choose.
22 (Whereupon, the witness was excused.)

23 MS. BARRY: Your Honor, at this time the state rests.

24 THE COURT: Okay. Stipulation?

25 MS. BARRY: There is a stipulation, Your Honor.

1 State's Exhibit 4 is a drug report. It is by Lynn
2 Black who is a forensic scientist at SLED who tested the
3 methamphetamine, and it did come back as .34 grams of
4 methamphetamine.

5 (SLED report marked State's Exhibit No. 4.)

6 THE COURT: Okay. So noted.

7 MS. BARRY: Thank you, Your Honor.

8 THE COURT: Okay. Anything? State rests?

9 MS. BARRY: Yes, sir.

10 THE COURT: State rests.

11 Madam Forelady and ladies and gentlemen, the state has
12 now rested its case, which means the state does not intend
13 to call another witness or introduce any other exhibits,
14 whatever it might be. They're done at this point in time,
15 which brings us to our break for the afternoon, and also
16 gives me a chance to talk to the lawyers about any matters
17 of law that we might need to talk about.

18 And, so, this is your afternoon break. I will see you
19 back in about 15 or 17 minutes.

20 Okay. Don't talk about the case. Don't -- just
21 refresh yourselves.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Anything from the state?

25 MS. BARRY: Nothing from the state, Your Honor.

1 THE COURT: Anything from the defense?

2 MR. BERRY: Your Honor, at this time we would make a
3 motion for a directed verdict. Again, I'm aware of the
4 fact that these motions are taken in the light most
5 favorable to the state.

6 Our position would be that there has been no proof
7 that a drug transaction was conducted that day. We don't
8 have any direct evidence of that.

9 The evidence that has been entered into has now been
10 called into question with the testimony of both C.I.s that
11 have testified here in court today. So, and we would make
12 a motion for a directed verdict.

13 THE COURT: Solicitor.

14 MS. BARRY: Thank you, Your Honor.

15 As Your Honor knows, it's not the weight of the
16 evidence but existence of any evidence. There has been
17 direct testimony from one of the C.I.'s who said that he
18 bought methamphetamine from this defendant.

19 So, I would ask that this case go to the jury and the
20 defense's motion to be denied.

21 THE COURT: Yes. The directed motion is denied. If
22 there's any -- if there's any evidence in the light most
23 favorable to the nonmoving party, which is the state, it
24 goes to the finder of fact, which is the jury.

25 Our court did away with scintilla awhile back, but,

1 nevertheless, any evidence at all, and there certainly is.

2 So, it's denied, but you're protected on the record.

3 MR. BERRY: Thank you, Judge.

4 THE COURT: While we're at that now, we will break
5 here.

6 Is there -- is there going to be a defense case?

7 MR. BERRY: No, sir.

8 THE COURT: Okay. Do you want me to address that now?

9 MR. BERRY: If you want to go ahead and do that, or do
10 you want to take a break? Whatever is good for the Court.

11 THE COURT: Okay. We can take a break. Talk to him
12 about that over the break, and I'll come back and we'll do
13 that before we bring the jury in.

14 MR. BERRY: Thank you, Judge.

15 (Whereupon, a recess was taken.)

16 THE COURT: The state has rested. Is the defense
17 going to put up anything?

18 MR. NIETERING: No, Your Honor.

19 THE COURT: Okay. So, does the defense rest?

20 MR. NIETERING: Yes, Your Honor. The defense will
21 rest.

22 THE COURT: Okay. Defense rests.

23 Okay. Anything from the state?

24 MS. BARRY: No, sir, Your Honor.

25 THE COURT: Do you renew your motions for a directed

1 verdict? Do you renew your motion for a directed verdict?

2 MR. NIETERING: Yes, Your Honor.

3 THE COURT: Yes.

4 Okay. Anything?

5 MS. BARRY: We would ask that it be denied for the
6 same reasons.

7 THE COURT: And it's denied for the reasons heretofore
8 enunciated.

9 Okay. Now you're protected on the record.

10 Okay. So, what will happen is when the jury comes in,
11 I will let you rest in front of the jury. Okay.

12 MR. NIETERING: Yes, Your Honor.

13 THE COURT: And then are we ready to go to closings?
14 Everybody ready?

15 MR. NIETERING: Yes, Your Honor.

16 THE COURT: Okay. Then we will have him sworn right
17 quick.

18 LARRY CHARLES JONES, having
19 been first duly sworn, was voir dired as follows?

20 THE COURT: Sir, we have reached the stage of this
21 trial where you may present a defense. You have the right
22 to claim protections given to you by the Fifth Amendment to
23 the Constitution of the United States, which states, in
24 part, no person shall be compelled in any criminal case to
25 be a witness against himself.

1 Additionally, you have the right to claim protections
2 given to you by Article 1, Section 12, of the South
3 Carolina Constitution, which states, in part, no person
4 shall be compelled in any criminal case to be a witness
5 against himself.

6 This means that you cannot be required to testify.
7 You have the right to do so, but no one can make you
8 testify. This is a personal right, and no one can waive
9 your right except you.

10 If you decide to testify you will be subject to the
11 same rules that govern other witnesses, and you may be
12 examined and cross-examined on any relevant issue in this
13 case.

14 Additionally, if you have convictions involving
15 dishonesty or a false statement or for crimes punishable by
16 imprisonment for more than one year and this Court
17 determines the probative value of admitting this evidence
18 outweighs its prejudicial effect to you, the solicitor will
19 be able to introduce your record to attack your
20 credibility.

21 If you decide to testify the decision must be freely,
22 intelligently and voluntarily made with knowledge of the
23 protections given to you by the constitutions of the United
24 States and the State of South Carolina and the consequences
25 of your decision.

128 closing arguments

1 If you decide not to testify I will instruct jurors
2 they cannot give the fact that you did not testify any
3 consideration and that there is absolutely no prejudice to
4 you because you did not testify.

5 Sir, the decision is yours, and yours alone.

6 Do you understand what I have explained to you?

7 THE DEFENDANT: I do, sir.

8 THE COURT: Do you have any questions about what I
9 have explained?

10 THE DEFENDANT: I do not.

11 THE COURT: Have you discussed with your lawyers --
12 you have two -- whether you should or should not testify?

13 THE DEFENDANT: Yes, sir. I have.

14 THE COURT: Do you wish to talk with your lawyers any
15 further about this?

16 THE DEFENDANT: I do not.

17 THE COURT: Sir, what is your decision?

18 THE DEFENDANT: I do not wish to testify.

19 THE COURT: All right. Thank you so very much.

20 THE DEFENDANT: Thank you, sir.

21 THE COURT: Okay. Everybody ready for the jury?

22 MS. BARRY: Yes, sir, Your Honor.

23 THE COURT: Okay. Remember, I'll let you rest in
24 front of the jury.

25 MR. NIETERING: Yes, Your Honor.

1 THE COURT: We'll have the jury.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Madam Forelady, everybody on the jury
5 good?

6 THE FOREPERSON: Yes, Your Honor.

7 THE COURT: Ready to go to work?

8 THE FOREPERSON: Yes.

9 THE COURT: All right. Okay. State has rested.
10 Counsel.

11 MR. NIETERING: Defense will rest, Your Honor.

12 THE COURT: Defense rests.

13 MR. NIETERING: Yes, Your Honor.

14 THE COURT: Okay. That means that the defense does
15 not intend to put up any evidence whatsoever, and
16 challenging the evidence but not putting up anything, which
17 now brings us to closing arguments.

18 State ready?

19 MS. BARRY: State's ready, Your Honor.

20 THE COURT: Ladies and gentlemen, give your attention
21 for closing arguments.

22 MS. BARRY: Thank you, Your Honor. May it please the
23 Court -- defense counsel.

24 Good afternoon, ladies and gentlemen. I again just
25 want to thank you for your attention this afternoon.

130 closing arguments

1 You've watched that video. There was a lot of talking, and
2 you've heard a lot of testimony. So, just thank you for
3 paying attention today.

4 So, when I started I told you who you were going to
5 hear from. You were going to hear from the C.I.s, law
6 enforcement, and then you're going to actually get to see
7 what happened at ■■■ Clairmont Road.

8 So, what did the C.I.s have to say? well, Mr.
9 Hughey -- just get it out of the way. He's got a record.
10 But who cares?

11 You know, law enforcement testified that they're not
12 going to send Boy Scouts to go buy drugs. Who's going to
13 go buy drugs? Drug users. Those are the paths. I can't
14 imagine somebody selling me drugs dressed like this.

15 So, Mr. Hughey goes. He couldn't give a detailed
16 accounting of what he did on June the 11th of 2021. I
17 couldn't tell you what I did on June the 11th of 2021. But
18 he remembered the big thing that happened. He bought drugs
19 from the defendant.

20 He had \$20 in his hand. You actually see it on the
21 video. And he gives it to the defendant. well, how do we
22 know that? No. You don't see it, but we know that he was
23 searched prior to going there. He had nothing on him. And
24 he was searched after he came back. He didn't have the \$20
25 on him.

1 You saw the video. You'll see him throw it out the
2 window. He gave it to the defendant because the defendant
3 gave him drugs.

4 And then you heard from law enforcement regarding Mr.
5 Hughey. Again, he was searched. He was the one who
6 brought them the name of Larry Jones.

7 You know how there's that saying trust but verify?
8 That's what law enforcement did. They got the name Larry
9 Jones from Mr. Hughey and then they did their research.
10 They did their homework.

11 And what did they find out? Mr. Hughey's information
12 checks out. So, they know that Mr. Hughey has given them
13 good information. And then what happens? Mr. Hughey goes
14 and he comes back with methamphetamine.

15 And then we heard from Ms. Davis. Ms. Davis was an
16 interesting lady, but Ms. Davis really didn't play a role
17 in this distribution. She was a driver. She just drove
18 Mr. Hughey to and from. He didn't have a license. And
19 that's all she really did. She did take him
20 methamphetamine at one point because she didn't want him
21 accused of anything if something went down. But that's it.

22 We heard from law enforcement. Deputy Oglesby who's
23 been doing this a while -- and, like I said, they do their
24 homework. And that's what they did here. Larry Jones is a
25 drug dealer.

1 This isn't a game, ladies and gentlemen. This is
 2 serious. We're dealing with real drugs. We're dealing
 3 with a real drug dealer. We have drugs all over the
 4 streets in Cherokee County, and he contributes to that.
 5 And he contributed to that on June the 11th of 2021. It
 6 just happened to be a controlled buy.

7 Now, Deputy Oglesby did not sign up Mr. Hughey. But
 8 they used each other's confidential informants. Nothing
 9 out of the ordinary. We went over the paperwork. And he
 10 didn't commit a crime in furtherance of helping law
 11 enforcement, which is not quite what Mr. Nietering got out
 12 of him. Forgot to read that last line in the C.I. packet.

13 And I asked Deputy Oglesby, you know, is it normal to
 14 send somebody like Mr. Hughey, somebody like Ms. Davis.
 15 Yes. Probably the preferred method. They're the ones who
 16 are going to get the drugs, and that's what happened.

17 And then of course he searches Mr. Hughey. There's
 18 nothing on him. Mr. Hughey doesn't have any drugs hiding
 19 on him that he can then say, oh, Mr. Jones gave me these.
 20 And he's searched after. He didn't take any for himself.

21 Ms. Davis is searched. Nothing falls out of her
 22 shirt. Nothing falls out of her pockets.

23 And then we have Lieutenant Tate who thoroughly
 24 searches the car. He went through a detailed version of
 25 how he does it. Front to back on the driver's side; front

1 to back on the passenger side; the trunk and the hood.

2 There were shoes in the car. No drugs in the shoes.
3 Took out the soles, untied the laces. Nothing in the purse
4 of Ms. Davis.

5 And then you saw the video. Now, I know that there
6 was a lot going on in that video. There was a lot of
7 talking, but there was also a lot of important information
8 that's helpful to you all.

9 So, the video starts when they get to the Buffalo Fire
10 Department. Law enforcement reads that I'm Deputy Oglesby
11 with the Cherokee County Sheriff's Office. This is what
12 we're going to do today. This is who we're going to buy
13 from. And you're able to hear what Mr. Hughey sounds like
14 on the video. You got his voice up here.

15 And then that video takes them to the defendant's
16 residence. They don't make any stops. You can see that.
17 They don't meet with anybody else.

18 And then they go inside. They talk to Mr. Jones. And
19 Mr. Jones smiles pretty good for the camera. Here he is,
20 ladies and gentlemen. Here's Mr. Jones, the same man
21 sitting over there.

22 And then, no, you don't get a hand-to-hand
23 transaction. But what do you get? You have Mr. Jones
24 looking directly at this bag of meth. This bag of meth has
25 been admitted into evidence, and you'll get to take this

134 closing arguments

1 back here with you, I think. I could be wrong. But this
2 is what it looks like. It's a little bag. This little bag
3 is right there.

4 And what does he say? He says I'm not sure if I shut
5 that bag. What bag is he talking about? The only one
6 that's on the screen. And what's in that bag?

7 Methamphetamine, .34 grams of methamphetamine. That was
8 stipulated to by both parties, and you will get to take
9 that back there with you as well.

10 What else does he say? He believed he didn't bring a
11 bowl. What's a bowl? It's used to smoke methamphetamine.
12 I mean, he's eating cereal in the video, but that's not the
13 bowl we're talking about. Where is your bowl? I thought
14 you were going to bring a bowl. Why would he be asking
15 about a bowl if he's not dealing drugs? And then it's real
16 quick in the video, but it scans down to his lap. He's
17 doing something in his lap.

18 Now, Mr. Hughey said he handed him that little bag of
19 meth. Where did it come from? What's in his lap?

20 And no. Mr. Jones doesn't look like he has a lot. He
21 doesn't have two nickels to rub together, I think is what
22 Mr. Nietering said. He didn't have a bowl. But he's not
23 being prosecuted for possession of methamphetamine. He's
24 being prosecuted for distribution of methamphetamine, and
25 that's what he did.

1 Now, you'll get to see this video. You can take it
2 back there with you, play it. Play it as loud as you want.
3 Maybe not, you know, listen to about the pretty red pumps
4 and the red dress and the red pocketbook.

5 But what's also important about this video is once
6 they leave the defendant's address, they get in the car and
7 they go to the sheriff's office.

8 Now, did they follow all of their instructions -- meet
9 back at the Buffalo Fire Department and then go to the
10 sheriff's office? No. But does that mean that a drug deal
11 didn't just go down? It does not.

12 It means that Mr. Hughey was trying to tell Ms. Davis,
13 hey, you missed your turn, we're supposed to meet them back
14 at the Buffalo Fire Department, what you hear on the video.
15 And she just keeps on going. Doesn't surprise me with the
16 way Ms. Davis was on the stand, but they don't make any
17 stops. They don't meet up with anybody else. And then
18 they go back to the sheriff's office and they hand over the
19 drugs.

20 Now, remember when I told you that the judge is going
21 to charge you on the law? Well, if I say anything that
22 doesn't match what he says, go with what he says. But all
23 I have to do is prove that a distribution went down. I
24 don't have to prove it by way of a video. And I freely
25 admitted that there is no hand-to-hand transaction on this

136 closing arguments

1 video. But we have a distribution.

2 How did Mr. Hughey get these drugs? We know he didn't
3 bring them with him. We know he didn't stop anywhere and
4 get them from anybody else. He got them from Mr. Jones.

5 And, sure, credibility is at issue with any witness
6 that testifies. But, again, who's going to be the best
7 person to go into this type of situation and be believable
8 to buy drugs?

9 And if this was a setup, as they keep calling it, Mr.
10 Hughey was on an ankle monitor. He knew, Mr. Jones knew,
11 that Mr. Hughey had pending charges and he gave him the
12 methamphetamine anyway. It wasn't a setup.

13 I mean, sure. Mr. Hughey gave the name, but he wasn't
14 making an innocent man who had never done this before sell
15 something that he would never do. Law enforcement verified
16 that.

17 So, ladies and gentlemen, I'm going to ask you when
18 you go back into that deliberation room take all of this
19 evidence with you. Look at it. Watch the video. Look at
20 that still shot. I think that still shot says it all.

21 He's looking at the drugs. Hey, I don't think I shut
22 that bag. A picture is worth a thousand words, and it says
23 it all.

24 If you have any questions about anything that you
25 heard or anything that you saw, you are always welcome to

1 ask questions. If you need something recharged, ask for it
2 to be recharged. That is what your job is as a jury, to
3 make sure that you have all of the information and that you
4 understand it. And I think that you will be firmly
5 convinced that he is guilty of distribution of
6 methamphetamine and I ask that you find him guilty of
7 distribution of methamphetamine. Thank you very much.

8 THE COURT: Counsel.

9 MR. NIETERING: Thank you, Your Honor.

10 We're reading these Catch 22 of the government here
11 where we don't need the video because we have their
12 testimony, and we don't need their testimony because we
13 have the video, neither of which -- as the government
14 stated, there's no hand-to-hand transaction. And if Mr.
15 Hughey went out here and told us that the grass was green,
16 I'd recommend that we all go out and check.

17 Now, Deputy Oglesby picked Mr. Hughey to be his C.I.
18 He chose to interact and work with him. He was working off
19 a charge, but then, you know, he's supposed to abide by the
20 law.

21 He picks up two additional charges. He's now working
22 three charges. So, he was originally in a hole. He
23 originally needed to work to avoid time, and then he digs
24 an even deeper hole. He's a desperate man.

25 Now, the government said that this wasn't a game, but

138 closing arguments

1 they're giving him a get-out-of-jail-free card here.
2 They're giving him a get-out-of-jail-free card so he can
3 come up here and he can avoid time. And he's willing to
4 turn in his cousin. He was reluctant to admit that Larry
5 Jones was his cousin.

6 And on the video he says, quote, he got me my time,
7 now he needs some rest. This wasn't just someone that he
8 was desperate, he was desperate and flailing about and
9 going to turn in his -- his family member, his cousin. He
10 had revenge on his mind here.

11 Now, and let's back up. He also said that he was
12 going to turn in traffickers. He was going to turn in
13 large people that are moving large amounts of meth. And he
14 gets his cousin giving him \$20 -- \$20 worth of meth.
15 That's who he turns in.

16 Now, he supposedly goes to the sheriff's office and
17 makes a phone call. Supposedly, he goes to the sheriff's
18 office and then arranges this meeting.

19 Solicitor's not produced any phone records here,
20 didn't introduce any phone records into evidence.
21 Detective Oglesby -- they didn't testify at all about a
22 phone call. That was the first anyone heard about that,
23 was this phone call that occurred to set it up. But
24 there's no record of it.

25 Now, let's talk about Ms. Davis' testimony. Let's

1 talk about Ms. Davis' testimony. She says that she had
2 only met Mr. Jones, my client, two or three times. She was
3 very comfortable in there. She walked right in and made
4 herself at home.

5 She commented on the shelves, how nice the shelves
6 looked, how he'd cleaned up the place. They didn't stop
7 talking the whole time, as I'm sure you guys noticed.

8 She also said that she was not involved at all, that
9 this was a one-time thing. And then when asked for
10 clarification, she doubled and tripled down. She doubled
11 down on her statement that she was not involved in any of
12 this C.I. testimony, in any of this turning in people.

13 Go to three minutes.

14 (Whereupon, the video was played for the jury.)

15 MR. NIETERING: So listen closely here.

16 (Whereupon, the video was played for the jury.)

17 MR. NIETERING: She just said that she's going to tell
18 Roderick about Tara because he's got to do something. She
19 is desperate to help him stay out of prison. Now it's just
20 a one-time thing supposedly.

21 Go to 30 minutes and 41 seconds.

22 (Whereupon, the video was played for the jury.)

23 MR. NIETERING: "I don't know why you can't but you
24 always have." That's not someone who's only dealt with him
25 one time, this is a one-time incident with someone that

140 closing arguments

1 she's met twice, two or three times.

2 Let's talk about the search. The government makes a
3 big to-do that they supposedly entered without meth and
4 left with meth.

5 Oglesby said that he searched Davis, but according to
6 Davis' own testimony their C.I., she never went inside the
7 sheriff's office. How was she searched then?

8 He mentioned that he didn't bother to get a female
9 officer out. Don't know why. And he said that she had her
10 pull out her bra.

11 This is a very small bag of meth. It's about the size
12 of a postage stamp, about the thickness of a piece of
13 paper. And he was uncomfortable and didn't want to search
14 her full. He admitted that he didn't search her as well as
15 he could because she's a female and he didn't feel like
16 bringing a female officer up. That could easily have been
17 inside a bra so when you just pulled it out. It would stay
18 in there, stay in the wire, could be in his waistband,
19 could be in a waistband, could be anywhere else.

20 And then this searching early, he says that he
21 searched her quickly but didn't mention any search of her
22 in his police report. The police report account of, well,
23 what's supposed to happen to remind him, this is almost
24 three years old at this point. And he remembers exactly
25 how he searched her?

1 Further, let's talk about the search of the vehicle.
2 I directly asked Tate about him introducing himself. He
3 said that he introduced himself to her and took her keys
4 from her. However, on the video she doesn't know who's
5 with Oglesby. She asked about that. We're going to play
6 that for you.

7 (Whereupon, the video was played for the jury.)

8 MR. NIETERING: Who's with the tape?

9 Now let's talk about the rest of this video. This is
10 a poor quality camera. There were other cameras that they
11 could have used. He decides to only put the camera on one
12 person. There's two C.I.s though. He puts that camera on
13 Hughey and he supposedly tells Hughey to look at what he's
14 dealing with here. He looks everywhere else. He's facing
15 the wall half the time, facing, looking up at the ceiling
16 for some reason. He doesn't direct his camera at all.

17 This -- and the government said what was going on with
18 his lapse. You can hear it. He's talking about eating
19 beanies. He's talking about eating and has a bowl in his
20 lap.

21 I said at the beginning that we wanted to see that
22 video. You could see what conditions my client lived in.
23 You get to see that he didn't have a bowl and he didn't
24 have a lighter. But somehow, according to the government,
25 this is some expert drug dealer who just sells meth without

142 Jury charge

1 ever talking about it. It never comes up in conversation.

2 He just sells meth. He just eyeballs now and then and
3 that's how the sale's made apparently. He doesn't have a
4 lighter; doesn't have a bowl. And that's a drug dealer?
5 That's a drug dealer, someone who doesn't have a lighter
6 and doesn't have a bowl.

7 He has clothes hanging up dividing rooms. He also
8 uses spare wood for cabinets in his trailer. That's what a
9 drug dealer looks like? And both officers admitted that
10 drugs are usually sold by weight. There's no scales here.
11 There's no mention of scales. It's just a small amount of
12 sell-by-the-bag. Both officers said that meth is sold by
13 weight.

14 The government's case here is a Catch 22. They're
15 using imperfect video. The video doesn't show a
16 hand-to-hand transaction. A guy without a lighter and
17 without a bowl. And they're reinforcing it with a
18 criminal's testimony who's working off several charges.
19 And it's a Catch 22. They're using one to support the
20 other, but they don't support anything. It's silly. It's
21 not highest of levels.

22 The government has to prove their case beyond a
23 reasonable doubt, and they can't prove anything. So, we
24 ask that you do the -- that you return the only verdict
25 that makes sense, and that's not guilty. Thank you.

1 THE COURT: Madam Forelady and ladies and gentlemen of
2 the jury, you have seen and heard the evidence presented,
3 as well as the arguments of the lawyers, and it is now my
4 duty and my obligation to instruct you on the law in this
5 case.

6 It will then be your duty and your obligation to begin
7 your deliberations, through which process you will decide
8 the facts, apply the law as I now instruct it and render a
9 fair and impartial verdict.

10 It is your duty to determine what the facts are. You
11 will do that based on your common sense evaluation and
12 examination of the testimony and any evidence received
13 during the trial.

14 You 12 alone will decide what effect, value and weight
15 is to be given to the testimony and the evidence.

16 Now, in Indictment 2022-GS-11-00544 it charges this
17 defendant with the offense of distribution of
18 methamphetamine.

19 The state alleges that this defendant did in Cherokee
20 County, South Carolina, on or about June 11 of 2021
21 distribute, dispense, deliver, purchase or otherwise aid,
22 abet, attempt or conspire to do so with regard to a
23 quantity of methamphetamine, which is a controlled
24 substance, and did so in violation of state law.

25 I remind you that the fact that this defendant was

144 Jury charge

1 arrested, charged and indicted is not evidence and cannot
2 be considered by you as evidence of guilt, nor does it
3 create any presumption or inference of guilt.

4 The indictment is simply a written instrument which
5 contains the charge made against this defendant. It is the
6 formal document by which this case is brought before this
7 Court.

8 The defendant has pled not guilty, and that puts the
9 burden on the State of South Carolina to prove his guilt
10 beyond a reasonable doubt.

11 A person charged with committing a criminal offense in
12 South Carolina is never required to prove himself innocent.
13 I charge it is a cardinal, important and vital rule of law
14 that in a criminal trial, no matter what the seriousness of
15 the charge may be for which he stands charged, the
16 defendant is always presumed to be innocent of the crime
17 for which the indictment was issued unless guilt has been
18 proven by evidence satisfying you of guilt beyond a
19 reasonable doubt.

20 The presumption of innocence does not end when you
21 begin your deliberations. It accompanies this defendant
22 throughout the trial until you reach a verdict of guilt
23 based on evidence satisfying you of guilt beyond a
24 reasonable doubt.

25 The presumption of innocence has been described as

1 being like a robe of innocence placed about the shoulders
2 of the defendant which remains with him from the moment of
3 his arrest and continues until it has been stripped from
4 his shoulders by evidence satisfying you of his guilt
5 beyond a reasonable doubt.

6 The presumption of innocence is not a legal theory nor
7 is it a legal phrase. It is a substantial right to which
8 every -- to which every defendant is entitled unless you 12
9 jurors are satisfied from the evidence of his guilt beyond
10 a reasonable doubt.

11 I remind you that during this trial you and I have
12 certain duties to perform. As the trial judge it is my
13 responsibility to preside over the trial, and I have the
14 duty to rule on admissibility of evidence offered during
15 the trial.

16 You are to consider only the competent evidence before
17 you. You are to consider the testimony which has been
18 presented, the exhibits which have been made a part of the
19 record and the stipulations of the lawyers.

20 Additionally, I have the duty to charge you the law
21 applicable to the case. As the presiding judge I am the
22 sole judge of the law, and it is your duty to accept it and
23 apply it as I now state it to you.

24 If you have any idea as to what the law is or what the
25 law should be or ought to be and it does not agree with

146 Jury charge

1 what I tell you the law is, you must abandon your idea
2 because you have sworn to accept it and apply it as I now
3 state it to you.

4 In every case tried in this courtroom before a jury
5 you 12 become the sole and exclusive judge of the facts. A
6 trial judge cannot make a comment or a statement to a jury
7 of 12 about a fact in the case.

8 You are the sole judges of the facts, and you are not
9 to infer from anything that I might have said or done
10 during the progress of this trial that I have an opinion
11 about a fact in this case.

12 I tell you and I charge you that South Carolina law
13 does not allow me or any other circuit judge to have an
14 opinion about a fact in a case. Facts are solely in your
15 wellhouse for you to consider.

16 The State of South Carolina has the burden of proving
17 this defendant guilty beyond a reasonable doubt, and I
18 charge you and I tell you that proof beyond a reasonable
19 doubt is proof that leaves you firmly convinced of this
20 defendant's guilt.

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

24 A reasonable doubt may also be described as the kind
25 of doubt that would cause a reasonable person to hesitate

1 to act.

2 If you have such a doubt as to the guilt of this
3 defendant, then say so and find him not guilty. Reasonable
4 doubt may arise from evidence in the case or from the
5 absence or lack of evidence in the case. But based on your
6 consideration of the evidence if you are firmly convinced
7 that this defendant is guilty, then say so and find him
8 guilty. You 12 alone must make this determination.

9 There are two types of evidence which are generally
10 presented during a trial, and they are known as direct
11 evidence and circumstantial evidence.

12 Direct evidence directly proves the existence of a
13 fact, and it does not require deduction.

14 Circumstantial evidence is proof of a chain of facts
15 indicating the existence of a fact. Crimes may be proven
16 by circumstantial evidence. Our law makes no distinction
17 between the weight or value to be given to either direct or
18 circumstantial evidence. However, to the extent that the
19 state relies on circumstantial evidence, all of the
20 circumstances must be consistent with each other and when
21 taken together point conclusively to the guilt of the
22 accused beyond a reasonable doubt.

23 If these circumstances merely portray the defendant's
24 behavior as suspicious, the proof will have failed. The
25 state has the burden of proving him guilty beyond a

148 Jury charge

1 reasonable doubt.

2 Now, in determining what the facts are you of
3 necessity must pass upon the credibility of witnesses who
4 have testified. You 12 are the sole judges of the
5 credibility of the witnesses who took the stand. And
6 credibility means believability, can I believe this
7 witness, is this witness credible. The value and the
8 weight to be given to their testimony is in your sound
9 discretion.

10 Now, in making a determination as to credibility of
11 the witness you may choose -- you may believe one witness
12 over several, several over one. You may believe part of
13 what a witness says or none of what a witness says.

14 Now, I instruct you and emphasize that the fact that
15 this defendant did not testify is a factor to be considered
16 by you in any way during deliberations and in your
17 consideration of the question of guilt or innocence [sic].

18 The defendant has a constitutional right to remain
19 silent, and the assertion of his right must not be
20 considered by you in your deliberations. You are to draw
21 no conclusion whatsoever from the fact that he did not
22 testify. The fact that this defendant did not testify
23 should not be discussed in the jury room.

24 Now, criminal intent is a necessary element of each
25 crime and it must be proven by the state beyond a

1 reasonable doubt. Criminal intent is a matter that must be
2 determined by you, the jury, from the circumstances
3 surrounding the situation.

4 There is no way to prove intent to a mathematical
5 certainty. Criminal intent is a state of mind which, when
6 operated jointly with an act, is the commission of a crime.
7 It is a mental state; it is a conscious wrongdoing. So, it
8 is up to you 12 to determine what this defendant intended
9 to do based on the circumstances shown to have existed.

10 Now, this defendant is charged with distribution of
11 methamphetamine.

12 The state must prove beyond a reasonable doubt that
13 this defendant distributed methamphetamine. Distribution
14 means to deliver or to actually, constructively or attempt
15 to transfer a drug other than by administering or
16 dispensing.

17 Delivery means to actually, constructively or attempt
18 to transfer the drug. A transfer can involve an exchange
19 for money, a barter or a gift. There does not have to be
20 anything given in exchange for the drugs for a transfer to
21 constitute distribution.

22 You 12 have been selected as fair and impartial jurors
23 and to determine the facts of this case. And you are to
24 decide it according to the evidence before you.

25 Ladies and gentlemen, your verdict must be unanimous.

150 jury charge

1 Madam Forelady, when the jury agrees on the verdict,
2 you will indicate the verdict in a space provided on the
3 verdict form that I will explain in just a moment. Sign
4 your name as the foreperson of the jury. Knock on the door
5 and inform the bailiff that the jury has reached its
6 verdict. We will then return the jury to this courtroom to
7 accept your verdict.

8 Now, during deliberations you may only discuss this
9 case in the jury room with fellow jurors while everyone is
10 present.

11 Madam Forelady, if someone needs to refresh themselves
12 deliberations must cease. All 12 must be together at all
13 times during the deliberations.

14 Okay. This is the verdict form of which I have
15 spoken. My law clerk prepares this for every case that I
16 try. It has the caption of the case and a case number,
17 meaning it goes with this indictment. That's all that
18 means.

19 It says, we, the jury, unanimously find the defendant
20 on the charge of distribution of methamphetamine not guilty
21 or guilty.

22 I tell you and I charge you there is -- there is no
23 significance to whether not guilty is first or guilty is
24 first, or vice versa. This is just put in this form in
25 every case that I try.

1 Okay. It then says I certify this decision was the
2 unanimous decision of this jury. And there's a line here
3 for you to sign your name. Okay. I do not -- we don't
4 carry -- this is check mark. If it's an X, it's an
5 initial. The only thing we ask is that it be unambiguous,
6 it's patently clear to everyone what the decision of this
7 jury is.

8 Okay. Now, I'm getting ready to send all 14 of you to
9 the jury room. When you go into the jury room do not begin
10 deliberations.

11 I am going to ask the lawyers to get up and go to
12 madam court reporter and ensure that all of the evidence is
13 there. It won't take more than a minute or two for them to
14 do that. There's not that much.

15 When we try a medical malpractice case or some other
16 case sometimes it takes an hour. We might have 2,000
17 exhibits or something like that.

18 It is so very easy, and I've done it and didn't mean
19 to do it, to be -- because I practiced many years in this
20 courtroom before I came up here. It's so easy for a lawyer
21 in a closing to pick up a piece of evidence, talk about it
22 to a jury in closing, walk back to my table and lay it face
23 down and now it's missing. And it belongs to you. All I
24 want the lawyers to do is to verify with madam court
25 reporter that the documents are here, whatever is here is

152 verdict

1 ready.

2 when they do that the bailiff is going to bring that
3 evidence to you, Madam Forelady, along with this form. And
4 that is your signal to begin your deliberations and that is
5 the signal for you two to follow him back into my
6 courtroom. And I will release you here on the record.

7 Okay. Madam Forelady, if you will, take the jury out.

8 (Whereupon, the jury retired to deliberate at
9 4:12 p.m.)

10 THE COURT: Anything from the state?

11 MS. BARRY: Nothing from the state, Your Honor.

12 THE COURT: From the defense?

13 MR. NIETERING: Nothing, Your Honor.

14 THE COURT: Before we go any further, I enjoyed
15 working with all of you. Great to have good lawyers.

16 Okay. Y'all gather up and see if everything is there.

17 (Pause.)

18 THE COURT: Got everything?

19 MS. BARRY: Yes, sir.

20 (Pause.)

21 THE COURT: Take the evidence and bring the two
22 alternates, please.

23 (The following takes place with the alternate jurors.)

24 THE COURT: Gentlemen, thank you so much for your
25 service. This concludes your service because this is the

1 last trial that we're trying this week. In fact, all
2 circuit judges -- maybe family court too -- but I know all
3 circuit judges are required to be in Columbia tomorrow for
4 some training on A.I. I'm looking forward to that.

5 Anyway, this concludes your service. So, thank you
6 very much for your service.

7 I'm going to let you turn your badges in. I will let
8 Ms. Brandy say a few words. You're welcome to stay. A lot
9 of times the alternates want to know what happens, and
10 you're certainly welcome to stay. Just make yourself
11 comfortable out here.

12 (Whereupon, the alternate jurors were excused.)

13 (Whereupon, a recess was taken.)

14 THE COURT: You might need to talk to somebody about
15 no -- not going to have any celebrating. Everybody knows.
16 Okay. Ready for the jury?

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

18 THE COURT: We'll have the jury.

19 (Whereupon, the jury returned to the courtroom at
20 5:00 p.m. to report its verdict.)

21 THE COURT: Madam Forelady, has the jury reached its
22 verdict?

23 THE FOREPERSON: We have.

24 THE COURT: If you can, give that to Mr. Bailiff,
25 please.

154 verdict

1 Madam clerk will publish.

2 THE CLERK: 2022-GS-11-544, State of South Carolina
3 vs. Larry Charles Jones, we, the jury, unanimously find the
4 defendant, Larry Charles Jones, on the charge of
5 distribution of methamphetamine guilty. Signed by
6 foreperson, Ruth Merritt.

7 Ladies and gentlemen of the jury, if this is the
8 verdict of you all, please indicate by raising your right
9 hands.

10 (Whereupon, all jurors responded in the affirmative.)

11 THE CLERK: Thank you.

12 THE COURT: Polling of the jury by the state?

13 MS. BARRY: Not from the state, Your Honor.

14 THE COURT: By the defense?

15 MR. NIETERING: Yes, Your Honor.

16 THE COURT: Okay. Madam clerk will poll.

17 THE CLERK: When I call you name, please raise your
18 right hand. I'm going to ask you if this is your verdict,
19 and you'll need to respond yes or no.

20 Okay. Juror 76, Jeffrey Lail.

21 Please raise your right hand. Is this your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror 130, Derrick Upton, is this your
24 verdict?

25 THE JUROR: Yes.

1 THE CLERK: Okay. Juror 141, Gina Welchel, is this
2 your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror 104, Jose Oliedo, is this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror 79, Briyonna Leach, is this your
8 verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror 74, Jeremy Kierstead, is this your
11 verdict?

12 THE JUROR: Yes.

13 THE CLERK: Juror 123, Trina Smith, is this your
14 verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Juror 137, Jeanie Warren, is this your
17 verdict?

18 THE JUROR: Yes.

19 THE CLERK: Juror 98, Ruth Merritt, is this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror 143, Ronnie Wilkins, is this your
23 verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror 100, Katherine Morris, is this your

156 Sentence

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Juror 118, Ka'varius Sarratt, is this your
4 verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Thank you.

7 THE COURT: Any other matters concerning the jury at
8 this point?

9 MS. BARRY: Nothing from the state, Your Honor.

10 MR. NIETERING: Nothing from the defense, Your Honor.

11 THE COURT: Okay. Very good.

12 Madam Forelady, if you will come and meet madam clerk,
13 you have to sign the indictment.

14 (Pause.)

15 THE COURT: Madam Forelady, ladies and gentlemen, this
16 concludes your jury service this week. We won't be having
17 court tomorrow at all because we're required to go to
18 Columbia and have a training on A.I., artificial
19 intelligence, for tomorrow for all judges. So, we'll be
20 gone.

21 But thank you so very much for your service. We
22 couldn't do what we do without you. A lot of times the
23 jury wants to -- we're going to proceed to sentencing. A
24 lot of times jurors want to see that, and you're certainly
25 welcome to do that. After you turn your badge in, if you

1 just come back in this -- into the gally right here.
2 You're more than welcome to remain with us. But there's no
3 requirement to do so. If you'd rather go on home, you can
4 do that too.

5 Ms. Brandy.

6 (Whereupon, the trial jury was excused.)

7 THE COURT: Solicitor.

8 MS. BARRY: Your Honor, you heard the facts in this
9 case.

10 Mr. Jones does have a prior history. Beginning in
11 1989 -- excuse me -- 1990 with distribution of marijuana;
12 1992, disorderly conduct and simple possession of
13 marijuana; 2005, public disorderly conduct; 2008, cruelty
14 to children; 2011, burglary in the second degree, grand
15 larceny between two thousand and ten thousand dollars, and
16 malicious injury to personal property between two thousand
17 and ten thousand dollars; 2014, distribution of
18 methamphetamine first offense; 2015, entering premises
19 after warning; 2018, trafficking in methamphetamine 10 to
20 28 grams first offense; and then out of state, Your Honor,
21 in 2001, domestic assault.

22 THE COURT: Okay. Counsel.

23 MR. NIETERING: Thank you, Your Honor.

24 Your Honor, you saw the conditions that my client
25 lives in. He's not a drug kingpin. I drove out there, I

1 believe, yesterday. And it is even further delapidated and
2 disrepair. The back window's busted out.

3 My client is 55 years old. He's in relatively good
4 health currently. He's a skilled carpenter. I believe
5 that he would have a lot to offer if he applied those
6 skills productively, Your Honor.

7 He has the support of his two daughters. His daughter
8 Audry would like to come forward and speak.

9 THE COURT: Ma'am, tell me your name, please.

10 AUDRY JONES: It's Audry Jones.

11 THE COURT: You have a very soft voice. I'm going to
12 have to ask you -- I know you're upset, but she has to
13 record. Okay.

14 AUDRY JONES: My name is Audry Jones.

15 THE COURT: Yes, Ms. Jones.

16 AUDRY JONES: So, with hearing the track record of
17 Larry Jones, I get how it looks from anybody else on the
18 outside. But for someone who knows Larry Jones, someone
19 else besides just a criminal.

20 When he got released from jail this last time -- I
21 have two younger kids, and he got to experience them for
22 the first time, and they fell in love with him. And they
23 was going to come with me today, but I could not bring them
24 for something to happen like this and have to explain what
25 that meant for them. I didn't want them to lose a

1 grandparent like I lost a parent. So, I know what kind of
2 charge this is. But he's way more than just what history
3 shows.

4 MR. NIETERING: Thank you.

5 My client has a tough exterior, but in a candid moment
6 in my office he said that he was proudest. His proudest
7 accomplishment in life was his two daughters. His two
8 daughters have been here not only today. They were here at
9 the previous -- in this mistrial previously, Your Honor.

10 We just ask. The longest time he had previously been
11 in prison was six years. We're just asking for leniency in
12 the court so that way he can hopefully see his grandkids.

13 You know, he is 55 years old. There's -- we
14 understand there's a mandatory minimum, Your Honor. We
15 would ask that he be able to get out and at some point see
16 his grandkids before they grow up, Your Honor.

17 THE COURT: Anything, Mr. Berry?

18 MR. BERRY: Judge, I'll just point out the fact that
19 prior to the trial of this case and prior to disclosure of
20 the C.I. packet that the offer was a significant reduction
21 and that he was not facing any time that would actually
22 send him into the department of corrections. So, I would
23 just ask the Court to consider that.

24 Certainly, he's exercised his right, constitutional
25 right, to a trial. And we supported him through that, and

160 Sentence

1 it's his decision. We are again just asking for leniency
2 for him given his age right now and the fact that he knows
3 this is an 85 percent crime. So, we would ask the Court to
4 consider it.

5 THE COURT: Mr. Jones, I'm happy to hear from you,
6 sir.

7 THE DEFENDANT: I mean, I know I made mistakes, lots
8 of them, I mean, but I love my kids and my grandkids very
9 much. I mean, I've tried. I mean, I been out since '18,
10 and I thought -- thought I was doing good. I mean,
11 apparently, I still made mistakes but...

12 THE COURT: No, sir. You're not making mistakes.
13 Mistakes are putting too much salt on food.

14 THE DEFENDANT: Yeah.

15 THE COURT: That's not what we're here about.

16 THE DEFENDANT: Yeah.

17 THE COURT: We're about poison in the community, and
18 you are a career criminal. And I say that because I did a
19 lot of criminal defense work in federal court, and that's
20 what you qualify for theoretically.

21 THE DEFENDANT: Yeah.

22 THE COURT: All the way across on the table -- on the
23 chart.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I got daughters too, and grandchildren.

1 THE DEFENDANT: I understand that.

2 THE COURT: 2022-GS-11-0544, 20 years in the
3 department of corrections. Give you credit for any time
4 you're entitled. Very best of luck to you.

5 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

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I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Cherokee County, South Carolina, on the 6th day of June 2024.

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September 25, 2024

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

WITNESSES

CHEROKEE COUNTY SHERIFF'S OFFICE

Roderick Ogleby Jr

ARREST WARRANT NUMBER

2022A1110100106

ACTION OF GRAND JURY

Cathy Hines

Foreperson of Grand Jury

Date: 5-9-22

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 22-65-11-00544

The State of South Carolina

County of Cherokee

Barry Barrette, Solicitor

COURT OF GENERAL SESSIONS

May 9, 2022 TERM

THE STATE

VS.

LARRY CHARLES JONES

Indictment for

DISTRIBUTION OF METHAMPHETAMINE

SC Code: 44-53-375

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

2022 MAY -9 AM 10:53

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on May 9, 2022 the
 Grand Jurors of Cherokee County present upon their oath:

DISTRIBUTION OF METHAMPHETAMINE

That Larry Charles Jones did in Cherokee County on or about June 11, 2021,
 distribute, dispense, deliver, purchase or otherwise aid, abet, attempt or
 conspire to distribute, dispense, deliver, or purchase a quantity of
 Methamphetamine, a schedule II controlled substance, in violation of §44-53-
 375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended, such
 distribution not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in
 such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

STATE

VS.

Larry Charles Jones

AKA:

Race: W Sex: M Age:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022-GS-11-544

A/W#:

2022A111D10b106Date of Offense: 6/11/21S.C. Code §: 44-53-375CDR Code #: 3200

SENTENCE SHEET

*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: Distribution of Methamphetamine- Third Offense (10-30 years and/or \$0-\$50,000)In violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 3200
☒ 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:

Solicitor

SC Bar # 101671

Defendant

Attorney for Defendant

SC Bar # 105824WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 20 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.

STATE VS. Larry Charles JonesINDICTMENT/CASE#: 22 -GS- 11 -544**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)		<u>\$100</u>	\$ _____
§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)		<u>\$25</u>	\$ _____
§14-1-213 (Drug Court Surcharge)		<u>\$150</u>	\$ _____
§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		\$500	\$ _____
☒ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$ <u>40.00</u>
		TOTAL	\$ <u>323.25</u>

Clerk of Court/Deputy Clerk:
Court Reporter:Brandy McRee
Linda MoffittPresiding Judge:
Judge Code:
Sentence Date:R. Keith Kelly
2165
June 4, 2024

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Sarah E. Shipe
Appellate Defender

RECEIVED

Jun 30 2025

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 30th day of June, 2025.

RECEIVED

Jun 30 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

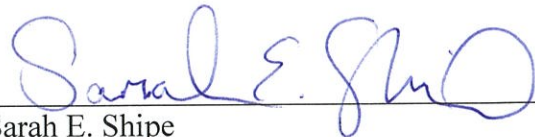
LARRY CHARLES JONES,

APPELLANT.

APPELLATE CASE NO. 2024-001013

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Larry Charles Jones, #348745, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 30th day of June, 2025.



Sarah E. Shipe
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT